

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
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MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
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1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

CHAIRMAN OF DIVISION (P): MR. JUSTICE SEAN RYAN,
FORMER PRESIDENT OF THE COURT OF APPEAL

HEARING HELD IN DUBLIN CASTLE
ON THURSDAY, 16TH JUNE 2022 - DAY 187

187

Gwen Malone Stenography
Services certify the
following to be a
verbatim transcript of
their stenographic notes
in the above-named
action.

GWEN MALONE STENOGRAPHY
SERVICES

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1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 16TH JUNE
2 2022:

3
4 MS. MCGRATH: Now, good morning, Chairman. We're just
5 continuing with the evidence of Inspector O'Sullivan. 11:07

6 CHAIRMAN: Thank you very much. Good morning
7 inspector, thank you very much for coming back. That's
8 great.

9 THE WITNESS: Good morning.

10
11 INSPECTOR ANTHONY O' SULLIVAN CONTINUED TO BE
12 DIRECTLY-EXAMINED BY MS. McGRATH, AS FOLLOWS:

13
14 Q. MS. McGRATH: Now, inspector, we finished some of the
15 issues on Tuesday evening and I said there was just -- 11:07
16 in fact there's about three more issues that I would
17 just like to go through some documentation with you?

18 A. Yeah.

19 1 Q. Okay. The next issue that I'd like you to assist the
20 tribunal on, on the issue paper it's issue 3H, and 11:07
21 again this is an allegation in respect of
22 Superintendent Comyns and/or Chief Superintendent
23 Dillane targeting or discrediting Sergeant Barry by
24 making implicit criticism of Sergeant Barry, including
25 requiring him to make a report in respect of a fatal 11:07
26 fire that occurred on the 9th April 2013. Now, we know
27 that, as we were dealing with on Tuesday evening, we
28 know that you were in the station that night with the
29 chief superintendent, isn't that right?

1 A. That's correct, was 9th April 2013.

2 2 Q. Okay. And had you met with Mr. Barry and you went off
3 duty at 10pm, isn't that right?

4 A. That's correct.

5 3 Q. Okay. Before we just get into the actual events of the 11:08
6 night, one of the issues we have been looking at in the
7 tribunal is the circular on critical incidents, and
8 you'd be aware of that, isn't that right?

9 A. I would be.

10 4 Q. Now it's been opened a number of times to the Chairman 11:08
11 and just for the transcript, it's at page 734. And
12 you'd be aware, inspector, it refers to two reports, a
13 30-minute report effectively after the incident occurs
14 and then a report the following morning, isn't that
15 right? 11:08

16 A. That's correct.

17 5 Q. And that's very much summarising it, isn't it?

18 A. That's correct.

19 6 Q. Can I just ask you some general questions about this
20 circular. First of all, in relation to the report 11:08
21 that's to be made within 30 minutes of the incident
22 occurring, now you'll see there if you go down --
23 sorry, if you just stay there, Mr. Kavanagh. "All the
24 critical incidents will be reported to office of Deputy
25 Commissioner Operations by regional offices within 30 11:09
26 minutes of the incident occurring." Now, when
27 Mr. Barry was giving his direct evidence on Day 176, he
28 was asked who would do this particular report and he
29 said it was the radio room personnel who'd take in the

1 999 calls. what's your view on that? Is that how it
2 happens, with a 30-minute incident report?

3 A. I can't really answer the 30-minute one, but I presume
4 it goes in from somebody who is working at the time.

5 7 Q. But I mean, you have critical incidents regularly, I 11:09
6 would imagine, in the division, and you are a core
7 inspector in Fermoy, what happens with the 30-minute
8 notification?

9 A. Well, if it was the day time obviously we'd on to the
10 regional office right away. 11:10

11 8 Q. Who would be on, sorry?

12 A. The superintendent.

13 9 Q. The superintendent?

14 A. Or if I was acting, it would be me.

15 10 Q. Okay. And then if it's not the day time? 11:10

16 A. There would be a report go in from the sergeant at
17 nighttime. I don't believe if it's one o'clock at
18 night, that there's anybody that rang up at the middle
19 of the night. It's my understanding from my old days
20 in Mitchelstown with Mr. Barry, a report would go into 11:10
21 the superintendent, he'd make sure it'd be delivered to
22 the station.

23 11 Q. No, but can we just stay with the 30-minute
24 notification. Let's keep them very separate,
25 inspector. With the 30-minute notification, you are 11:10
26 saying that during day time hours --

27 A. I think that refers to day time. I can't see the time
28 on it here now, but I think that refers to day time.

29 12 Q. Well, it deals with normal office hours and outside

1 office hours there's a mobile number given, isn't that
2 right?

3 A. I don't believe anybody would be rang at one or two
4 o'clock in the morning to say there's such a fire after
5 occurring. 11:11

6 13 Q. Okay, but I suppose the question I'm asking you is a
7 very simple one: who does it?

8 A. It would be somebody working in the nightttime. So I
9 accept if it's nightttime it would be given in by the
10 radio, whoever took the call. 11:11

11 14 Q. So you're accepting Sergeant Barry was correct when he
12 said it would be the radio room personnel that might do
13 this?

14 A. I can't answer you a hundred percent who does it but I
15 would take it somebody working at the time would do it. 11:11
16 I believe the 30-minute is in relation to the day time,
17 which would be done by the superintendent or the acting
18 superintendent.

19 15 Q. And then in the evening, you're not able to assist us,
20 are you? 11:11

21 A. It would be somebody -- well, if it's six o'clock in
22 the evening I have no issue, but what I am saying is,
23 if it's after midnight that I don't believe Sergeant
24 Terry would be woken up at two o'clock in the morning
25 to tell her something that can be on her desk in the 11:11
26 morning, that's what I'm saying.

27 16 Q. Well, you see, I'm sorry, inspector, that's not
28 particularly clear. What I'm asking you is, because
29 this incident did happen late the night, so in relation

1 to the 30-minute incident report, it is his evidence
2 that the radio room personnel call it in and I'm asking
3 you in your view is that correct or incorrect?
4 A. The 30-minute one?
5 17 Q. Yes. 11:12
6 A. I believe possibly whoever took the call could notify
7 them. What I am saying is, that during the night, at
8 two o'clock in the morning, I actually don't believe
9 that Sergeant Terry is awoken in bed to tell her
10 something that can be at her desk in the morning when 11:12
11 she arrives into work.
12 18 Q. But as I say, let's again just have a very straight
13 answer in the sense of, at nighttime in those out of
14 office hours, who makes the call?
15 A. I believe it's someone from the working crew, that's 11:12
16 how I can put it to you.
17 19 Q. So not the radio room personnel? You see, I think
18 earlier you agreed with me that it was?
19 A. It could be, it could be is the answer. What I am
20 saying to you is, that if somebody rang me and told me 11:12
21 at 12 or one o'clock at night, I would not wake up
22 Sergeant Terry to tell her something. If the scene is
23 being preserved and everything done, why would I wake
24 somebody in their bed to tell them something that could
25 be on their desk when they arrived at a quarter past 11:13
26 eight.
27 20 Q. Well, you see, the circular requires this and I think
28 we have been spending a lot of time on what's mandated
29 by the circular. So it mandates a 30 minute

1 notification, isn't that right?

2 A. But I don't believe that says one o'clock in the
3 morning. That's my reading of it, that you're talking
4 about day time.

5 21 Q. Well, I think, inspector, in plain English, it's 11:13
6 looking for a 30-minute report and during normal hours
7 it's indicating how that is to be done and outside
8 office hours it's indicating how that is to be done?

9 A. Well, I'm sorry, Ms. McGrath, I will give you the same
10 answer. If I was working, I don't think I would wake 11:13
11 Sergeant Terry at two o'clock in the morning to tell
12 her something that can be on her desk at 8.15,
13 providing everything is done at the scene.

14 22 Q. Now, I think it is the case that on the night of the
15 9th April you did not call in the 30-minute 11:13
16 notification?

17 A. No, I didn't.

18 23 Q. You didn't?

19 A. No, I have no issue with that.

20 24 Q. Do you know who did that night? 11:14

21 A. I don't believe -- I don't know is the answer, but
22 again, I would say to you, I finished sat ten o'clock
23 that night, I believe the file was around 11 o'clock, I
24 came off duty, that was 20:13, I would have four kids
25 from 14 down to four, I was off duty, Garda ward did 11:14
26 ring me in the presence of Sergeant Barry at the scene
27 and I did get a call, I think he said numerous calls, I
28 would say I got one call from Garda ward. I didn't
29 notify the 30-minute call, as you say, because I didn't

1 think it would be done that time at night.

2 25 Q. Okay, but who did notify the 30 -- comply with the
3 30-minute requirement, do you know, that night?

4 A. What I say to you, Ms. McGrath, and I'm sorry, I can't
5 help the tribunal any more. If it was late at night, 11:14
6 11 or 12 o'clock, I would not ring up Sergeant Terry to
7 tell her there has been a fire in Kilbeheny. If
8 Mr. Barry says that the radio room did it, I take it
9 they did it, if he says the radio room did it.

10 26 Q. It is Mr. Barry's evidence and we can look at it if you 11:15
11 want, but he says that that should have been done by
12 the divisional officer in Fermoy, to the people who
13 take the 999 calls?

14 A. But there's nobody in the divisional office in Fermoy,
15 Ms. McGrath, after five o'clock in the evening, there'd 11:15
16 be nobody there. But if it's the person who took the
17 999 call, you're saying, maybe in the public office?

18 27 Q. Well, that is his evidence, that it is the radio room
19 personnel, and that is either correct or incorrect in
20 your view? What is your view? 11:15

21 A. It's somebody working, Ms. McGrath. I cannot put the
22 issue any further. If somebody rings -- I certainly
23 wouldn't ring up at that time of night to tell somebody
24 that. I would have it in the morning.

25 28 Q. Okay, I think we will just move on from that. In 11:15
26 relation to the second requirement. If we just go back
27 up there, Mr. Kavanagh. So, it says:
28
29 "Following the initial notification, a full report on

1 the incident signed by the relevant district officer,
2 acting district officer or superintendent on call will
3 be forwarded to the regional office via e-mail."

4
5 And it gives the details there, before 8.15 on the 11:16
6 following morning day. Okay. So again it mandates
7 another action that must be carried out in relation to
8 a critical incident, isn't that right?

9 A. That's correct.

10 29 Q. So it must be signed, would you accept it must be 11:16
11 signed by the district officer or the acting district
12 officer or a superintendent on call?

13 A. That's correct.

14 30 Q. I think that you didn't sign any report the following
15 day, is that right? 11:16

16 A. No.

17 31 Q. Okay. But were you aware this obligation existed in
18 respect of the acting district officer?

19 A. It's my -- I was, I'm aware about the day time one, I'm
20 fully aware of that. And what I am saying is, that I 11:16
21 believe the superintendent or acting superintendent
22 would make out that report based on a report that
23 should be forwarded by the unit that was working at
24 night. That's my understanding.

25 32 Q. Okay. But what I am asking you, inspector, is you 11:17
26 didn't sign anything the following morning?

27 A. I didn't, I probably wasn't even there the following
28 morning. But I didn't, the answer to that is no, and,
29 Chairman, I did not sign any report.

1 33 Q. I suppose can I ask you, just moving away from that
2 night in question, can you tell the Chairman what's
3 commonly done on the following morning in respect of
4 any critical incident?
5 A. I would say even any type of an incident like that, the 11:17
6 superintendent is not working at night unless he's
7 called out to an incident. He is relying solely on his
8 unit to perform their duties, and as I say, when I was
9 in Mitchelstown in the early 2000s with Mr. Barry,
10 always we made sure if something happened that a report 11:17
11 was delivered to Fermoy Garda Station. And even if I
12 was at home, I would say, make sure that goes in the
13 super's post, it's not left behind in the station, it's
14 in the super's post for the morning. And that is an
15 ongoing practice that has been there as long as I am in 11:18
16 the Garda Síochána. It's an ongoing practice, even
17 before any critical investigation was thought of.
18 Basically because the superintendent could come in the
19 morning and he would get a call from somebody, it could
20 be the media, and he'd know nothing about the incident. 11:18
21 So if anything happens during the night, be it a
22 critical incident or other, I believe whether it's the
23 guard wrote it out but the sergeant would ensure to
24 write superintendent Fermoy, forwarded for your
25 information, and he'd sign it. 11:18
26 34 Q. But we will come in a moment, inspector, to the
27 sergeant's duty. I am just talking about in your
28 capacity, acting district officer duty. So, you have
29 an obligation under this critical incident circular,

1 isn't that right?

2 A. I would. As I said to you, Ms. McGrath, if I was
3 acting that day inside in Fermoy Garda Station and I'm
4 not so sure, I don't believe I was, if I was I would
5 expect a report to be on my desk in relation to that 11:18
6 and I would read the report first thing and I would
7 expect maybe to have urgent written on the envelope.

8 35 Q. Okay. But would you accept that neither the district
9 officer or acting district officer signed anything that
10 morning before 8.15? 11:19

11 A. I can only speak for myself, Ms. McGrath, I didn't sign
12 it. I did take a call maybe somewhere around 11.30pm
13 that night in relation to the fire, and I believe I
14 took one call and I went to the seen in the morning.

15 36 Q. Okay. Can I ask you to look at your statement, please, 11:19
16 inspector. It's at 5336. Now, again I just want to
17 stay with the generalities for the moment. At 5336,
18 that paragraph starting with "Later that night" if you
19 can go down, Mr. Kavanagh, please. Just midway through
20 that paragraph there, if we can just stop. we'll talk 11:19
21 about the phone calls and everything in a moment. But
22 you say:

23
24 "However, I believe all such criminal investigations
25 are reported by the duty sergeant to district 11:20
26 headquarters for onward transmission to the regional
27 office before 8.15 the following day."

28
29 Okay. So you're using the words you believe. I just

1 want to ask you about why you say you believe that's
2 the case. It doesn't appear to be written down
3 anywhere?

4 A. Look, Ms. McGrath, I could say I know or I believe. I
5 made that statement long before that and I said it 11:20
6 earlier, I have been -- know, I won't use the word
7 believe, I know that such report has always been sent
8 in by the sergeant working to the superintendent, the
9 whole system grinds to a halt if we don't have it.

10 37 Q. You continue in that paragraph, you say, "I do not 11:20
11 believe appropriate report was forwarded by a working
12 unit." why do you use the words "working unit", can
13 you just assist the Chairman on that?

14 A. I believe there was only one working unit working at
15 the time, and it's my understanding that the sergeant 11:20
16 does not have to make out the report verbatim but he
17 should have a read of the report, that it contains the
18 required information that the superintendent would be
19 looking for, and he should write at the bottom of that
20 report, superintendent, Fermoy, forwarded for your 11:21
21 information, signed and the station stamp. That's my
22 understanding.

23 38 Q. I just think the use of the words "working unit", can
24 you tell the Chairman, it would seem to suggest a
25 member of that investigation team on the critical 11:21
26 incident, again staying with generalities?

27 A. No, sorry, in relation to the report sent in for the
28 criminal incident, the working unit is the unit that's
29 rostered, there would only be one unit working at 1am

1 at night, and I mean that unit. Like the person out at
2 the scene, that person may not have to come into the
3 station to write the report. If that is relayed to the
4 person in the station. The person at the scene may not
5 be in a position to leave the scene, but the person can 11:21
6 ensure that that report is forwarded to the
7 superintendent and that's what the superintendent will
8 look for. And I said, Ms. McGrath, as well and I go
9 back, I think the envelope should be marked urgent if
10 it's a criminal incident. 11:21

11 39 Q. Inspector, I am just asking you there about your
12 reference to the working unit. There would be more
13 than one person on the working unit, is that right?

14 A. Oh there'd be a couple in the unit I think probably,
15 would there be three, four, maybe three. There'd be 11:22
16 more taking in the district but I presume there would
17 be two in Mitchelstown.

18 40 Q. Can you just move the microphone, sorry, inspector,
19 just a bit closer to you?

20 A. Closer to me, is it? 11:22

21 41 Q. Yes, come closer and move it a little bit towards you,
22 perfect?

23 A. Okay, sorry apologies.

24 42 Q. I think, inspector, as you say, there's more than one
25 person on the working unit, isn't that right? 11:22

26 A. That's correct.

27 43 Q. Okay. And just again staying with that sentence "I do
28 not believe the appropriate report was forwarded by the
29 working unit", can you just expand on that and

1 specifically address whether it could be any member of
2 that working unit?

3 A. I suppose and I'll say it again, Ms. McGrath, that the
4 investigating member who was at the scene, be it he or
5 she, that person does not have to come back to the 11:22
6 station or leave the scene, they can ring the garda
7 station, get the sergeant to make out the report or get
8 another garda to make out the report. But the main
9 issue is, it's not the audited report, the main issue
10 is that the supervision that the report -- the required 11:23
11 report goes into the super. I don't think he'd give
12 out if it wasn't forwarded by the sergeant and once he
13 got it. But 99 time times out of a 100 that's what the
14 sergeant is for. The sergeant would say,
15 superintendent, forwarded for your information, and 11:23
16 it's signed and station stamp.

17 44 Q. well, just there in relation to what you just say,
18 going into the specifics of the night in question, on
19 Day 176, at page 93, Mr. Barry accepted that it was his
20 duty to ensure there was a report the following morning 11:23
21 and he instructed Garda Ward to complete that report,
22 what do you say to that?

23 A. Sorry, I missed that sorry?

24 45 Q. Okay. As I say, Mr. Barry in his evidence, he accepted
25 that it was his duty to ensure that there was a report 11:23
26 the following morning and that he instructed Garda Ward
27 to complete a report. Now what do you say to that? Do
28 you agree with that?

29 A. It's my understanding a C71, a coroner's report was

1 forwarded to the garda station, so I do not believe a
2 coroner's report, a C71 -- in older days there was an
3 original two copies, one to the C branch, copied to the
4 coroner, the super wrote on the original, sent it back
5 to the sergeant or guard to investigate it. But in 11:24
6 this case I do not believe there was a report
7 forwarded. That's what I meant.

8 46 Q. Okay, just leave the C71 aside for one moment. What he
9 is saying is, and it's on page 93 there, if you just go
10 down a little bit. Now, first of all he says there, if 11:24
11 you look at line 12, he said "It was wasn't my duty to
12 notify the regional office within half an hour of the
13 critical incident occurring", do you accept that?

14 A. Yeah, I'd accept if he said it. I think the issue is
15 about the morning one. I'll accept the 30-minute one, 11:24
16 I think the issue is the report in the morning.

17 47 Q. Okay. And that's at line 15?

18 A. Sorry.

19 48 Q. He says, yes, and here is the question:

20
21 "But do you accept that it was your duty to ensure
22 there was a report by the following morning?

23 A. I did. I instructed Garda Ward to complete his
24 report."

25
26 Now, as I say, without reference to the C71, that seems
27 to be just very straightforward, do you accept that
28 there -- is that a reasonable or unreasonable position
29 for Mr. Barry to adopt? 11:25

1 A. I can't accept it and I have to go back, the C71 is
2 internal information for a coroner, date time and when
3 somebody died, other details, whatever happened, that
4 follows. I don't believe it complies with a criminal
5 investigation. And so I have to disagree with it. I 11:25
6 don't want to be awkward about it, but they are two
7 different formats.

8 49 Q. Now, if we look at the night in question, inspector --
9 MR. COSTELLOE: I am sorry, excuse me, Ms. McGrath.
10 Chairman, I don't want to make a big deal out of it, 11:25
11 but Ms. McGrath is putting a portion of a question
12 which elicited an answer. It's quite clear that my
13 client clarified the answer in the line subsequent and
14 I wonder if perhaps the portion of the question and the
15 portion of the answer that Ms. McGrath has put would 11:26
16 be -- it might provide greater clarity if the balance
17 of the answer that my client gave is put so that the
18 witness can then comment upon it. There's a very clear
19 suggestion being made here that my client is saying
20 what's put in that question and my client in fact 11:26
21 clarified that he was dealing with the 30-minute aspect
22 of the circular if one reads on.

23 MS. McGRATH: well, just in plain language. "We're
24 talking about the report the following morning" in the
25 question and I certainly would accept that as accepting 11:26
26 a duty to ensure. But I am open to correction, it does
27 refer to the following morning. I accept as
28 Mr. Costelloe is saying, the next question, 18 says, if
29 you see there inspector:

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"Well, there is a difference of opinion, it would seem between yourself and Inspector O'Sullivan, you suggested it was Inspector O'Sullivan's duty to provide that report?"

11:27

And he's clarifying:

"No, no, no, sorry. I said I could not have notified the regional office within half an hour of the incident occurring."

11:27

CHAIRMAN: I think Ms. McGrath should proceed with her examination and Mr. Costelloe can clarify, can rectify, can refer to any matters that he thinks are arising. I am conscious that -- I am trying to avoid a situation where we're descending into a bit of uncertainty as to which report, the 30-minute report or the morning after report or the 30-minute report. So, Ms. McGrath, I think the best thing is for you to proceed and Mr. Costelloe can return to that.

11:27

11:28

50 Q. MS. McGRATH: Certainly, in ease of Mr. Costelloe, I certainly read it as talking about the report the following morning, but if I have done so incorrectly, I am happy to --

11:28

CHAIRMAN: That's a matter -- in the end of the day, we can clarify any of those matters. Insofar as it's necessary, ultimately an appropriate submission can be made. I am alive to that question. But at this moment

1 I understood that Ms. McGrath was discussing with
2 Inspector O'Sullivan the morning after report.

3 MS. McGRATH: Certainly and, as I say, that's how I
4 read the transcript in question but Mr. Costelloe can
5 correct --

11:29

6 CHAIRMAN: And what the inspector is saying is,
7 Mr. Barry may well have instructed Garda Wall but a
8 C71, his evidence is a C71 is not the report that's
9 required under the directive. That is my understanding
10 as to where we are going. And Mr. Barry, if I remember 11:29
11 correctly, I may be totally incorrect and probably I
12 shouldn't say this, but I think Mr. Barry maintained
13 that the C71 was a sufficient description.

14 MS. McGRATH: Okay.

15 CHAIRMAN: That's what I am understanding. I may be 11:29
16 wrong about that, and anybody can correct me, but at
17 this moment the discussion is about the morning after
18 report and Inspector O'Sullivan says the C71 was not a
19 sufficient report to comply. That's where I understand
20 the -- is that right? Is that where we are at the 11:30
21 moment?

22 A. That's my understanding, Chairman.

23 CHAIRMAN: It doesn't mean that anybody is right or
24 wrong, but that is where we are at the moment in the
25 questioning. That is my understanding, Ms. McGrath. 11:30

26 51 Q. MS. McGRATH: Indeed. And I think you said in your
27 interview, inspector, that you felt that C71 was not
28 sufficient in the circumstances of this incident.

29 A. That was my view from years ago and it's still my view,

1 Ms. McGrath, they're two separate things.

2 52 Q. So I think all in all in relation to the night in
3 question, is it your position then that the circular
4 wasn't complied with, and you use the words "the
5 working unit", is that right? 11:30

6 A. Yes, again I would say, Ms. McGrath, the person who is
7 at the scene does not have to be at author of the
8 report, once somebody in the station -- and it's for
9 the sergeant to make sure it's on the envelope for the
10 super. 11:30

11 53 Q. Okay. Can I just ask you a couple of things in
12 relation to the night in question then. As you say,
13 you went off duty at 10pm, isn't that right?

14 A. Correct.

15 54 Q. Then staying with your statement, you say that the 11:31
16 person was pronounced dead at 11.50pm, isn't that
17 right?

18 A. I would have got that from the information I think,
19 yeah.

20 55 Q. Yes. You also say that it was around midnight, in your 11:31
21 statement, that you received a phone call from Garda
22 ward, is that right?

23 A. If it was 11.50 pronounced dead, it's sometime after
24 11.50.

25 56 Q. Okay, you say around midnight there? 11:31

26 A. Yes.

27 57 Q. At page 5336?

28 A. I would think I had gone home at ten o'clock, I would
29 think it was somewhere between 11 and 12.

1 58 Q. Now, when you were questioned by the tribunal
2 investigators you said that to the best of your
3 knowledge you phoned Superintendent Comyns after you
4 got that call, is that right?
5 A. I did. I believe I did. 11:31
6 59 Q. And can you tell the Chairman a little bit about that?
7 A. I suppose I would just have passed on that a call about
8 the fire in Kilbehenny, I can't recollect everything I
9 said. But I did speak to Superintendent Comyns, that's
10 what I would do in any event if I was informed about 11:32
11 something.
12 60 Q. Okay. Let's start with the first call, you say that
13 Garda Ward phoned you around midnight, can you tell the
14 Chairman what he told you?
15 A. What Garda Ward told me? 11:32
16 61 Q. Yes.
17 A. I wouldn't remember exactly what, Chairman, but
18 basically there was a fire and there was a male
19 deceased, the scene was preserved and I went there
20 myself in the morning. That's my understanding. 11:32
21 62 Q. Okay. So it sounds it was a very brief phone call, is
22 that right, inspector?
23 A. I couldn't honestly remember the length of the phone
24 call at this stage.
25 63 Q. And then when you were speaking to Superintendent 11:32
26 Comyns shortly afterwards, again can you assist the
27 Chairman in relation to that conversation?
28 A. Honestly, I can't recollect everything. I believe I
29 would have passed on the information, that there was a

1 fire in Kilbeheny and a male was deceased, pronounced
2 dead at the scene.

3 64 Q. Okay. Now, in your interview you told the
4 investigators here that to the best of your
5 recollection you had one phone call with Garda Ward
6 that night, is that right? 11:32

7 A. I still believe I had only one phone call.

8 65 Q. Okay.

9 A. But I'm not going to argue if they said they made two
10 phone calls, I definitely had one phone call. 11:33

11 66 Q. Now, if we just look at Garda Ward's report, at 5341.
12 Now, I think you say you hadn't seen this report before
13 matters before the tribunal, but it's at 5341. And he
14 says there that, if you just go to the middle of the
15 paragraph: 11:33

16
17 "At all times I was available on my mobile phone if
18 there was any issue in relation to the incident. I
19 would have gladly taken a call in relation to a matter
20 of such a serious nature, as you are aware, and I had 11:33
21 regular contact with Inspector O'Sullivan on the night
22 in question and also on the morning and afternoon of
23 the postmortem."

24
25 Okay, so he refers to regular contact. 11:33

26 A. I saw that, Ms. McGrath. The time of the tribunal,
27 speaking with the investigator was my first time seeing
28 that document. I believe I got one phone call, I would
29 need to have some sleep during the night. I did not

1 have regular contact during the night, but I would have
2 spoken to Garda Ward first thing in the morning. If he
3 says regular contact is at 7am or 7.30 before he went
4 to the PM, but I believe I had one phone call that
5 night.

11:34

6 67 Q. What do you say to Mr. Barry's position that he was in
7 the presence of two phone calls between yourself and
8 Garda Ward that night?

9 A. Mr. Barry didn't speak to me that night, if we're
10 arguing whether it was one or two calls, Ms. McGrath,
11 if he says there was two calls, we'll take it there was
12 two calls. But if there were two calls they were very
13 near together, because I certainly -- if I was awoken
14 again at one or two o'clock in the morning to take
15 another call in relation to this, I would well remember
16 it.

11:34

11:34

17 68 Q. Okay. Can we just look at Superintendent Comyns'
18 journal at page 730. If we can just move down there to
19 the 9th April. You see there Tuesday, 9th April 2013?

20 A. Yes, I do, Ms. McGrath.

11:35

21 69 Q. So if we just go onto the next page, please,
22 Mr. Kavanagh. At 10.42pm, you see it there, Inspector
23 Tony O'Sullivan, fatal fire at [blank], if you can move
24 down. So 10.42pm "preserve scene for SOC examination
25 in the morning and result of postmortem". Now, that is
26 10.42pm. Are you able to assist the Chairman as to why
27 there is a record of a call at that time?

11:35

28 A. Maybe it was after 11 o'clock. And if there was a
29 second call, maybe Garda Ward rang me when he was on

1 the way out to the scene and I'm not arguing whether it
2 was one call or two calls, but if they were both were
3 before midnight.

4 70 Q. Can you tell the Chairman, do you remember what that
5 conversation was about? Can you assist?

11:36

6 A. I wouldn't. I wouldn't, Chairman. I couldn't
7 remember. But if there was two calls. Maybe when he
8 left the garda station he rang to say, we're on the way
9 to a fire and I would have rang the superintendent.

10 Maybe that's what happened. But I definitely -- this
11 regular contact during the night, again I say, if I was
12 woken again at 1 or 2am in the morning when I would be
13 getting up at 6.30, I would remember it. So maybe
14 there was two calls, one at 10.45 and one at 11.50.

11:36

15 71 Q. Okay. If we go then into the 10th April, the following
16 day, Superintendent Comyns is recording that -- I think
17 it's 7.33 possibly "Sergeant Liam Kelleher is at
18 scene." And 7.49am you're phoning him, is that right?
19 Can we just go down. "Scenes of crime examiner at the
20 scene. Garda Ward attending --"

11:36

11:37

21
22 Sorry, Mr. Kavanagh, if you just go back up.

23
24 "Garda Ward attending postmortem in Limerick at 11am."

25
26 Do you see that?

27 A. I do.

28 72 Q. If you keep going down, at 8.06am he informs Chief
29 Superintendent Dillane regarding the fatal fire. And

11:37

1 then we continue on down. I think there's another
2 phone call or contact with you at 12.44. If we can
3 just go down. "Inspector Tony O'Sullivan, fire started
4 in downstairs room, maybe where stove is. Postmortem
5 result: Died from smoke inhalation." 11:37

6
7 SO there is a lot of contact there between yourself and
8 superintendent in relation to the incident, is that
9 right?

10 A. That's correct. I would have went straight to that 11:37
11 scene in the morning, had this regular contact, if
12 there was two calls before 12, there was. You can see
13 the time I went to the scene, I would be living in that
14 general area, it would probably take me only about 20
15 minutes from my house to get there, or 15 minutes. So 11:38
16 I accept I was at the scene in the morning and I did
17 take contact with Superintendent Comyns, as always.

18 73 Q. Now, I think that we just opened the report there of
19 Garda Ward and he said that he was in contact with you
20 in the morning and afternoon of the postmortem. So is 11:38
21 this where you are getting your information from?

22 A. I would have been in contact with garda -- but I had my
23 own information from going to the scene in the morning,
24 at what time was it, 7.48 or something I arrived there,
25 I was at the scene. But I would have kept in contact 11:38
26 with Garda Ward during the day, yes.

27 74 Q. Okay. Can I ask you now at this stage, we're now in
28 the middle of the following day, what's your level of
29 knowledge with regard to the compliance with the

1 circular and the report going in to the regional
2 office?

3 A. Again --

4 75 Q. Had you followed it up, inspector, at any stage?

5 A. Again, Ms. McGrath, it's my same answer, and I'm sorry. 11:38
6 But if something happens during the night, the working
7 unit, if there's a sergeant there, he would sign it
8 off, superintendent Fermoy, forwarded for your
9 information and he'd mark the envelope urgent. I had
10 no knowledge of that report. 11:39

11 76 Q. Okay.

12 A. Until afterwards.

13 77 Q. Had you seen the C71 at this stage during the day?

14 A. No, no.

15 78 Q. Had you clarified whether a report had been submitted 11:39
16 in accordance with the circular?

17 A. I hadn't, Ms. McGrath, because if I took a call before
18 12 and I went to the scene I would have expected the
19 report to go in. 99 times out of a 100 it would go in.
20 It would be gone in. 99 times out of a 100 I'd say all 11:39
21 over Ireland that report would be gone in.

22 79 Q. Now, inspector, if we can just move on to the next
23 issue I just want to ask you about. Again you have
24 some involvement in an issue under issue 5 of the issue
25 paper, and it is asking the question: 11:39
26
27 "Did Superintendent Comyns target or discredit Sergeant
28 Barry as he alleges because he made a protected
29 disclosure by refusing to authorise his annual leave

1 application in May 2013."

2
3 Now, can I just ask you about this. In around this
4 time in May 2013, I think the first issue was a request
5 for annual leave between April and June of 2013, that 11:40
6 was made by Mr. Barry. Do you remember this, it was
7 for dates between the 4th April --

8 A. I do.

9 80 Q. -- 2013 and 15th June 2013?

10 A. The 13th of April? There was one earlier, Ms. McGrath, 11:40
11 that I remember. It was a leave sheet that came in
12 for -- just to explain the annual leave, Ms. McGrath,
13 it's a difficult situation and it was difficult for me
14 as well. Because annual leave in Fermoy district,
15 Superintendent Comyns had a rule that you apply 16 days 11:40
16 in advance. There was no issue with that, if there was
17 manpower available, and I'll explain it, but the leave
18 was granted in the superintendent's office by four
19 people, Mary Collier, Detective Sergeant Twohy now, or
20 Garda Deirdre Twohy at the time, Superintendent Comyns 11:41
21 and I. I believe we were the only four people
22 authorised to put somebody on leave on the computer.
23 And it was called a leave calendar. So the difficulty,
24 and just to explain it to the tribunal, the difficulty
25 is, if -- the leave had to come in to the 11:41
26 superintendent's building upstairs, there was no point
27 in putting it anywhere else, okay. So, if Mr. Barry
28 was in Mitchelstown Garda Station on the Sunday
29 evening, and he decided to take the Thursday or Friday

1 off of that week, he looked into the calendar, yeah,
2 Sergeant Andrew Geary is working, I'm home and dry, I
3 have my leave. If that leave sheet arrived in the
4 superintendent's desk on a Monday morning in compliance
5 with the district officer's instructions, what happens 11:41
6 is, if there's nine leave sheets there, they're done
7 early in the morning, because guards often look for
8 leave in a hurry, depending on the sunshine and
9 basically the leave is done in the morning.
10 Superintendent's secretary, go in the calendar and 11:42
11 input Mr. Barry is on leave. But however, Ms. McGrath,
12 if that leave sheet is left in my tray in the public
13 office or two days, and Sergeant Geary decides on
14 Tuesday, oh, I'm going to take Thursday and Friday off,
15 he looks in the calendar, nobody off, indeed, if he 11:42
16 arrived in late even to myself or Superintendent
17 Comyns, he wants the date, there's never an issue. The
18 leave sheets are there, the superintendent would even
19 sign them without looking at them. And if there's was
20 problem with one of them, his secretary will put a 11:42
21 yellow sticker on it, inspector/super will have you a
22 look at that, not sure. We'd look at it and decide it
23 was fine and we'd grant the leave. But the difficulty
24 with Mr. Barry's leave sheet was that on Sunday evening
25 he'd be fully entitled to leave but by the time I found 11:42
26 it on Wednesday, I may not be able to grant leave and
27 that happened on the 5th -- I think, was it the 5th
28 April? I think somewhere then. I actually found his
29 leave sheet on the 5th April in the public office and

1 he was on leave from the morning and I sent over the
2 superintendent's report again saying that I had granted
3 the 5th and 6th -- or 4th and 5th retrospectively but
4 had it been submitted, I would have to refuse it
5 because Sergeant Dunne was on leave. I made no issue, 11:43
6 I put Superintendent Comyns, nice report on it again,
7 and I said, please comply with the instruction.

8
9 The reason I have given you that, Ms. McGrath, is just
10 to explain to the tribunal, if a leave sheet is left in 11:43
11 the public office Mr. Barry might think he didn't get
12 leave he was entitled to, but it was because of the way
13 he made his application.

14 81 Q. Okay. Now, inspector, can we just break all that down.
15 There's a lot in that, in what you say and if we can 11:43
16 just break it down. First of all, it certainly was my
17 understanding that we were talking about two sets of
18 leave applications?

19 A. No, but I just wanted to explain the leave sheet first
20 Ms. McGrath. 11:43

21 82 Q. Okay?

22 A. Just to the Chairman. I just want to explain how
23 leave, because there's an issue that I could grant
24 leave, I could only grant annual leave if I was sitting
25 in Superintendent Comyns' chair in the district office. 11:44

26 83 Q. That is something I want to clarify with you, but
27 again, just to keep everything straight on the
28 transcript, there were two different sets of leave at
29 issue around that time for Mr. Barry, is that right?

1 A. I definitely refused leave in April -- refused two days
2 only.

3 84 Q. Can we stay with April, if you don't mind?

4 A. Okay.

5 85 Q. In relation to the April application, he put in an 11:44
6 application for a number of dates, isn't that right,
7 and they were to run between, certainly from the
8 papers, the 4th April 2013 to the 15th June 2013?

9 A. That's correct, the three days in question, I well
10 remember them, it was the 15th, 16th and 17th April. 11:44

11 86 Q. Okay.

12 A. I refused the 15th and the 16th because I had to and I
13 said, resubmit your leave sheet for 17th April 2013 and
14 I would have granted it.

15 87 Q. Okay. Perfect. If we just stay with that particular 11:45
16 one because we know those are the dates that
17 subsequently arose in relation to force majeure, isn't
18 that right?

19 A. I believe so, yes.

20 88 Q. Those three days. If we stay with the April one, can I 11:45
21 ask you. Two things appear to have happened around
22 this particular application and Mr. Barry says he had a
23 phone call with you in relation to this before he got
24 your letter dated 12th April 2013, do you remember a
25 phone call with him? 11:45

26 A. I think I spoke to him about the leave being refused, I
27 did.

28 89 Q. Okay. And we'll come back to that phone call again and
29 the nature of that conversation, but it is his evidence

1 that you had a phone call, you went through why you
2 were refusing leave, is that right?

3 A. I would have, yeah.

4 90 Q. Just in general terms?

5 A. I would have had, yeah. I wouldn't like refusing leave 11:45
6 to anybody.

7 91 Q. Okay. Then you wrote to him, a letter dated 12th April
8 2013, and that's at 5354. If we can just have that.
9 And again, this is simply more by way of clarity for
10 the tribunal in respect of how you dealt with it and 11:46
11 why you dealt with it. So it's dated 12th April 2013,
12 if we just go down. Now, you're saying:
13

14 "I received your form D9 on the 4/4/2013 at 4pm in
15 public office. Annual leave applications must be 11:46
16 submitted 16 days in advance to the district office.
17 Leave is not granted until signed off by the district
18 officer or acting district officer."
19

20 Okay, now that is what you have been explaining to the 11:46
21 Chairman, is that right?

22 A. That's correct.

23 92 Q. I think that's in compliance with guidelines
24 Superintendent Comyns had issued on the new roster, is
25 that right? 11:46

26 A. That's correct.

27 93 Q. And you enclosed a copy of those guidelines for
28 Mr. Barry with this letter, is that right?

29 A. I did, because I wanted Mr. Barry's leave to come in

1 properly. How he would be granted his leave, it would
2 come to the building it was supposed to come to, I was
3 in a portacabin in the backyard. I don't believe I
4 ever signed a leave sheet in the portacabin in the
5 backyard.

11:47

6 94 Q. Can we just stay with this letter, you say: "Had I
7 received your application in advance of 4th April 2013,
8 I would have refused the dates 4th and 5th April
9 bearing in mind Sergeant Aidan Dunne, sergeant in
10 charge, Mitchellstow, was already on annual leave."

11:47

11
12 You say "I have sanctioned both days retrospectively in
13 the circumstances bearing in mind your recent return to
14 work" you say "I have sanctioned all other dates with
15 the exception of the 15th and 16th April 2013 due to the
16 sergeant in charge Mitchellstow being already on annual
17 leave." And you say "Resubmit your application for
18 17th April 2013". And again you had summarised that
19 for the Chairman earlier.

20 A. I think it's self explanatory, I have outlined it
21 pretty clearly in that.

11:47

22 95 Q. Okay, can I just ask you. Were you dealing with this,
23 you say "I have sanctioned both dates", you've
24 sanctioned other dates, in what capacity were you
25 sanctioning those dates?

11:47

26 A. Because I probably went upstairs, maybe I was signing
27 the post that day, but if I went upstairs there was no
28 leave granted from my office in a portacabin in the
29 backyard.

1 96 Q. Okay, but I suppose what I would like you to clarify,
2 inspector, were you sanctioning that leave in your
3 capacity as inspector?
4 A. No, I don't believe I ever sanctioned leave as an
5 inspector for anybody. I would have been acting in the 11:48
6 leave sheet. But possibly -- did I want to cause
7 trouble as soon as Mr. Barry arrived back? No doubt, I
8 know the kind of person I am. I went upstairs, if the
9 superintendent was gone or I probably got the clerk to
10 do what I wanted in that. 11:48
11 97 Q. Okay, so again, just to be very clear, are you
12 sanctioning, writing this letter, sanctioning that
13 leave in your capacity as district officer only?
14 A. I'd say I would have been acting superintendent.
15 98 Q. But what I am asking you to tell the Chairman is, is 11:48
16 that an absolute, you would have had to have been
17 acting as district officer on that day?
18 A. I believe I would.
19 99 Q. Okay, okay?
20 A. I believe -- Superintendent Comyns may have been there 11:48
21 earlier in the day but if I got that letter written up
22 there that evening, I was in the superintendent's
23 office.
24 100 Q. Okay, and is it your evidence to the Chairman that
25 could you not have granted annual leave to any sergeant 11:48
26 in your capacity as inspector, is that your position?
27 A. It is my understanding and I think it is very clear in
28 Superintendent Comyns' document that is before the
29 tribunal, annual leave is granted by the district

1 officer or the inspector acting district officer. We
2 have to include the word acting district officer. It
3 doesn't say the leave is granted by the superintendent
4 or the inspector. It clearly says and the inspector
5 acting. And I suppose, Ms. McGrath, I want to explain 11:49
6 it again and I know you keep asking can I grant the
7 leave. The superintendent's office is a big office,
8 the clerks are in there, that's where all the leave
9 originated from, not from my portacabin in the backyard
10 of the station. 11:49

11 101 Q. Now, I take from what you have just said that you wrote
12 this letter in your capacity as acting district officer
13 effectively, is that right?

14 A. I would.

15 102 Q. Is that your evidence? 11:49

16 A. It is my evidence.

17 103 Q. Okay. And I think again, can I just ask you, was this
18 because -- to your knowledge had Superintendent Comyns
19 stood back from dealing with Sergeant Barry at this
20 stage, did that have anything to do with this? 11:50

21 A. 2013, no.

22 104 Q. In April 2013?

23 A. That's a year on. April 2014, Superintendent Comyns
24 stood back from Mr. Barry I believe very early April
25 2014, when some issue came down from Dublin in relation 11:50
26 to being injurious to Mr. Barry coming into the
27 building. That's my understanding, Ms. McGrath. And
28 by meaning standing back, I mean Mr. Comyns would have
29 said to me, if any correspondence comes in, will you

1 deal with that for me.

2 105 Q. Okay. What I am asking you, was that a situation in
3 April 2013?

4 A. Ms. McGrath, I said April 2014.

5 106 Q. Okay. 11:50

6 A. Early April 2014.

7 107 Q. Okay. Now when we come to the application where he's
8 looking for annual leave for a family holiday in July,
9 that's a separate application, isn't that right, later
10 in 2013? I think this is the one that comes in in May, 11:50
11 where there is an issue with it being left in your
12 postbox, do I have that right?

13 A. I'm not sure if that's the one for the family holiday.
14 All I can say, Ms. McGrath, and I don't want to go off
15 on a tangent again. But very shortly, I dealt with 11:51
16 leave in April, I think it's in the tribunal notes
17 there, where I signed a good few leave in April, all up
18 to maybe May as well, that I signed. The only dates I
19 refused was the 15th and 16th of April. Shortly after
20 that, I would have arrived into Fermoy Garda Station 11:51
21 again and I found a leave sheet, which is bigger than a
22 normal letter, inside in my postbox again.

23 108 Q. Okay.

24 A. Signed by Mr. Barry's secretary. I would have known
25 the writing because she was my secretary for eight 11:51
26 years. So, what I did with that leave sheet, I was
27 frustrated with it, I'd say I probably took it up to
28 the district office, because I couldn't grant the leave
29 or more than likely I put it in an envelope,

1 superintendent Fermoy, and I put it in the right
2 postbox and that's what I did.

3 109 Q. Okay.

4 A. And I rang Mr. Barry's secretary.

5 110 Q. But I think we're dealing -- and to put a date on this 11:51
6 is 16th May 2013?

7 A. I think it was the month of May, I'd be fairly sure.

8 111 Q. Okay.

9 A. I had written, bearing in mind, in April, now please
10 comply with them instructions. It was within a couple 11:52
11 of weeks of that, because I would have said to myself
12 no, not again, when I saw this envelope.

13 112 Q. Okay. Now, when Superintendent Comyns was giving his
14 evidence he was asked why was he dealing with this
15 application for annual leave when he had not dealt with 11:52
16 the one previously and I think his reply, and I am just
17 summarising it, he said that he felt that perhaps you
18 were not available, would that be a fair representation
19 of why it was going on to him in July or was there any
20 other reason why it was being sent on to him? 11:52

21 A. I didn't examine the leave sheet that came in that
22 evening again because I was disappointed probably that
23 it was back coming in again the same way. I didn't
24 examine how many days leave was in it and I believe I
25 either sent it to the superintendent's office or put it 11:52
26 in an envelope. In actual fact, I removed my postbox
27 afterwards because it was causing me difficulty.

28 113 Q. Now, you will see there is a statement from a station
29 clerk, Ms. Patricia Gould, have you seen that?

1 A. The first time I saw it was in the documents at the
2 tribunal.

3 114 Q. That's at page 1390. She puts it at -- this particular
4 instance, she puts it as 16th May 2013?

5 A. I'd accept that. It was definitely the month of May. 11:53

6 115 Q. She said:
7
8 "I was contacted by Inspector Tony O'Sullivan, who told
9 me that all post from Sergeant Barry was to be
10 forwarded directly to the superintendent at Fermoy and 11:53
11 not to the inspector."
12

13 Now, can you expand on that for the Chairman?

14 A. I can. I think that the leave sheet -- Mr. Comyns'
15 instructions, which we spoke about earlier, I cannot 11:53
16 grant annual leave and basically I did tell Ms. Gould,
17 please stop addressing the leave sheet to me, because
18 it was causing me difficulties, in the sense that
19 Mr. Barry might be without his leave, like I explained
20 earlier, because it was not sent in the day it went in, 11:54
21 and two or three sergeants could have got in for leave
22 in the meantime while that sat in my postbox in the
23 public office, while I could have been in Mallow or
24 Middleton doing some job or report for the chief.

25 116 Q. And she continues: 11:54
26
27 "He was referring to the fact that I had forwarded
28 annual leave sheet directly to him. I told Inspector
29 O'Sullivan that I had forwarded the annual leave sheet

1 to him on the instruction of Sergeant Barry."

2
3 Did you know anything about that?

4 A. She possibly said that. I remember saying to Ms. Gould
5 that Paul Barry had to comply with the regulations and 11:54
6 the code with Mr. Comyns in relation to annual leave.
7 I definitely said that. What she said to me was, I am
8 going to take directions from Sergeant Barry. Do you
9 know what I said Ms. McGrath, being honest with you,
10 and I did say it, I wanted to solve the problem for 11:54
11 myself, I said, that's fine, I'm going to take my
12 postbox. And that's what I did. I had to remove my
13 postbox. Because I said, if Mr. Barry sent in another
14 envelope next week, there was no postbox there, the
15 chances are it would wind up in the super's post and it 11:55
16 would be opened. That's what happened that day. And I
17 was disappointed after sending out the instruction,
18 being as nice as I could and I had repetition within a
19 month again.

20 117 Q. If we just continue in her statement? 11:55

21
22 "Inspector O'Sullivan instructed me to read the Garda
23 Code, to which I informed him that it didn't apply to
24 me and I didn't have a copy. I also told me Inspector
25 oils that I was stuck in the middle of a situation that 11:55
26 I felt was unfair and that I didn't want to end up in
27 the High Court over Mr. Barry's complaints to the
28 authorities."
29

1 Can you assist the Chairman as to what she may have
2 meant by that?

3 A. I didn't remember any mention of the High Court. But
4 she mentions that I said she didn't have to comply with
5 the code. I'm 35 years in the guards, I have five 11:55
6 members of garda staff in my own office now, I was well
7 aware that Ms. Gould didn't have to comply with the
8 Garda Code. What I asked in that conversation that
9 evening, I said, will you please have Sergeant Barry
10 comply with the Garda Code and forward the leave. I 11:56
11 have no recollection of a mention of the High Court.

12 118 Q. And what did she mean by stuck in the middle, do you
13 think?

14 A. Ms. Gould will have to answer that, I can't speak for
15 Ms. Gould. I can't. Because Ms. Gould said in that I 11:56
16 abused her. She knows well I didn't abuse her. She
17 was my secretary for eight years and again, I don't
18 think I ever had a row with her and I certainly didn't
19 abuse her.

20 119 Q. She goes on to say: 11:56
21
22 "Inspector O'Sullivan became excited and stated he was
23 going to move his post locker as he was unable to check
24 it on a regular basis, which could have resulted in
25 Sergeant Barry's annual leave sheet going unseen for up 11:56
26 to two weeks."

27 A. I don't get excited, Ms. McGrath, but I probably used
28 the word, maybe I was frustrated that evening and I
29 think anyone inside in this room would be frustrated if

1 you were in the position that I was in. There was a
2 leave sheet being forwarded not in accordance with the
3 regulations of the district officer. And I was caught
4 in the middle of this. And I had to remove my postbox,
5 was the only way I could solve the problem. And I 11:57
6 don't think there is any other inspector in the country
7 had to remove his postbox from the station.

8 120 Q. Can you tell the Chairman, is this an example of
9 escalating tensions in relation to Sergeant Barry at
10 this particular point? 11:57

11 A. You see, I can't, Ms. McGrath. I can only deal with
12 Mr. Barry -- but certainly all I can say is, it was
13 very simple. And I think I have explained it the best
14 way I can in relation to the annual leave. On a Sunday
15 you can get leave on Monday, but if you take a 11:57
16 different route with that leave sheet -- sorry, you can
17 take leave Thursday or Friday, but if goes a different
18 route you by Wednesday you may not be able to get that
19 leave Thursday and Friday. Certainly there was issues
20 for me with the leave. It was causing me problems, for 11:57
21 want of a better word.

22 121 Q. Was this arising in relation to any other member or was
23 this just Sergeant Barry? Was this unique to him, this
24 situation?

25 A. I don't believe there was any other issues with any 11:57
26 other member. I never saw any issues.

27 122 Q. Okay.

28 A. Not that I am aware of, and I am in Fermoy district 28
29 years.

1 123 Q. Okay. Now, just brief in relation to two final issues.
2 The first one, the issue of the Haddington Road hours
3 and again, this is issue 5:

4
5 "Did Superintendent Comyns target or discredit Sergeant 11:58
6 Barry as he alleges because he made a protected
7 disclosure: C, by requiring Sergeant Barry to reply to
8 Inspector O'Sullivan or Superintendent Comyns for
9 certification of Haddington Road hours."

10
11 Now, can I just ask you about that? You were the 11:58
12 sergeant in charge in Mitchelstown, you told us on
13 Tuesday, since January 1999, is that right?

14 A. That's correct

15 124 Q. And you became inspector in 2007? 11:58

16 A. Correct.

17 125 Q. In that intervening period as sergeant in charge, would
18 you have sanctioned Haddington Road hours for members?

19 A. You see Haddington Road wasn't there then.

20 126 Q. Oh 2010, of course, you're right? 11:58

21 A. I think we're mixed up. There was old time off in
22 lieu, that there wasn't really an issue about if you
23 were finishing off something I suppose pre
24 Superintendent Comyns' time. Yes, pre Superintendent
25 Comyns' time, ordinary time off, which was in money, 11:59
26 was actually sanctioned by the sergeant in charge. In
27 other words, if somebody was out at a traffic accident,
28 had to work on two hours, there was no issue with it.

29 127 Q. You're absolutely right, it's a 2010 agreement, and I

1 think Superintendent Comyns he became the district
2 officer in July 2010, isn't that right?

3 A. He did. He came to Fermoy in July 2010.

4 128 Q. Okay. And can I ask you in relation -- we have a
5 statement from the sergeant in charge, Sergeant Aidan
6 Dunne, at page 1881 of the papers and he says:

11:59

7
8 "In relation to the issue," --

9
10 It's about three or four lines down there. Actually
11 it's the sixth line down he says:

11:59

12
13 "In relation to the issue raised by retired Sergeant
14 Paul Barry regarding Haddington Road duty, I can
15 confirm that at one time I did sign and approve all
16 such applications made by retired Sergeant Barry as
17 well as for the other sergeant attached to Mitchelstown
18 Garda Station, Sergeant Gerry Quinn."

11:59

19
20 So it's his evidence, well, it's statement to the
21 tribunal that certainly when Haddington Road came into
22 being in 2010, that he says that he did approve and
23 sign all such applications, what's your view of that?

12:00

24 A. I can't speak for Sergeant Dunne, but I think he may be
25 mixed up. But I haven't the month of the Haddington
26 Road agreement. I mean, I would say it was probably
27 the middle of 2010, bearing in mind Superintendent
28 Comyns came there in July. I think that Sergeant
29 Dunne, I can't speak for him, but I think he may be

12:00

1 mixing up time off in lieu. I believe all Haddington
2 road was pre-sanctioned.

3 129 Q. He does refer to Haddington Road duty specifically
4 there, isn't that right?

5 A. It's going to have to be put to Sergeant Dunne, I can't 12:00
6 answer, I'm sorry.

7 130 Q. Okay.

8 A. But I believe he's mixed up with time off in lieu.

9 131 Q. Okay, well, maybe you can assist in relation to the
10 next part. It says: "However, this practice changed 12:00
11 under Superintendent Michael Comyns, in which he
12 directed that all such applications should be forwarded
13 to him for sanction or to the district inspector
14 Anthony O'Sullivan."
15 12:00

16 Is that right?

17 A. 110% right, yeah.

18 132 Q. Do you remember, this practice changed, can you say
19 when? Can you assist?

20 A. You're going to have to ask Sergeant Dunne. I don't 12:01
21 think it ever changed in Superintendent Comyns' time,
22 they were his rules.

23 133 Q. He said:
24
25 "I cannot recall initially if this applied to retired 12:01
26 Sergeant Barry only but I can say that before he moved
27 from Fermoy district, all such applications did have to
28 be forwarded to Superintendent Comyns."
29

1 Can you assist the Chairman, was there a distinction
2 between Sergeant Barry and Sergeant Quinn in relation
3 to this?

4 A. All I can say is, my recollection of Haddington Road,
5 and, Ms. McGrath, that would include myself, if I was 12:01
6 getting Haddington Road, I would say to Superintendent
7 Comyns, look, I'm doing five hours Haddington Road. I
8 believe all Haddington Road was pre-sanctioned. Now it
9 may not, can I explain this to you, the 85s would come
10 in at the end of the week, so they would be there on 12:01
11 the Monday morning. And if a couple of guards had
12 taken Haddington Road during the week, they may not
13 have it signed, sanctioned the day before but they
14 would have made some contact with the superintendent or
15 I and said, I'm at such a thing, I want to do some of 12:02
16 my ten hours Haddington Road, do you mind if I do that?
17 What would happen on Monday morning, and many the time
18 Superintendent Comyns would have come out to my
19 portacabin and said, did you sanction that Haddington
20 Road and I said, for who, and we'll say he has three of 12:02
21 them, and I say, yeah, two out of them three guards did
22 make contact with me, Garda Gerry Murphy from
23 Mitchelstown, we'll say, Garda Alan Murray from the
24 policing unit, they've contacted me. He would say,
25 what about the third one? And he'd send the third one 12:02
26 back out, who sanctioned this? So I believe that's
27 what happened.

28 134 Q. I think Superintendent Comyns, when he was being
29 cross-examined by Mr. Costelloe, 183, at page 103, he

1 was very clear in his evidence, he said that prior
2 approval had to be given by him or you, is that right?

3 A. It is. But I think that that's slightly mixed up,
4 because somebody could be out at the screen on
5 wednesday -- I think, Ms. McGrath, you're taking it 12:02
6 that it has to be written off, we'll say, today being
7 the 16th June, you're saying that it has to be dated
8 the 15th June, that's not correct. Say, this Sunday
9 now, being the 19th, the 85s come in, on the 20th I
10 could sign that, because I got a phone call on the 12:03
11 Tuesday from the guard. That is my understanding. And
12 that's what I meant by pre-sanctioned. And indeed,
13 there were times I was doing the 85s that I would have
14 rang Superintendent Comyns and say, did so and so seek
15 sanction for Haddington Road. So it's not a situation 12:03
16 that there was one law for one member and one law for
17 the other, it's my understanding pre sanction meant
18 either a phone call or in writing.

19 135 Q. Now, Mr. Barry's evidence, both in his statement and
20 interview to the tribunal and his direct evidence, he 12:03
21 says he was the only sergeant who had to apply to an
22 inspector or a superintendent for Haddington Road
23 approval, is that right?

24 A. All I can say, Ms. McGrath, and I have taken the oath
25 here, that's incorrect. 12:03

26 136 Q. Okay. Now, can I then just the final issue I want you
27 to look at is in relation to the force majeure, it's
28 issue 4H and 5B. I won't read them out. It's in
29 relation to the initiation of the disciplinary

1 proceedings in respect of those dates, 15th, 16th and
2 17th April 2013. Now, I just want to ask you about
3 this one particular aspect of it only. You'll recall
4 from the papers that one of the issues was in relation
5 to the disciplinary proceedings, that prior contact had 12:04
6 not been made with you or the superintendent to explain
7 the absence, and that's putting it quite generally.
8 Contact was not made?

9 A. I am aware that Superintendent Comyns would have asked
10 me did I know anything about Sergeant Barry being off. 12:04
11 I was aware of that. Off, we didn't know where he was.

12 137 Q. Okay. If I can ask Mr. Kavanagh just again a very
13 specific issue here, only one issue I want you to look
14 at, Day 176 at page 120 of the transcripts. So it's
15 176, page 120, line 27, I believe it is. Oh yes. So, 12:05
16 this is, if you remember, when we were talking about
17 the annual leave issue and you had written a letter to
18 him on the 12th April 2013, isn't that right? And we
19 opened that letter. And here, what we're doing is
20 we're just looking at -- he says that prior to this 12:05
21 that he had this phone with you and I think you
22 accepted earlier that there was a phone call, is that
23 right?

24 A. There was. I think it was I rang him actually about
25 being sorry for refusing his two days. 12:05

26 138 Q. Okay. He says in his answer, and this is his direct
27 evidence at Day 176, he says:

28
29 "Prior to this he rang me and he explained to me that

1 he was going to have to refuse my leave for those dates
2 and I told him that my wife had been suffering from
3 chronic back pain for a couple of months and I was
4 taking my leave on early tours just in case she had a
5 recurrence as I was the only one at home to take my
6 kids to college or school at the time 12:06

7 Q. So it was sort of precautionary leave you were
8 envisaging that you had a stock of leave and you
9 thought...

10 A. If she was sick I would not come to work." 12:06

11

12 CHAIRMAN: If she was not sick.

13 MS. McGRATH: Sorry "If she was not sick I would have
14 come to work."

15

16 Do you see that? 12:06

17 A. I do.

18 139 Q. If we go down to page 129. I think if you keep
19 scrolling down, Mr. Kavanagh, it's actually the easiest
20 thing. And you see there, and this is the Chairman is
21 putting it to Mr. Barry: 12:06

22

23 "In other words, and he would have understood that is
24 force majeure, is that what you were talking about?"

25

26 And he answered "Yes". Now, this is in the nature of
27 the phone call that you had with him. And so, that's
28 his direct evidence but I also want you to look at
29 another piece of his direct evidence in relation to 12:07

1 this, and if you go down to page 132, line 14. So
2 staying on the same day. So, page 132, line 14. So
3 this is in relation to -- Mr. McGuinness is saying:
4

5 "Obviously you don't know whether Superintendent Comyns 12:07
6 or Inspector O'Sullivan made any enquiry as to why you
7 weren't there?

8 A. No.

9 Q. But this seems to suggest that they had no idea, do
10 you think it's possible that they didn't know why you 12:07
11 weren't there. "
12

13 He says:

14
15 "A. Well it is not possible for Inspector O'Sullivan 12:07
16 not to know.

17 Q. You think he -- do you think he should have
18 foreseen that if you didn't turn up --

19 A. Which I had told him.

20 Q. -- that you would be on force majeure? 12:07

21 A. No, I told him that if my wife was sick on those
22 dates I would have to avail of force majeure. "
23

24 Can I ask you about that? Is that an accurate
25 reflection, can you tell the Chairman, of the 12:08
26 conversation you had with him that day?

27 A. That is 110% incorrect. You put to me yesterday or the
28 day before, Ms. McGrath, two things, in Watergrasshill
29 that I said to Mr. Barry talking on and off the record,

1 stay out until this thing is sorted. Again, the 9th
2 April in Mitchelstown or the 5th April, whatever date
3 that was I think, no, 29th March, that I said put
4 whatever medical conditions on that certificate. This
5 is the third one that is 110% incorrect. I know 12:08
6 Mr. Barry's wife [REDACTED], she's a lady, and if
7 Mr. Barry said to me in that phone call that my wife is
8 having serious difficulties with her back, I think I
9 would not have forgotten it. And certainly, when
10 Mr. Comyns or Superintendent Comyns asked me that day 12:08
11 had I any idea, I know for a fact if I was aware of
12 that, I would have said to Superintendent Comyns, God,
13 he was on to me about his wife. And do you know what
14 the super would have told me? will you ring him.
15 140 Q. well, inspector, can we break it down? Leaving force 12:09
16 majeure to one side, was there a conversation in
17 relation to his wife's illness and possibility of not
18 being able to come to work?
19 A. I just said, Ms. McGrath, 110% incorrect, like the two
20 other conversations. I had no knowledge of Mrs. Barry 12:09
21 being ill. And if I had, why would I later make a
22 statement to Superintendent Lehane in a disciplinary or
23 an inquiry into this, why would I make a statement
24 saying that. Of course, Mr. Barry was my friend,
25 surely I would say to the superintendent, I'm going to 12:09
26 ring him, he said his wife was sick. We didn't operate
27 like that. Mr. Comyns would actually impress on me to
28 ring him. Now, he would probably tell me get back to
29 him and he would be back to me within an hour if I

1 hadn't, did you make that phone call. But that is the
2 situation. That phone call never took -- the phone
3 call took place, but there's no thing about saying in
4 five days' time I'm going to take force majeure, my
5 wife has a bad back.

12:10

6 141 Q. Now, in relation to the force majeure, when he was
7 absent on those dates, in the light of the fact that
8 you had been involved with the leave application, did
9 you consider contacting him?

10 A. Sorry?

12:10

11 142 Q. Did you consider contacting him perhaps about his
12 absence on those dates?

13 A. No. I think he was absent without leave as far as we
14 were concerned, I wasn't getting involved in that. I
15 had solved my post locker thing, I wasn't getting
16 involved in it.

12:10

17 143 Q. Well the postal locker thing was, as we know, a month
18 later, it had nothing to do with it?

19 A. That was after, yeah, sorry. I had spoken to him in
20 relation to the leave, saying I was sorry to refuse
21 him. There was no message in relation to going, my
22 wife's back is bad, I will be taking force majeure.

12:10

23 144 Q. Okay.

24 A. If there was, Ms. McGrath, I can assure you, I'd be the
25 first person in this room to ring him.

12:10

26 145 Q. Okay. As you say, you didn't contact him when he was
27 absent on those dates?

28 A. No. Because the superintendent was enquiring where he
29 was and I didn't think it was a matter for me to get

1 involved in it.

2 146 Q. Okay. There's one just very final and it's a general
3 issue, it was something you mentioned earlier in your
4 evidence, in relation to April 2013. And we've heard
5 from Superintendent Comyns in his evidence and it's 12:11
6 also in his statement, that he effectively stood back
7 from Mr. Barry at around this time and in his statement
8 he uses the words, he asked you to deal with all
9 matters relating to Sergeant Barry until the
10 investigations were finished, and that's at page 552 of 12:11
11 the book. Can you tell the Chairman about that or can
12 you expand on it in any way?

13 A. Again, I believe that's April 2014, and something came
14 down from Dublin that it would be injurious, this is my
15 memory of it, it would be injurious for Mr. Barry to 12:11
16 attend Fermoy Garda Station and Superintendent Comyns,
17 but that's not '13. This is definitely '14. And
18 Superintendent Comyns did say to me, anything that
19 comes in here for Sergeant Barry, will you deal with
20 it? And I said I would. And so what happened then is, 12:12
21 if there was something, it would be left in my tray and
22 I would deal with it. But that's not 2013. I think
23 it's a year late. The dates may be mixed up, it's 2014
24 I'm sure.

25 147 Q. So did you effectively becoming acting district officer 12:12
26 for him, effectively? Is that what this means?

27 A. No, I think that if anything came in that I think
28 Superintendent Comyns, no matter what he did with it,
29 if he went left or right, it was wrong, so he said,

1 look, will you deal with it? And anything that, you
2 know, came down to be passed on, I did do that to the
3 best of my ability. And I don't think that Mr. Comyns,
4 Superintendent Comyns, no, he was running his own
5 district, he didn't make me a superintendent, but he 12:12
6 said, would I deal with anything that came along in
7 relation to Paul Barry because I don't want to because
8 of an ongoing investigation, and I said I would.

9 148 Q. Okay. So from 23rd April 2014, factually.
10 A. I think it's '14, yes. 12:12

11 149 Q. You took over in relation to Sergeant Barry, is that
12 right?
13 A. No, I would have dealt with anything that came in in
14 relation to Paul Barry. That's my understanding.

15 150 Q. Okay. Now, it is Mr. Barry's direct evidence on Day 12:13
16 177, page 208, he says:
17
18 "I was never approached by Inspector O'Sullivan to say
19 that he was in charge of all my dealings, that was
20 never relayed to me, that information." 12:13
21

22 Can you assist the tribunal? Do you have any comment
23 to make on that?
24 A. I can. It's my understanding, Chairman, that in April
25 2014 that something came down from Dublin in relation 12:13
26 to Mr. Barry, it'd be injurious to his health to have
27 any contact with Superintendent Comyns. I know where I
28 was on the day, I was inside in the clerk's office and
29 the super's office. And Superintendent Comyns said

1 that to me and he said, will you deal with anything.
2 He didn't appoint me to go to Mr. Barry and say, you're
3 being appointed district officer, he said, if anything
4 comes in in relation to Paul Barry, will you deal with
5 it. And I did. 12:13

6 151 Q. Okay. Well, as I say, Mr. Barry's position is he knew
7 nothing about this. Would that be correct? Did you
8 have a conversation with him at any stage about this?

9 A. But I suppose why would I? It was just like, my
10 understanding from Superintendent Comyns was that if 12:13
11 something came in, that he didn't want to write
12 anything with his name on it -- if something came down
13 from Dublin to be delivered to Mr. Barry, he probably
14 just left it in the tray for me, for me to do it.

15 152 Q. Okay. 12:14

16 A. He just didn't want to put his name to any document
17 that related -- that's my understanding of that
18 conversation with Superintendent Comyns.

19 153 Q. Okay. That was April 2014, is that right?

20 A. Definitely was April 2014. 12:14

21 154 Q. Okay. Thank you, inspector. I wonder if you could
22 answer any questions please?

23 A. Thanks, Ms. McGrath.

24

25 END OF EXAMINATION 12:14

26

27 CHAIRMAN: Now, Mr. Costelloe.

28 MR. COSTELLOE: Thank you Chairman.

29

1 INSPECTOR ANTHONY O' SULLIVAN WAS CROSS-EXAMINED BY MR.
2 COSTELLOE, AS FOLLOWS:

- 3
- 4 155 Q. Good afternoon, Inspector O'Sullivan?
- 5 A. Good afternoon, Mr. Costelloe. 12:14
- 6 156 Q. You know my name, that's good. You know that I am
7 representing Mr. Barry and I have certain questions to
8 put to you, obviously.
- 9 A. Thanks.
- 10 157 Q. You have been cross-examined, if I may say so, 12:14
11 extensively yesterday and today I will make you a
12 promise, I will do my level best not to go back over
13 any grounds that I feel we don't need to, okay. So I
14 will try and curtail things as best I can in that
15 regard. Before I get to specific areas, could I just 12:14
16 explore with you, you haven't been here, at least to my
17 knowledge, you weren't physically present in this room
18 during the course of earlier testimony, am I right on
19 that?
- 20 A. Sure. And I'll be gone again as soon as I can after 12:15
21 this, Mr. Costelloe.
- 22 158 Q. We can all understand that, inspector?
- 23 A. No, I wasn't here, Mr. Costelloe, no.
- 24 159 Q. But obviously, because you said it yourself there as
25 recently as just a few moments ago and it is, if I can 12:15
26 suggest to you, quite apparent from your evidence, you
27 have read material that has been furnished by the
28 tribunal, you've read what's been generally referred to
29 as disclosure issued by the tribunal, isn't that right?

1 A. I would have had the disclosures, yeah.

2 160 Q. Say that again to me, please?

3 A. I wouldn't have -- you mean what's going on here every
4 day?

5 161 Q. No, no, okay. Before we go any further, pull yourself 12:15
6 into that microphone, please?

7 A. No problem. Can you hear me?

8 162 Q. That's perfect, just what you did there, thank you.
9 So, don't worry about what's going on in the room,
10 what's being said in the room for the time being. What 12:15
11 I am first asking you is, the material being sent out
12 to the various parties, the various witnesses, the
13 disclosure, you have read through that, isn't that
14 correct?

15 A. I did. I think that's in the folder, anything that 12:16
16 referred -- I didn't read the whole folder, anything
17 that referred to me, I looked at it.

18 163 Q. Okay.

19 A. I think.

20 164 Q. And then, to go to what you just dealt with there a 12:16
21 moment ago yourself, you probably anticipated what I
22 was about to ask you, have you taken an opportunity of
23 reading the public online transcripts of the evidence
24 that's been heard in this module of the tribunal?

25 A. No. 12:16

26 165 Q. At all?

27 A. I saw a snippet. I'm too busy. I saw snippets of it,
28 I didn't read -- do mean read the whole tribunal?

29 166 Q. No, no. Just this module. So when we began four weeks

1 ago?

2 A. I saw bits online but I certainly haven't read
3 everything in relation to the tribunal.

4 167 Q. How was it that you saw bits?

5 A. Actually, we would get a transcript, if I had time to 12:16
6 read all the transcripts.

7 168 Q. Inspector, we'll get through this fairly quickly?

8 A. I don't know what you are asking me, Mr. Costelloe,
9 sorry.

10 169 Q. That is fine, if you don't understand the question, it 12:17
11 is probably because I did a poor job in the way I
12 phrased it, so I will rephrase it.

13 A. I'm not saying that for a minute.

14 170 Q. I am, inspector. I am taking the hit for it, okay. I
15 am going to rephrase. The transcripts are online, you 12:17
16 told the Chairman you have seen bits of those
17 transcripts?

18 A. Yeah.

19 171 Q. Okay.

20 A. That's true. 12:17

21 172 Q. How did that come about?

22 A. We get a copy of a transcript ourselves, in actual fact.
23 I could get a copy of the transcript.

24 173 Q. Okay.

25 A. I have read some of them and my answer is still the 12:17
26 same, they're pages, they are going into pages, I would
27 not have read all of them.

28 174 Q. Okay. And again, I understand that to be your answer.
29 But if we try and be a little bit more specific then,

1 did you read the evidence of Superintendent Comyns?
2 A. No, not all of it.
3 175 Q. Does that mean you've read some of the evidence of
4 Superintendent Comyns?
5 A. Mr. Costelloe, I read some of this online and I want to 12:17
6 be as fair as possible. If you are asking me did I
7 read every single line that Superintendent Comyns said,
8 I didn't, is the answer.
9 176 Q. The very last question I asked you inspector was: Did
10 you read some of it? 12:18
11 A. I did read some of it.
12 177 Q. Okay. Did you read all of the evidence of Chief
13 Superintendent Dillane?
14 A. No.
15 178 Q. Did you read some of the evidence of -- 12:18
16 A. I probably did. And, Mr. Costelloe, I'd say the same
17 thing, I saw some of it online and I saw some in a
18 transcript.
19 179 Q. Yes.
20 MR. McGARRY: Chairman, I am sorry, I don't mean to cut 12:18
21 across Mr. Costelloe, but obviously the evidence that's
22 before the tribunal is evidence, so if Mr. Costelloe
23 wants to put certain things to the witness on the basis
24 that they contradict or he disagrees with what is being
25 said, that's fine. But I am not sure that it is very 12:18
26 helpful to ask him if he has read each and every bit of
27 each and every transcript at any particular time. The
28 evidence is there.
29 MR. COSTELLOE: with all due respect, Chairman, do you

1 need me to reply?

2 CHAIRMAN: You don't need to answer. Mr. McGarry,
3 everybody in this room is going to cross-examine, if
4 they were cross-examining they would do it in a
5 different way. The question for me is: Any question 12:19
6 that Mr. Costelloe has asked, is it unreasonable,
7 unfair, invalid, improper? Is it objectionable? And
8 the answer to all of that general questions is no. So
9 Mr. Costelloe can proceed with his examination. If
10 there's some obvious reason to object, then I will be 12:19
11 happy to receive objections, but Mr. Costelloe has done
12 nothing wrong in my opinion and he's perfectly entitled
13 to cross-examine in his own fashion and he has asked
14 nothing objectionable to date. So, please proceed,
15 Mr. Costelloe. 12:20

16 MR. COSTELLOE: Thank you, Chairman.

17 180 Q. Inspector, if I have created confusion or some --
18 CHAIRMAN: You haven't Mr. Costelloe, you haven't
19 created any confusion. There's no need for you to
20 worry about this. Let me finish for a second. The 12:20
21 inspector is in no difficulty, I am in no difficulty,
22 so we don't need to return to the issue raised by
23 Mr. McGarry. If I have ruled on it, that's the end of
24 it. Proceed with your cross-examination,
25 Mr. Costelloe. 12:20

26 MR. COSTELLOE: Thank you, Chairman.

27 CHAIRMAN: You're doing nothing wrong.

28 181 Q. MR. COSTELLOE: Thank you, Chairman. I wasn't in fact
29 going back to the objection. I just want to make it

1 clear before I ask my next question. I don't need to
2 know and I don't care if we're talking about a
3 transcript that's e-mailed to you or a transcript which
4 is available through the portal for the tribunal, I am
5 only asking if you read some or all of the transcript 12:20
6 of these parts of the evidence, do you understand?

7 A. I do understand, and I said I read some of it. Some
8 online and some from the transcript.

9 182 Q. Yes. And as I understand your answer, will you tell me
10 now if I have got this wrong before I go any further, 12:21
11 you read some of the transcript of the evidence of
12 Superintendent Comyns and you've read some of the
13 transcript of the evidence of Chief Superintendent
14 Dillane?

15 A. I would. Some of it I would have read on the phone as 12:21
16 well.

17 183 Q. Say that again to me, please.

18 A. Some of it I read on the phone, on my phone, on the
19 daily news.

20 184 Q. Right. 12:21

21 A. And honestly, I want to be as honest -- I did not and I
22 will say it again, Mr. Costelloe, I did not read all of
23 the transcripts. I read some of the transcripts of
24 Superintendent Comyns and Chief Superintendent Dillane
25 and I am willing to answer any question that's asked of 12:21
26 me.

27 185 Q. Absolutely. Okay. I have taken that to be the case, I
28 have certainly taken it for granted that you're willing
29 to answer questions, inspector. So my next question

1 for you then is, the evidence that you gave yesterday
2 and today, do you feel that there's any chance that the
3 evidence you've given has been informed or supplemented
4 or clarified to your mind by what you read in those
5 transcripts as opposed to your memory as the case was 12:22
6 prior to reading those portions of the transcripts?

7 A. I gave my own evidence here today and it's nothing to
8 do -- I speak for myself and it's nothing to do with
9 the evidence of Chief Superintendent Dillane or retired
10 Chief Superintendent Dillane or Superintendent Michael 12:22
11 Comyns. I gave my own evidence to the tribunal, not
12 helped in any way by anything I saw or read.

13 186 Q. Okay. And of course we have, if you forgive me, and I
14 don't say this pejoratively, the rather colourful image
15 that you gave us yesterday of you being an operational 12:22
16 guy, you're a hands on guy, you deal with the lads and
17 girls, as you said it, but you wouldn't be great for
18 taking notes as you go along. You don't seem to have
19 much in the way of notes in relation to these
20 particular incidents? 12:22

21 A. No, and I accept that, and I said the same things two
22 days ago, I deem myself operational, I'm working, I'd
23 be out at the accidents, I'm an outdoor person and I
24 don't around with a journal writing down every note. I
25 do accept that. 12:23

26 187 Q. So, for example, where you make a statement to the
27 tribunal and something isn't included in the statement
28 but then subsequently, either in response to questions
29 which were put by the investigators to the tribunal or

1 in response to a question put by Ms. McGrath, you do
2 mention it, is that because it's just come back to you
3 or is it because you have had your mind refreshed based
4 on the testimony of other witnesses?

5 A. No, it would depend on the question you asked me. 12:23

6 188 Q. That's fair enough, that's a very generalised questions
7 and it's probably unfair to put it that way. I will
8 get to specifics in due course, inspector. You knew my
9 client long before anything happened between him and
10 Superintendent Comyns? 12:23

11 A. That's correct.

12 189 Q. Indeed, you were friends,

13 A. Yeah, we shared an office for seven years, the same
14 office.

15 190 Q. I mean, you went on to describe your response to him 12:23
16 coming back to work having been out on leave due to
17 work-related stress, as he saw it, as being delighted
18 that he was back to work. That was your response at
19 that time, isn't that right?

20 A. I was, because there was an issue of half pay and I was 12:24
21 delighted to see him back. I would not like to see any
22 member on half pay.

23 191 Q. Yes. And again, you have anticipated something that I
24 was going to ask you about, you would have been well
25 aware, you're an experienced guard in any event but you 12:24
26 certainly in the context of somebody who was your
27 friend, had been well aware of the fact that he was
28 down to half pay because of the fact that he was out
29 sick from work?

1 A. I was aware, because I think I would have brought him
2 some of the documentation.

3 192 Q. A man with a family, a man with a wife at home, this is
4 something that would have been a real problem for him
5 and you would have been alive to that? 12:24

6 A. I fully accept that and I think that is why I said I
7 was delighted to see him back.

8 193 Q. Yes. You were appointed on 9th August 2012 to conduct
9 the inquiry that's mandated under HQ 139/10, correct?

10 A. That's correct. 12:24

11 194 Q. We've heard a lot about this, so I am really going to
12 try and not go back over ground that's already been
13 trod. But it's fair to say, as I understand your
14 evidence, that having -- first of all, you spoke to
15 Superintendent Comyns about going out to speak to 12:25
16 Mr. Barry, isn't that correct?

17 A. I think what I said, I'd no recollection of the call.
18 I basically got the documentation, did I have a
19 discussion with Superintendent Comyns before that? I
20 do not know. I would come back from somewhere and 12:25
21 there would be paperwork in my tray upstairs in the
22 super's office, and I would just take it. I could have
23 had a conversation but I've no recollection of it.

24 195 Q. In any event, whether it was specifically as a result
25 of a conversation with Superintendent Comyns or for 12:25
26 other reasons, presumably a relatively small station,
27 people talk, you knew by the time you went out to speak
28 to my client that a Regulation 10 had been served on
29 him as a result of him being 20 minutes late to work?

1 A. I was aware of that. And I was aware, I gave evidence
2 on Tuesday, I know exactly where I was told it: At the
3 door of the superintendent's office one evening by
4 Superintendent Comyns.

5 196 Q. So you do recall? 12:26

6 A. Oh I was well aware of it.

7 197 Q. Fair enough. Then you went out to speak my client, you
8 met with him at Watergrasshill I think, is that right?

9 A. That's correct.

10 198 Q. And as I understand your evidence, but you tell me now 12:26
11 if I have this wrong, he declined to speak to you,
12 saying that because you and Superintendent Comyns
13 worked in the same building he wanted somebody
14 independent to deal with the issue?

15 A. That's correct. 12:26

16 199 Q. So that we understand ourselves, you're there to speak
17 to him in the context of him having filed a sick
18 report, a sick note effectively, saying that he's out
19 of work due to work-related stress, that allows for a
20 procedural mechanism under HQ 139/10 whereby an 12:26
21 inspector, for example, has to speak to the guard or
22 the sergeant in this case to try and ascertain what is
23 the cause of the work-related stress, and you make
24 efforts to do that by going out to speak to him at
25 Watergrasshill, correct? 12:27

26 A. That's correct. I was appointed under HQ 139/10 by
27 Superintendent Comyns and I think there was a copy of
28 the sick form to Garda Clifford saying it was
29 work-related stress.

1 200 Q. And when you spoke with him, he said he had an issue
2 with Superintendent Comyns but declined to say anything
3 further to you, correct?

4 A. That is correct.

5 201 Q. Okay.

12:27

6 A. I explained to him that I was there, HQ 139/10, I was
7 appointed to investigate it, and he said, I do not wish
8 to discuss the matter with you, but he said he an issue
9 with Superintendent Comyns.

10 202 Q. Well, my question then for you is, that in the context
11 of all of that, in the context of why you were there,
12 your formal reason for being there, if I put it that
13 way, under the HQ Directive, and the fact that you were
14 a friend of Mr. Barry's, was it not peculiar that you
15 didn't ask him what was the nature of his complaint
16 about Superintendent Comyns?

12:27

12:27

17 A. And I think I did say it on Tuesday, I think in March
18 Mr. Barry, Sergeant Barry same back, his attitude
19 towards me would have changed. He saw me as part of
20 the management chain, albeit I was the lowest rung of
21 that ladder. And Mr. Barry was not going to discuss
22 anything with me that day. He made it quite clear to
23 me that I was in the same building as the chief and the
24 super and he wished to have somebody outside of Fermoy
25 Garda Station investigate it. And I did not have any
26 other conversation with Mr. Barry on that day.

12:28

12:28

27 203 Q. When you say in March his attitude changed, is this
28 prior -- I am not certain, I don't really -- I'm not
29 clear as to which March you're referring to?

1 A. No, I'll tell you, it's the 29th March 2013. This is
2 all about 2013 I am speaking of. 29th March 2013, when
3 Mr. Barry came back to work.

4 204 Q. But that's not when you went out to speak him under the
5 HQ Directive? 12:28

6 A. Well, that would have been in September.

7 205 Q. Inspector, we are going to be here for days if I have
8 to keep going back over -- hang on a second, inspector.
9 We are going to be here for days if I have to keep
10 going back to clarify matters. Everyone, I would 12:29
11 suggest to you, knew I was asking you about the meeting
12 at Watergrasshill in August/September, I think it was
13 actually September?

14 A. Sorry, Chairman, that was just one error.

15 206 Q. Okay. 12:29

16 A. I will answer any question. I got mixed up between 4th
17 September 2012 and March 2013. Sorry.

18 207 Q. Okay.

19 A. My apologies.

20 208 Q. So then whatever part of your answer relates to his 12:29
21 behaviour or his attitude towards you in March is
22 completely irrelevant to this particular meeting
23 because this predates that, isn't that correct?

24 A. It does, it does.

25 209 Q. Okay. 12:29

26 A. I accept that.

27 210 Q. So let's go back then to the question I asked you.
28 You're there for a formal reason and you're also there
29 as his friend, he is a man who has put in a sick note

1 to say he's out as a result of work-related stress and
2 he says to you, it's got something to do with
3 Superintendent Comyns. And you say there's no further
4 conversation because he declines to speak to you. And
5 my question is: Isn't it peculiar that you don't ask 12:29
6 him about the nature of the complaint he has in respect
7 of Superintendent Comyns?

8 A. I respected Sergeant Barry, he said he did not wish to
9 discuss it. And in fairness, if I go to a person as an
10 independent person, and I believed I was independent, 12:30
11 and I go to that person and I say, I am here to do such
12 a thing, and I am told, I do not want to discuss the
13 problem with you, I will respect that person, be it he
14 or she. And that's not the first time I investigated
15 HQ 139/10. 12:30

16 211 Q. Do you know the meaning of the word loquacious, do you
17 know what I mean by that?

18 A. I do.

19 212 Q. Would you consider yourself to be a loquacious person?

20 A. All I can say to you is -- 12:30

21 213 Q. Well in fairness now, that's a fairly simple question
22 and I'm asking you of your own view of yourself?

23 A. I would say, yeah.

24 214 Q. You seem like a fairly gregarious, easy to get on with
25 kind of guy, well able to have a chat with somebody, 12:30
26 yeah?

27 A. I would. I would, yeah.

28 215 Q. Okay. You've gone out there, you've been sent out
29 under HQ 139/10, and you're speaking to your friend, a

1 man who you shared an office with for years, and you're
2 telling the Chairman that you never asked him, tell me
3 about the complaint, give me information about the
4 complaint, let me know anything about the complaint, or
5 any words to that effect vis-à-vis his issue with 12:31
6 Superintendent Comyns?

7 A. That is all that was disclosed to me on that day. I
8 don't know why Mr. Barry was holding back, what he was
9 thinking of doing at that time, I cannot answer that
10 for Sergeant Barry. But Sergeant Barry said to me on 12:31
11 that occasion, I will not discuss the matter with you.
12 And I did not, whether rightly or wrongly, I did not
13 ask him anything else.

14 216 Q. I am going to move on, but before I do so I am going to
15 formally put it to you that you did ask him what was 12:31
16 his complaint with Superintendent Comyns at that
17 meeting?

18 A. I didn't, is the answer to that. If Mr. Barry or
19 Sergeant Barry told me the day what the complaint was,
20 I think would I have put it in that. 12:31

21 217 Q. Okay. I am moving on now, I am moving onto the next
22 year and I am moving onto the timeframe in around 29th
23 March to 9th April 2013, okay? Is that all right?

24 A. Sorry?

25 218 Q. Not at all. There was a bang behind us there, you 12:32
26 might not have heard me. I am just letting you know
27 that I am moving on to the following year?

28 A. Yes.

29 219 Q. To the timeframe roughly the 29th March 2013 to roughly

1 the 9th April 2013?

2 A. Thanks, Mr. Costelloe.

3 220 Q. Okay. Sorry?

4 A. Thanks.

5 221 Q. Okay. 12:32

6 A. Thanks.

7 222 Q. Of course. And what we're dealing with here is your
8 attendance at Mitchelstown Garda Station when you spoke
9 with Mr. Barry, okay?

10 A. That's correct. 12:32

11 223 Q. So is he comes back to work on the 29th March, isn't
12 that right?

13 A. It was the 29th March.

14 224 Q. Yeah. And that night you speak with him at
15 Mitchelstown Garda Station? 12:32

16 A. I did.

17 225 Q. None of this appears to be disputed, this all seems to
18 be agreed, yes?

19 A. Yes, that's correct, sorry.

20 226 Q. One of the things that -- I have a suspicion that the 12:32
21 Chairman knows the answer to this long before I ask the
22 question, but I want to be clear I haven't got
23 something wrong, you were coming back from delivering
24 adult cautions under the scheme, isn't that right?

25 A. I was. 12:33

26 227 Q. You would have been wearing a uniform in order to
27 deliver those adult cautions?

28 A. I had a uniform on me when I was dealing with the adult
29 cautions, yes.

1 228 Q. There's a protocol uniform, where if you're in front of
2 the president of Ireland you wear your full dress or
3 battle dress, but for here, for the purposes of court
4 or a tribunal or, for example, delivering adult
5 cautions, you dress as you're dressed right now? 12:33

6 A. Exactly. I was just going to say, Mr. Costelloe,
7 exactly like I was now, where I was delivering the
8 adult cautions.

9 229 Q. Sorry. The middle word in that sentence I didn't
10 catch? 12:33

11 A. Sorry, when I was in Charleville that day and Mallow, I
12 would have been dressed exactly like this, epaulettes,
13 shirt and tie.

14 230 Q. Okay.

15 A. Exactly, that's the way I would have been dressed. 12:33

16 231 Q. And the adult cautions from in Charleville?

17 A. And Mallow.

18 232 Q. And Mallow, I beg your pardon, I missed that, which one
19 was first?

20 A. Charleville was first and Mallow was second. 12:33

21 233 Q. So you did Charleville, then you went over to Mallow?

22 A. Then I went to Mallow.

23 234 Q. What time did you finish delivering the cautions in
24 Mallow?

25 A. I don't know exactly what time I finished, I would have 12:34
26 thought it was earlier than nine I called to Paul, so
27 it would have been sometime between half eight and
28 nine.

29 235 Q. What time did your tour of duty finish that day? I

1 mean you must have gone long past your --

2 A. Sometimes, if it's a bank holiday, I could start late
3 or I could start early.

4 236 Q. Right.

5 A. Bank holiday, there would be no -- at there was no 12:34
6 inspector in Mallow and I was doing the adult cautions
7 in Mallow.

8 237 Q. I suppose if I put it in a somewhat different way, you
9 finished delivering the adult cautions, you're on your
10 way home? 12:34

11 A. That's correct.

12 238 Q. Okay. You told us about the cross country route you
13 took, as someone from that part of Cork would know, and
14 you're on your way home and then your evidence was that
15 you bumped into Sergeant Barry? 12:34

16 A. That's correct.

17 239 Q. You'll have discerned from the manner in which I
18 phrased that question that I am putting emphasis on the
19 word bumped, okay?

20 A. I wasn't aware Mr. Barry was at work. 12:34

21 240 Q. Sorry, you what?

22 A. I wasn't aware at the time that Sergeant Barry was back
23 at work.

24 241 Q. Okay. So why did you go into Mitchelstown Garda
25 Station? 12:35

26 A. As I said, if we were passing garda stations, I think
27 our boss would always say to call in to Mitchelstown
28 Garda Station.

29 242 Q. Okay.

1 A. And I would see no issue, I gave eight of the happiest
2 years of my life in Mitchelstown Garda Station.

3 243 Q. I am delighted to hear it, inspector, but with all due
4 respect, that's not the question I am asking you. And
5 my understanding of your evidence to the Chairman on 12:35
6 Tuesday was that you might call in to passing garda
7 stations, particularly if quote-unquote the boss told
8 you to?

9 A. No, I think what I said, we would be told if we were in
10 route back from some place to call into a garda 12:35
11 station.

12 244 Q. We will find that particular part of the evidence?

13 A. I think.

14 245 Q. Page 150 odd? We will find that and come back to it.

15 A. If I was on route the boss would say, call into the -- 12:35

16 246 Q. We will move on so we don't have to delay things
17 unduly?

18 A. Yeah.

19 247 Q. So are you telling the Chairman then that it was just a
20 complete fluke, a total happenstance that in driving 12:36
21 home late enough in the evening on the 29th March,
22 rather than going directly home, having finished giving
23 adult cautions, you decide to stop off at Mitchelstown
24 Garda Station?

25 A. That's correct. 12:36

26 248 Q. Okay. Could I suggest to you that you knew full well
27 that Sergeant Barry was back at work and you made a
28 point of going back in to speak to him?

29 A. I didn't know Sergeant Barry was back to work.

1 249 Q. And I am suggesting to you that you went in at a time
2 when you knew that he would be on shift. Do you have
3 any response to that? I mean, I think we can infer you
4 are saying you didn't know he was there?
5 A. I didn't know Sergeant Barry was in work at the end of 12:36
6 March.
7 250 Q. And that the purpose of going in there was to discuss
8 with him the necessity of producing a certificate
9 saying he was fit to come back to work?
10 A. I spoke to Sergeant Barry in relation to the medical 12:36
11 cert and I knew that anybody who had been out sick, you
12 would have to have a medical certificate to come back.
13 My own service, I would have known that at the time and
14 I did say to Sergeant Barry, you need to have a medical
15 certificate. 12:37
16 251 Q. How long do you think you were speaking with Paul Barry
17 that night?
18 A. Ten, 15 minutes.
19 252 Q. So a relatively long period of time, longer than you
20 and I have been questioning and answering? 12:37
21 A. I would think I was there ten minutes.
22 253 Q. Okay.
23 A. I couldn't exactly say how many minutes. Ten minutes.
24 254 Q. Ten to 15 minutes I think was your initial gambit?
25 A. Yeah, ten to 15 minutes. 12:37
26 255 Q. This is somebody who has been out sick, a friend of
27 yours, you bump into him and you're having a
28 conversation with him, all of that is correct?
29 A. That's correct.

1 256 Q. You know that it's an issue for him about being on half
2 pay, correct?

3 A. That's correct.

4 257 Q. And your point at this stage is to say to him, you need
5 a certificate in order to come back to work officially, 12:37
6 so that you can then be back on full pay. Have I got
7 that right?

8 A. I don't think there was any mention of full pay or half
9 pay. What would I have said to Sergeant Barry on the
10 night, because I would have known with all the other 12:37
11 members going through the Garda Síochána, anybody who
12 is out sick, whether short-term or long-term, there is
13 a certificate needed. And I did say to him
14 certificate. I know exactly what I said on that.

15 258 Q. Again, it's something to do with the acoustics today or 12:38
16 maybe I am just bunged up and I can't hear you
17 properly. Would you mind, I am terribly sorry, would
18 you say that last answer again?

19 A. I didn't discuss with Sergeant Barry about a
20 certificate or full pay, all I asked was, you will be 12:38
21 required to submit a certificate. And that would be
22 general knowledge to me.

23 259 Q. Yes. I just want to explore that ever so slightly,
24 okay. We have a situation where a friend of yours, a
25 man who you shared an office with, who you were aware 12:38
26 would have a financial hit as a result of being out
27 sick, has come back to work, you know from your own
28 experience that he needs to get a certificate to show
29 that he is back properly, if I can put it that way, and

1 thereby he would be back on full pay. Are you
2 seriously suggesting that you wouldn't have made that
3 point to him, saying, get your house in order, get a
4 certificate so that the half pay issue is behind you
5 and you are back on full pay? 12:39

6 A. My understanding, and I did not say to him about full
7 pay, I did not have that conversation with him, even I
8 would presume somebody is back, he's back on the
9 payroll, but I did say to Sergeant Barry, and I was
10 delighted to see him back because I was aware he was 12:39
11 gone on half pay, I did say to Sergeant Barry, you will
12 require a medical certificate.

13 260 Q. Okay. I understand your answer, I will move on. I
14 think we can agree in any event that you did discuss --
15 sorry, I don't want to put weight on it that perhaps it 12:39
16 doesn't deserve, but in the conversation there was
17 mention of a medical certificate?

18 A. 110% I asked for a medical certificate.

19 261 Q. And in this context was there a discussion about his
20 general practitioner, his doctor, wanting to affix a 12:39
21 term or a condition to the certificate before she would
22 give it to him? Do you understand what I mean?

23 A. I do. And I have no recollection of any condition and
24 I think Mr. Barry has said that I told him to put
25 conditions on it, I did not tell Mr. Barry to put 12:40
26 conditions on the medical certificate, or I don't
27 believe I had any discussions about conditions.

28 262 Q. To be fair to with you, we all appreciate you use the
29 way there of expressing yourself that that you don't

1 remember it. Is it possible that in the context of the
2 medical certificate discussion he would have said to
3 you, my doctor won't give it to me unless she can put a
4 condition on it, or words to that effect?

5 A. No. No, that did not take place. 12:40

6 263 Q. So we're clear before I move on, you're saying to the
7 Chairman that at that point you wouldn't have had any
8 knowledge that his doctor wanted to put a particular
9 term or a condition in his return to work certificate?

10 A. No, I never heard of conditions at the time and if it 12:40
11 was mentioned I think -- the only condition I would
12 have known with a medical certificate was light duties,
13 where somebody would stay in the office and couldn't go
14 outdoors.

15 264 Q. Before I move on, I am going to suggest to you that 12:41
16 that was part of the conversation and that he did raise
17 it as an issue, that his GP didn't want to give him a
18 certificate unless she can put a condition in it?

19 A. If that was the situation I think would I well remember
20 it because it would be new to me to see conditions in a 12:41
21 medical certificate. I had never seen them before,
22 with the exception of light duties, if somebody comes
23 back after an injury they take the calls at the desk
24 and don't go out.

25 265 Q. I am going to move on but before I do, just to go back 12:41
26 to that portion of your evidence, Mr. Perry has found
27 it for me, it's at page 139 of the transcript. You
28 were asked about -- the question, it's at line 10:
29

1 "Q. Now, you say in your interview with the
2 investigators, you say that you're based in Fermoy
3 Garda Station and you also tell the investigator "I
4 wouldn't be in Mitchelstown that much, is that right?"

12:41

5
6 And the response you gave was:

7
8 "Well, that would be correct. I think if we were
9 coming back from some place we could call in to
10 Mitchelstown Garda Station. Our boss people would tell 12:41
11 us if we saw a garda station, if we were passing on
12 route we may call in. But other than that, my job was
13 in Fermoy, I would go straight to Fermoy every morning
14 unless there was some reason not to."

15 A. That's correct. And if I was coming back from Mallow, 12:42
16 coming through Ballyhooly, before I passed the door,
17 the garda station was open, our boss man would say,
18 stand in and hello to the guard. And that's what I
19 said to on Tuesday. If the door was -- the garda
20 station, pass a garda station, our boss would tell us 12:42
21 to call in. I think that's what I said.

22 266 Q. I am going to move on, inspector, but I am just going
23 to suggest to you, with all due respect, that's not
24 what you said on Tuesday. On Tuesday, which I just
25 read to you, you said you could or you may, but not 12:42
26 that you had to or you must?

27 A. No, I never said I have --I could pass sometimes with
28 the door open. But I said, our boss would tell us to
29 go in. It's not to say every time I saw a door open

1 that I would go in, I'm not saying that.

2 267 Q. I'll move on. In relation to my client's complaint
3 about the fact that efforts weren't made to put in
4 place a system whereby he could continue to work in a
5 manner that he felt appropriate after he came back to 12:43
6 work. So, I don't know if you're familiar with this
7 terminology, it's been used during the course of this
8 hearing, that inadequate or nonexistent temporary
9 workplace accommodations weren't there for him, do you
10 follow me? 12:43

11 A. I do, I think the chief superintendent was dealing with
12 that.

13 268 Q. Certainly Chief Superintendent Dillane touched upon it,
14 I think other witnesses did as well. In any event, you
15 know what I am talking about, right? I don't want 12:43
16 there to be any confusion, you understand I am moving
17 on to this topic?

18 A. I know what you mean by the word by I just don't know
19 how...

20 269 Q. Well, Ms. McGrath touched upon this earlier and as a 12:43
21 result I don't think I need to spend a great deal of
22 time upon it. But I do want to put it to you
23 specifically because I said to you a moment ago or at
24 least earlier on that I was going to. We have a
25 situation where my client came back to work and a 12:43
26 medical certificate is issued, I'll get on to the
27 nature of the medical certificate in due course, but
28 there's a term within it that says that he should not
29 come into contact with Superintendent Comyns nor should

1 he have to attend at Fermoy Garda Station, you're aware
2 of that?

3 A. I'm aware, that's correct.

4 270 Q. Yes. And we know from the statement of Chief
5 Superintendent Dillane, which was at page 552 of his 12:44
6 statement, we know that he says that -- sorry, I beg
7 your pardon, I have confused myself. Let me just
8 re-set. Superintendent Comyns tells us in his
9 statement at page 552, that "In discussing with Chief
10 Superintendent Dillane on 3rd April 2014, that it would 12:44
11 be injurious to Sergeant Barry's health to work with me
12 or in Fermoy Garda Station. Asked Inspector O'Sullivan
13 if he would deal with -- " and I am using particular
14 emphasis here, inspector, "-- all matters relating to
15 Sergeant Barry until investigations finished. 12:44
16 Inspector O'Sullivan agreed and we also agreed that if
17 Inspector O'Sullivan had any issues, he would contact
18 me and there would be a consultation on the issue."

19
20 Now, that's already been put to you, you're aware of 12:45
21 the fact that that's how Superintendent Comyns in his
22 statement expressed himself in the context of what he
23 was asking you to do vis-à-vis Mr. Barry, yes?

24 A. That's my understanding, it was correspondence to deal
25 with it. 12:45

26 271 Q. You see, you've gone right to the nub of it. You've
27 helped me out in a big way. I can discard ten
28 questions, we've gone right to the nub of it. That
29 statement says "all matters"?

1 A. Yes.

2 272 Q. Nowhere in any statement that you made to the tribunal,
3 I say this, I hope without fear of being corrected by
4 any of the parties in the room, nowhere in any
5 statement that you made to the tribunal or in response 12:45
6 to any questions put to you by an investigator for the
7 tribunal do you use the word correspondence to deal
8 with this arrangement that's been put in place being
9 referred to here. And the only time that we hear any
10 reference to this arrangement being limited to 12:46
11 correspondence is when Superintendent Comyns gives his
12 evidence both in direct to Mr. Marrinan and in
13 cross-examination to questions put by me. Do you
14 understand?

15 A. It is my understanding, and all I can do is speak for 12:46
16 myself, I had a conversation with Superintendent Comyns
17 inside in the clerk's part of the district office,
18 that's what I said to Ms. McGrath, that it was April
19 '14, and I knew that something came from Dublin that
20 would be injurious to Mr. Barry's said. And 12:46
21 Mr. Comyns did say to me deal, whether he said
22 correspondence or deal with -- deal with whatever comes
23 in here to me, and my understanding was that was any
24 paperwork.

25 273 Q. When I was cross-examining Superintendent Comyns, I put 12:46
26 to him that there was a clear distinction between the
27 use of the words "all matters" and the use of the word
28 "correspondence". He agreed with me?

29 A. I can't --

1 274 Q. There's a distinction?
2 A. I can't.

3 275 Q. No, just bear with me, bear with me. He agreed with
4 me, okay, that's in the transcript. It's there. As to
5 the reasons for that, he gave his own reasons and I'm 12:46
6 not concerned with that in this question for you. But
7 do you also agree that there's a distinction between
8 all matters and correspondence?

9 A. Well, they're two different words, I accept that. But
10 all I can say to you, Mr. Costelloe, is, my 12:47
11 conversation, I was led to believe anything that would
12 come in for Mr. Barry, I was to deal with it. If
13 something came from Dublin, it ended up in my tray, I
14 rang Mr. Barry and in fairness to him, 11 out of 10, he
15 always met me to meet me to collect the stuff. That 12:47
16 was my understanding of that April '14 agreement.

17 276 Q. Excuse me for speaking over you a moment ago. Do you
18 need to repeat your answer, I think we all heard it.

19 A. If you didn't hear it.

20 277 Q. No, no, I heard it? 12:47
21 A. Yes, that was my understanding.

22 278 Q. Before I move on, the portion of the transcript of the
23 evidence of Superintendent Comyns that you read, be it
24 on your phone or however you read it, was that portion
25 a part of the evidence that dealt with this particular 12:47
26 issue as to the distinction between all matters and
27 correspondence?

28 A. I don't believe I read anything in relation to that in
29 the transcript. All I can say to you, Mr. Costelloe,

1 is, I was well aware of what was going on with
2 Mr. Barry or Sergeant Barry and Superintendent Comyns
3 at the time. And I was well aware, and that's why I
4 said to Ms. McGrath this morning she had the wrong
5 year, that it was April 2014 that I was told to look 12:48
6 after the correspondence. That was my understanding.

7 279 Q. well, we're about to move on to that in fact, but
8 before I do, that is move on to the distinction between
9 2013 and 2014, but before I do, can I suggest to you
10 that in fact what happened in April of 2014 was 12:48
11 Superintendent Comyns decided to insert you for
12 everything, for all matters between himself and Paul
13 Barry?

14 A. That is not my understanding of the agreement. And
15 you're going to have to recall Superintendent Comyns. 12:48
16 All I can do is speak for myself. It was my
17 understanding from the conversation that if something
18 came into the building belonging to Sergeant Barry, I
19 was to deal with it because Superintendent Comyns
20 didn't want to write his name on it. 12:49

21 280 Q. So that you aren't in any way misled by the manner in
22 which I am phrasing my questions, Superintendent Comyns
23 did say in his direct evidence that this process was so
24 that you would deal with, and again the word now is
25 correspondence, and that's day 9, the 1st June, I think 12:49
26 it's approximately page 45, but my point is that until
27 he said that in his direct evidence, the only thing we
28 knew about this arrangement from any of the material we
29 had was his statement which said that he had put you in

1 between himself and Paul Barry for quote-unquote all
2 matters?

3 A. I think it was to deal with correspondence -- that's
4 was my -- all we can do, Mr. Costelloe is say that it
5 was my understanding it was to deal with correspondence 12:49
6 that would come into the garda station. That
7 Superintendent Comyns would not write his name on it
8 and he would put it in inside in Inspector O'Sullivan's
9 tray in the other part of the -- that was my
10 understanding of it. 12:50

11 281 Q. Okay. We're coming up to the lunch break, we've ten
12 minutes, so let's see if we can get one of the other
13 topics off the table before we come back after lunch?

14 A. Thanks.

15 282 Q. Let's deal with the fire, okay. The incident on the 12:50
16 9th April and the complaint that my client has, whereby
17 he says that he has been targeted because he has been
18 unduly criticised for the perceived noncompliance with
19 the directive as to how critical incidents are supposed
20 to be reported. We're going to deal with that now? 12:50

21 A. Yes, thanks.

22 283 Q. I am just making it clear because we are somewhat
23 jumping forward and I think we might be able to get it
24 done between now and lunchtime, and that is why I am
25 doing it, okay? 12:50

26 A. Thank you.

27 284 Q. It seems to me that the directive is quite clear, there
28 is a requirement to make a report within 30 minutes if
29 during day time hours a serious incident occurs, isn't

1 that correct?

2 A. That's my understanding of it.

3 285 Q. And you were able to tell us that whatever the
4 directive says, the reality is that outside of normal
5 office house, or specifically, as in this instance, 12:51
6 after ten o'clock at night, nobody would ring Sergeant
7 Terry, rather they would wait until the morning and
8 make sure that she was informed. The 30-minute
9 requirement wouldn't be complied with outside of the
10 normal office hours? 12:51

11 A. I suppose it would depend on the incident,
12 Mr. Costelloe. If it was a murder it would be a
13 different situation. But in relation to a fire, where
14 somebody is pronounced dead, I don't believe that
15 Sergeant Terry would be rang in relation to that. 12:51

16 286 Q. And, in fact, you used an expression today, if I
17 paraphrase it this way, this method, this process of
18 relaying information is to keep the superintendent up
19 to speed, effectively, isn't it? It's to make sure
20 that he or she is informed of what's going on in the 12:51
21 district. So, as you explained yourself earlier this
22 morning, for example, if there's a phone call from the
23 media the following morning, the superintendent has
24 some knowledge of it and they can deal with it at that
25 point, isn't that right? 12:52

26 A. The report would be forwarded to the superintendent.

27 287 Q. Yes. And there's a distinction then between that
28 immediate response and the information that has to be
29 sent up the line to the regional office so that the

1 regional office has a full picture of the serious
2 incident, isn't that correct?

3 A. That's correct.

4 288 Q. Will you agree with me that in the directive there is
5 no reference anywhere to it being the sergeant or a 12:52
6 guard's responsibility of communicating that
7 information to the regional office?

8 A. To the regional office?

9 289 Q. Yes.

10 A. No. The information I believe, and that -- 12:52

11 290 Q. Sorry, do you agree with me on that?

12 A. Sorry, could you just say the question again?

13 291 Q. There are two requirements under the directive. One is
14 a 30-minute requirement, we've already dealt with that?

15 A. Yeah. 12:52

16 292 Q. The other requirement is to make sure that the regional
17 office is appraised of the information as quickly as
18 possible, vis-à-vis what's going on, what's the
19 situation in relation to this critical incident and the
20 circular sets out how that it to be done, doesn't it? 12:53

21 A. Yeah, that's correct.

22 293 Q. And that is to be done either by the DO, the acting DO
23 or the superintendent?

24 A. That's correct.

25 294 Q. Not the sergeant, not the guard, nobody else? 12:53

26 A. Oh I accept that.

27 295 Q. Okay. So we are in agreement?

28 A. Oh yeah, that's a hundred percent.

29 296 Q. On the night in question you had phone calls with Garda

1 Henry Ward, correct?

2 A. Yeah. Made two phone calls with me now, I thought it
3 was one.

4 297 Q. And perhaps this is a helpful illustration of the fact
5 that, you know, a lot of time has gone by and your 12:53
6 memory of things may not be quite as accurate as you
7 thought they were, because you seem to think that these
8 phone calls only came after midnight, and we can see
9 from Superintendent Comyns' notes that you were in
10 contact with him about the fire at 10.42? 12:53

11 A. No, I didn't say -- I said I got no phone call after
12 midnight. I believe there was one phone call before
13 midnight but from that record now it would appear there
14 were two.

15 298 Q. Okay. 12:54

16 A. But it was never about phone calls after midnight,
17 because I knew I had gone to bed and if I had got a
18 phone call at two o'clock I would have remembered it.

19 299 Q. I obviously got that wrong. I thought you were telling
20 the Chairman that you thought the fire was after 12:54
21 midnight?

22 A. No.

23 300 Q. But clearly not. Okay.

24 A. No. I think I said 11 o'clock maybe or something.

25 301 Q. In any event, from that particular note, which has 12:54
26 already been put to you, has already been shown to you,
27 it's page 731 of the material book, we have an
28 awareness that you informed Superintendent Comyns that
29 there had been a fatal fire, that the scene was to be

1 preserved and that there would be an examination by
2 SOCO in the morning, isn't that correct?

3 A. That's correct.

4 302 Q. And the result of the postmortem examination would be
5 the following day, isn't that correct? 12:54

6 A. That's correct.

7 303 Q. Again, so that I understand your position before I ask
8 you any further questions about this, what you are
9 saying is that it was insufficient to say that the
10 superintendent could have relied on the C71 form in 12:55
11 order to get enough information to be fully aware of,
12 to be fully appraised of what was going on, that that
13 was where the dereliction was, that is where the
14 failure was. Have I got that right?

15 A. What I am saying, Mr. Costelloe, is, 99 times out of a 12:55
16 100 all over Ireland a report would be made up of that
17 fire that night, the sergeant would write,
18 superintendent, Fermoy, forwarded for your information.
19 It would arrive in an envelope at district headquarters
20 probably marked urgent. 12:55

21 304 Q. Okay. I don't want to belabour this point so I will
22 just cut straight to the chase. It have put it to
23 previous witnesses, it has been put to previous
24 witnesses. In this particular instance Garda Henry
25 ward is standing right next to my client and Garda 12:55
26 Henry Ward is phoning you, telling you exactly what he
27 has seen, we agree that?

28 A. Mr. Barry says he was there and I accept he was.

29 305 Q. Garda Henry Ward says that he's in regular contact with

1 you, your memory is that it was only one phone call,
2 but perhaps it was more?

3 A. No, two. I did not get a phone call after 12. I think
4 what Garda Ward means by regular contact, is taking the
5 12 hours from the time of the fire at ten o'clock all 12:56
6 up to 12 midday, or 24 hours. That's what regular
7 contact means to me I think.

8 306 Q. Okay. However many times he's in contact with you, he
9 said regular, you have your own view about that --

10 A. No, Mr. Costelloe, I just want to make it quite clear 12:56
11 now to the tribunal, if I got two calls before 12
12 o'clock, the regular contact, in fairness to Garda
13 Ward, and he's a good guard, the regular contact with
14 Garda Ward is about me phoning him about the PM, he
15 ringing back about the PM later in the day. So I think 12:56
16 we might have had five, six calls maybe.

17 307 Q. Again, we can only go from the piece of paper in front
18 of us. You have an interpretation of what Garda Ward
19 means by regular contact, we have all heard you say
20 that. Can we at least agree that he's in contact with 12:56
21 you at least twice?

22 A. There's issue with that. I have no issue with that.

23 308 Q. Okay. There is, of course, a further -- you go to the
24 seen the next morning?

25 A. The first thing in the morning. 12:57

26 309 Q. And you relay what you see at the scene and information
27 you've garnered, you relay it to Superintendent Comyns.
28 We know this because there is a note in his journal?

29 A. Yes.

1 310 Q. That you have been in contact with him about 7.48,
2 7.49?
3 A. It was before 8am anyway.

4 311 Q. Okay. Now, at this stage, or sorry, subsequent, just
5 in or about this time, what we know is that the C71 12:57
6 form has been completed, the Pulse database has been
7 updated, were you aware of that fact?
8 A. It would go on Pulse, I would expect, yeah, yeah.

9 312 Q. Certainly you would agree, as you already have, that
10 Garda Henry Ward has been in contact with you? 12:57
11 A. Correct.

12 313 Q. Right. Well, with those three sources of information,
13 what you have been told by Garda Henry Ward, the Pulse
14 database, the C71 and actually let's add a fourth, your
15 own observations at the scene, wasn't that sufficient 12:58
16 information for Superintendent Comyns to be able to
17 relay up the line to the regional office what had been
18 going on?
19 A. All I can say, Mr. Costelloe, is any of the other units
20 in Fermoy would forward a report to the superintendent. 12:58
21 And all I can say to you is, 99 times out of a 100 or
22 99 stations out of a 100, that's what would be done.
23 That's all I can say.

24 314 Q. The criticism here is that subsequently letters are
25 exchanged, letters are sent, where there's an 12:58
26 implication that my client hasn't done what he should
27 have done, and he says that that's unfair? Okay? You
28 understand that?
29 A. I do. But, Mr. Costelloe, all I can say, and I can see

1 where you are coming from and you represent Mr. Barry,
2 is all I can say, that if that was to happen tonight in
3 Fermoy Garda Station there would be a report sent over
4 to the super.

5 315 Q. Yes. And what I am suggesting to you, inspector, is 12:58
6 that using the word report doesn't get us anywhere
7 because here you have three if not four different
8 sources of information, which is more than adequate to
9 give Superintendent Comyns the information that he
10 needs for him to comply with the circular and send the 12:59
11 report up to the regional office?

12 A. In all other cases the reports are forwarded. And
13 they're two separate entities, Mr. Costelloe, the C71
14 is a total separate entity.

15 316 Q. I think I have been quite clear in saying to you, I am 12:59
16 not limiting it to the C71, I am also dealing with the
17 Pulse report?

18 A. You're saying the Pulse. But all I can say is, when
19 that when that e-mail came out from the assistant
20 commissioner, it went out to the inspectors, that would 12:59
21 be sent on to the sergeants, they discuss it at the
22 weekly PAF meetings, the superintendent when he comes
23 in in the morning expects to have that report on his
24 desk, whether marked urgent or not.

25 MR. COSTELLOE: Chairman, I wonder if that would be an 13:00
26 appropriate place to leave it until after lunch.

27 CHAIRMAN: Yes, thanks very much.

28 THE WITNESS: Thank you.

29 CHAIRMAN: Thanks very much, inspector, you can go for

1 the moment and we'll come back after lunch. I just
2 want to discuss something here. Mr. McGuinness,
3 Mr. Murrinan and Ms. McGrath, Mr. Kavanagh is raising a
4 question about whether we should interpose Assistant
5 Commissioner Fanning. I'm not sure that's a 13:01
6 satisfactory way to do it. Mr. Costelloe, I think you
7 should proceed with your cross-examination to a
8 conclusion and whatever the situation is, there's no
9 urgent need to interpose Assistant Commissioner
10 Fanning. So I mean, I am just deciding it this minute. 13:01
11 So I think you should proceed with your
12 cross-examination to a conclusion.
13 MR. COSTELLOE: Yes.
14 CHAIRMAN: And we will then consider Assistant
15 Commissioner Fanning's situation. 13:01
16 MR. COSTELLOE: Just so you know, Chairman, I did
17 communicate certain information to your counsel
18 yesterday and I don't want to be misspeak and I
19 certainly don't want to say --
20 CHAIRMAN: No. 13:01
21 MR. COSTELLOE: But if Mr. Fanning is being called, I
22 will have no questions for him.
23 CHAIRMAN: I understand. I knew that as far as you
24 were concerned you didn't require him to give evidence,
25 I mean, there's no sort of secret or anything, 13:01
26 everybody has been helpful, but I don't know about
27 anybody else and whether they want to have Mr. Fanning
28 give evidence. What I am saying is this,
29 Mr. Costelloe, it may transpire that we don't call

1 Assistant Commissioner Fanning at all, but if that's
2 not the case and we're proceeding with Assistant
3 Commissioner Fanning, we will not interpose him because
4 there's no reason to do so. You proceed with your
5 cross-examination, I don't want to interrupt that and I 13:02
6 don't see any reason to interrupt it. And then we will
7 deal with the evidence of Assistant Commissioner
8 Fanning. Everybody happy with that? Any good reason
9 why that shouldn't take place?

10 MR. MARRINAN: No, that is perfect, Chairman. 13:02

11 CHAIRMAN: Thanks very much.

12

13 THE HEARING ADJOURNED FOR LUNCH AND RESUMED, AS
14 FOLLOWS:

15

14:01

16 CHAIRMAN: Now, thank you very much, Mr. Costelloe.

17 MR. COSTELLOE: Thank you, Chairman.

18 317 Q. Inspector, I am going to go back to the chronological
19 way in which I was trying to deal with things before
20 the lunch break, okay. We took the force majeure issue 14:02
21 out of turn but I bring you back now to April of 2013,
22 okay?

23 A. Thanks, Mr. Costelloe.

24 318 Q. Okay. So, specifically I am going to ask you some
25 questions about the medical certificate that was 14:02
26 produced by my client and your role in relation to
27 enquiring about that, yes?

28 A. Yeah, thanks.

29 319 Q. Okay. So on the 4th April 2013, the medical

1 certificate was dropped in at approximately 4pm, this
2 was at Fermoy Garda Station. Again, I don't think
3 there is any contention, that seems to be common case?
4 A. No, that's accepted.
5 320 Q. Yeah. while in other parts of the testimony of other 14:02
6 witnesses there was some discussion about who did what
7 and at whose instruction, I am going to suggest to you,
8 just to try and get all of that out of the way in one
9 go, you were spoken to or you spoke with, however you
10 wish to describe it, Chief Superintendent Dillane and 14:03
11 he told you to go to Dr. Kiely?
12 A. That's correct. On Thursday, 4th April 2013, probably
13 around five o'clock.
14 321 Q. I think you know why I am putting it to you that way, 14:03
15 just because initially there was some confusion as to
16 whether or not you were going there anyway and, in
17 fact, Chief Superintendent Dillane just piggy backed on
18 that, if you will, and just used the fact that you were
19 going there, whereas it now seems to be the case, I
20 think even Chief Superintendent Dillane has 14:03
21 acknowledged it is the case, that in fact he spoke to
22 you on the 4th and told you to go there to make certain
23 enquiries, yes?
24 A. That's correct. I was made aware of that at the time,
25 that the statement was being taken there about a month 14:03
26 ago.
27 322 Q. Exactly. It was put to you.
28 A. It was put to me.
29 323 Q. Exactly, exactly.

1 A. Yeah.

2 324 Q. And look, I am not going to waste everyone's time going
3 back over all of that. So we will move on then. One
4 of the areas upon which you were closely questioned on
5 Tuesday by Ms. McGrath was to do with your purpose, 14:04
6 your job, why you were going to speak to Dr. Kiely, you
7 remember being asked quite a few times about that,
8 yeah?

9 A. Yeah.

10 325 Q. And that, if I could suggest to you, centred around the 14:04
11 fact that in Chief Superintendent Dillane's statement
12 he had said that he had asked you to go there to see if
13 the certificate was genuine, that is the word that he
14 used, that's to be found at 337 of the materials, we
15 needn't open it, we have gone through it many times 14:04
16 with earlier witnesses, but he used the word genuine.
17 And you, in your statement to the tribunal
18 investigator, and this is to be found at 1306, say that
19 you were instructed to go there by Chief Superintendent
20 Dillane and that the reason was "to check the validity 14:05
21 of the medical certificate". Okay. So he uses the
22 word genuine, you used the words check the validity,
23 that's what the purpose appears to be, from the
24 materials at least, of why you're going to speak to
25 Dr. Kiely. Are we agreed on that before I move on? 14:05

26 A. Yeah, that's the word that was used.

27 326 Q. Yeah. Now, I want you to tell me if I have this wrong,
28 I have heard the evidence and I read the transcript of
29 your evidence and I understand you to be saying that

1 insofar as you may have made enquiries about the date
2 being crossed out or the eligibility of the signature
3 or anything else, your purpose in going there wasn't
4 because there was a concern that the medical
5 certificate was a forgery or a fake or fraudulent, but 14:05
6 rather it was to do with the term or the clause within
7 it, which was unprecedented as far as you were
8 concerned, which seemed to preclude Mr. Barry from
9 going to Fermoy Garda Station or having any
10 interactions with Superintendent Comyns, is that 14:06
11 correct?

12 A. That's correct. There was never an issue about a
13 forgery.

14 327 Q. Yeah. So again, because I am going to have to come
15 back to this, I think you will anticipate that, or you 14:06
16 must have anticipated that, but just, you know, if we
17 can all mark the lines on the pitch before we start the
18 game, if you will?

19 A. Thanks.

20 328 Q. That seems to be what you're saying; that you were 14:06
21 there not because there was a concern that it was a
22 forgery or fake but rather because, when you use the
23 word validity, what you are saying is, this cause, this
24 condition that's put in the certificate?

25 A. Well, I suppose, Mr. Costelloe, I think I wrote three 14:06
26 things on it. It was 4th April 2013 and that was
27 crossed out.

28 329 Q. Yes.

29 A. And in biro, the 28th March '13 was in it. And I think

1 myself, my own evidence was that I had never seen a
2 medical certificate with the date changed on it,
3 because it moved back to say somebody could check to
4 work earlier and there was no initial on that
5 certificate, that normally if a doctor changes a 14:07
6 certificate, I would expect to see an initial alongside
7 it.

8 330 Q. Because you have brought us to it, let's deal with that
9 then. The 28th March being, of course, the day before
10 Mr. Barry had come back to work? 14:07

11 A. Yes.

12 331 Q. Also being the day before you spoke with him at
13 Mitchelstown on your way back from Charleville having
14 done the adult cautions?

15 A. That's correct. 14:07

16 332 Q. Mr. Barry, as you know, I have put it to you and I am
17 sure you are aware anyway even if I hadn't, says that
18 in that conversation the issue of a medical certificate
19 was brought up, you appeared to agree with that, but he
20 said also that his doctor would only issue one if she 14:07
21 could insert a clause or caveat within it to the effect
22 that he couldn't go to Fermoy or have anything to do
23 with Superintendent Comyns?

24 A. That discussion never took place.

25 333 Q. And again, I fully appreciate that you say it didn't 14:07
26 take place. It's just that we now have a scenario
27 which seems to be that having gotten the medical
28 certificate, it appears to be dated in type the 28th
29 March, being the day before and you yourself have

1 acknowledged that this was something that you wanted to
2 enquire about because that date was crossed through and
3 it was replaced with the date in ink, 4th April 2013,
4 yes?

5 A. That's correct, I had never seen a medical certificate 14:08
6 that had the date changed that wasn't initialed.

7 334 Q. But again, and I am trying as best I can to keep the
8 distinction between the content of the certificate
9 itself, the doctor's clause, if you will, and issues
10 about the date and things like that. I am just dealing 14:08
11 with the date right now. Isn't it in fact the case
12 that because you now have been provided with a
13 certificate which has a date on it which appears to say
14 exactly what my client says was raised in the course of
15 the conversation with you on the 29th, that when you 14:08
16 saw it on the 4th April you had an immediate concern
17 about whether it was valid or not?

18 CHAIRMAN: I don't understand that question.

19 MR. COSTELLOE: Sorry, Chairman?

20 CHAIRMAN: I don't understand that question, 14:08
21 Mr. Costelloe.

22 MR. COSTELLOE: Okay.

23 CHAIRMAN: I don't think anybody could understand that
24 question.

25 MR. COSTELLOE: Okay. 14:09

26 335 Q. So, you understand obviously that I have put it to you
27 that this conversation happened on the 29th and you've
28 disagreed about the content of that conversation?

29 A. I am telling you that I never had a conversation on the

1 29th about putting conditions in a certificate.
2 Because I said earlier, Mr. Costelloe, that the only
3 condition I saw on a medical certificate prior to that
4 and since that would have been light duties, other than
5 Mr. Barry's certificate. 14:09

6 336 Q. Yes. But what I am putting to you is that, in fact,
7 you must have and you did have a concern about the
8 validity as to the genuineness or whether it was real
9 or not of the certificate, because in fact you had had
10 that conversation on the 29th March and now you're 14:09
11 looking at a certificate with a date crossed out, which
12 appears in the content of that certificate to reflect
13 what my client, I am putting it to you, said was said
14 was discussed in the conversation. I hope I have done
15 a better job explaining the question there. 14:10

16 A. Mr. Costelloe, I am still going to answer you the same
17 way: There was no discussion on the 29th March in
18 relation to conditions on a certificate.

19 337 Q. Yes.

20 A. There was no conversation. 14:10

21 338 Q. Yes. Insofar then as one of the three things that are
22 written on the copy of the certificate that we have in
23 your handwriting, which you have admitted, you've
24 accepted were written by you.

25 A. That's right. 14:10

26 339 Q. Is a query about the date, that is just to ask a
27 question about why it was drawn through and replaced in
28 ink?

29 A. I think I penciled that, I wrote that down myself, that

1 is my writing, and I definitely wrote down the date,
2 the amendment and I think I put receptionist on it.

3 340 Q. Yes. But my question then is: If the issue about the
4 date only goes so far as the fact that you had never
5 seen a medical certificate with a date changed on it 14:10
6 before, what's the big deal?

7 A. Sorry, I didn't get that question, sorry.

8 341 Q. As I understand it, you're telling the Chairman that
9 you were only asking a question about the date on the
10 certificate because you had never previously seen a 14:11
11 medical certificate with the date crossed out and
12 replaced in ink, have I got that right?

13 A. Yeah, but --

14 342 Q. Sorry, have I got that right before we go on?

15 A. No, not fully. 14:11

16 CHAIRMAN: wait now. Mr. Costelloe, ask a question and
17 then stop. You're speaking across each other and it is
18 difficult to know, he begins an answer and you begin
19 another question. Just it's an important area, I'd
20 like you to ask questions as simply as you can so that 14:11
21 I can understand them and so that the witness can
22 understand them. And then stop and let him answer.

23 343 Q. MR. COSTELLOE: Do you want me to re-ask that question?
24 I interrupted your answer.

25 A. Sorry, could you ask the question again, sorry? 14:11

26 344 Q. Certainly. We have moved on in the transcript, but
27 rather than scrolling back, you told the Chairman that
28 insofar as you had written anything about the date on
29 the copy of the medical certificate that you had, and

1 insofar as you made any questions or asked any
2 questions about the date, the only issue, as far as you
3 were concerned, was the fact that the original date,
4 the date in print, had been crossed through and
5 replaced with a date in ink and you had never seen that 14:12
6 happen before?

7 A. That's correct. But Mr. Costelloe, I said in my
8 evidence, you're correct in what you said, that's what
9 I wrote down in the certificate, but Chief
10 Superintendent Dillane had concerns about the content 14:12
11 of the certificate and obviously when I saw it, I'd
12 never seen one before as well but I didn't -- and
13 Mr. Dillane wanted to start from scratch to say, yes,
14 the doctor means this, he can come to work but he can't
15 enter the place of work. 14:12

16 345 Q. Sorry?

17 A. No, Mr. Costelloe, my apologies.

18 346 Q. Finish?

19 A. Mr. Dillane, I think, it was obvious the contents of
20 the certificate was of concern as well, and I think 14:12
21 that is why the chief was sending me on.

22 347 Q. Yes.

23 A. And I wrote down these things because I saw the date
24 was changed and the amendment, sorry.

25 348 Q. Okay. So you're being directed to go there by Chief 14:13
26 Superintendent Dillane, Chief Superintendent Dillane
27 has expressed to you that he has concerns about the
28 content of the certificate, is that correct?

29 A. He has mentioned the certificate.

1 349 Q. No, no. Inspector --

2 A. I am not --

3 350 Q. Sorry, Inspector, let me finish my question?

4 A. Yes.

5 351 Q. Because the Chairman has asked that I try and do this 14:13
6 as simply as I can, which I am endeavouring to do. You
7 just told us that Chief Superintendent Dillane had
8 concerns about the content of the certificate. Now, do
9 you want to change that answer or can we accept that as
10 your answer and move on? 14:13

11 A. No, I'm not changing it, Mr. Costelloe. Mr. Dillane
12 was concerned about the certificate and I think he put
13 me in on an errand that morning to see is this
14 certificate correct, and he was going to work from
15 there, how he was going to handle a situation that the 14:13
16 certificate said this man was fit for work but he could
17 not enter the place of work.

18 352 Q. So, insofar as he was concerned about the content of
19 the certificate and insofar as he directed you to make
20 enquiries about the content of the certificate, does 14:14
21 that extend or encapsulate the issue about the date
22 being crossed out?

23 A. It was I -- Mr. Costelloe, it was I wrote that in
24 myself. I take full responsibility, that is my
25 writing. 14:14

26 353 Q. So I come back to my question: what's the big deal
27 with the date being crossed out and written in in ink?

28 A. Again, as I said, Mr. Costelloe, I had never seen, and
29 I haven't seen since, a medical certificate -- you have

1 to be very careful when you're coming back to work.
2 That certificate said the 4th April and it was amended
3 by the doctor and a new one was furnished. It was
4 amended -- a brand new certificate, 4/4/2013 was
5 issued, an updated certificate came in. Obviously if 14:14
6 you get a medical certificate into your hand, that was
7 my own thinking, the date was put back to the 28th, of
8 course you're thinking, why isn't the correct date on
9 the certificate.

10 354 Q. Because you're worried about the authenticity of the 14:15
11 certificate?

12 A. No. No, Mr. Costello. I know Mr. Barry. It never
13 came in that this certificate was a forgery. Mr. Barry
14 would never do anything like that. And I say that to
15 Ms. McGrath. 14:15

16 355 Q. And, inspector, it's not just a case of it being any
17 date that's crossed out, it's a case of it being a date
18 the day before you met with Mr. Barry at Mitchelstown
19 Garda Station when, even on your own evidence, the fact
20 of him requiring a certificate is discussed? 14:15

21 A. That's accepted, the 28th March was the day before
22 the -- and I accept that, Mr. Costelloe.

23 356 Q. And I suggest to you that the only reasonable
24 conclusion from you writing that as one of the three
25 things you're going to ask about when you go to 14:15
26 Dr. Kiely's surgery, is that you had a concern that the
27 certificate had been doctored up or fraudulently
28 created in order to coincide with what was said at that
29 conversation on the 29th March. Do you understand

1 that?

2 A. I do, Mr. Costelloe.

3 357 Q. Okay.

4 A. That situation, and I will answer it again to you,
5 never arose. The typed version of the medical 14:16
6 certificate clearly said what it wanted.

7 358 Q. Okay.

8 A. And I did not think for one minute that it was a
9 forgery.

10 359 Q. Okay. Leave aside entirely the issue of the doctor's 14:16
11 certificate, the third of the three reasons set out by
12 you, written down as an aide memoire, however you want
13 to refer to it, on that document, is that you wanted to
14 speak to the receptionist, the word receptionist is
15 written in? 14:16

16 A. I'd say I probably wrote down on that that probably the
17 receptionist might have changed the date.

18 360 Q. Inspector.

19 A. That's my thinking.

20 361 Q. You wrote the word receptionist? 14:16

21 A. I did, that's my writing.

22 362 Q. Isn't that clearly an indication that in light of the
23 conversation you had with Chief Superintendent Dillane
24 you were going there in order to ask the receptionist
25 did she print up this document, did she know anything 14:16
26 about why the date was changed on it?

27 A. I never had that conversation with the receptionist.
28 And, Mr. Costelloe, I never went there with that
29 intention. And if I had that intention, Mr. Costelloe,

1 I was waiting ten to 15 minutes, I had plenty of time
2 to ask the receptionist.

3 363 Q. And again, your reason for writing the word
4 receptionist is?

5 A. I jotted down, it may be that the receptionist changed 14:17
6 the date on it. But that's my writing.

7 364 Q. Let's leave aside then that side of your enquiries, to
8 do with those three things and let's deal with the
9 content of the certificate itself. This was
10 unprecedented as far as you were concerned, you 14:17
11 couldn't believe your eyes when you saw this in the
12 certificate, he wasn't to go to Fermoy Garda Station
13 and he wasn't to have anything to do with
14 Superintendent Comyns, yes?

15 A. That's correct. 14:17

16 365 Q. Okay.

17 A. But he wasn't to enter Fermoy Garda Station even if
18 Superintendent Comyns was out of the country for a
19 month and I was acting super, he couldn't enter the
20 building, that's what it said. 14:17

21 366 Q. You know, to adopt the words of one of my children
22 which is repeated to me every time he gets an
23 opportunity to do so, is this for real? Seriously,
24 this is a documents that's been handed in as a medical
25 certificate, you're looking at it and it seems to 14:18
26 completely preclude Mr. Barry from going to Fermoy or
27 having anything to do with Superintendent Comyns?

28 A. Yeah, Mr. Costelloe, I said I never saw one before.

29 367 Q. Okay.

1 A. I'm 35 years in the guards, and I never saw one since.

2 368 Q. Yes. And to be clear, you're not saying that you were
3 worried about the document being a forgery, you're not
4 saying -- is that right, before I move on?

5 A. No, I have said -- 14:18

6 369 Q. You are not saying that you were worried about anybody
7 other than Dr. Kiely having written it, is that
8 correct?

9 A. Correct.

10 370 Q. It was just that there was this clause, this line in it 14:18
11 and you couldn't believe your eyes when you saw it?

12 A. Chief Superintendent Dillane, who was my boss, asked me
13 to do a job and as far as I was concerned,
14 Mr. Costelloe, I don't believe Dr. Kiely had any
15 difficulty with me that morning. I was clarifying an 14:18
16 issue for Chief Superintendent Dillane. That's what I
17 was doing. Doing my job.

18 371 Q. When Chief Superintendent Dillane asked you to go
19 there, did you have any difficulty with what you were
20 being asked to do? 14:18

21 A. I hadn't really.

22 372 Q. Pardon?

23 A. I didn't.

24 373 Q. You didn't?

25 A. No. 14:19

26 374 Q. And on your evidence, you were going there to speak to
27 Dr. Kiely to ask her about how it is she comes to write
28 in the medical certificate he shouldn't go to Fermoy
29 and he shouldn't have anything to do with

1 Superintendent Comyns?

2 A. I suppose Chief Superintendent Dillane -- or we'll say
3 myself, Mr. Costelloe, the organisation was being hit
4 with a certificate, this man -- if it was a building
5 site, this man is free to go back to work but he can't 14:19
6 enter the building site, he has to stay outside and
7 look in. The reason the certificate -- there was
8 concern about the certificate.

9 375 Q. Yes.

10 A. I was actually as polite as I could be with Dr. Kiely, 14:19
11 there was no issue, it was done very discreetly.

12 376 Q. Before you went to speak with Dr. Kiely you spoke with
13 Superintendent Comyns, isn't that right?

14 A. I have no recollection of that. If Superintendent
15 Comyns says that he spoke to me -- my recollection was 14:19
16 that I got that certificate in the public office in
17 Fermoy, in my tray. That I brought it up to -- it was
18 a Thursday evening and I would have been doing court in
19 Fermoy on the Friday, and I went up to see the doctor
20 before I went to court because it could be five o'clock 14:20
21 when I would be finished in court.

22 377 Q. You can't assist us then with anything by way of what
23 might have been said in that conversation?

24 A. No, I honestly can't. I have no recollection, I have a
25 recollection of Chief Superintendent Dillane telling me 14:20
26 what to do. Not Superintendent Comyns.

27 378 Q. You told counsel for the tribunal on Tuesday that you
28 were there for ten to 15 minutes and you told Dr. Kiely
29 you were asked to make an enquiry as to whether the

1 certificate was valid or not. "I asked was it issued
2 by Dr. Kiely as the date had been changed and she had
3 no issue, she confirmed that it was."
4 A. She confirmed that she issued the certificate.
5 379 Q. Sorry, I am just reading back to you what you said on 14:20
6 Tuesday?
7 A. Sorry, yeah, that's correct.
8 380 Q. This is page 173, line 4 onwards in the transcript?
9 A. That's correct.
10 381 Q. Now, we have established therefore that your evidence 14:20
11 is that on foot of a direction from Chief
12 Superintendent Dillane you went to Dr. Kiely to ask her
13 about this clause in the medical certificate, correct?
14 A. I think I said the contents of the certificate, was the
15 word I said. 14:21
16 382 Q. Well, the contents are on that line as well, aren't
17 they?
18 A. Sorry.
19 383 Q. The contents include that line, don't they?
20 A. Oh they would, I presume, yeah. 14:21
21 384 Q. We put aside the issue about the date and the issue
22 about the signature and the issue about whether you
23 were speaking to the receptionist, we've dealt with
24 that. I'm just dealing now with the line in the
25 medical certificate that says he's not to go to Fermoy 14:21
26 Garda Station and he's not to have any contact with
27 Superintendent Comyns. That's not exactly what it
28 says, I'm paraphrasing, but we all know what I am
29 talking about, isn't that right?

1 A. Yeah.

2 385 Q. And part of why you are there is to ask her about that
3 sentence, correct?

4 A. There was a reference to the content of the
5 certificate. 14:21

6 386 Q. Yes. Because you couldn't believe your eyes, you had
7 never seen anything like it before and you couldn't, as
8 far as you were concerned, see how something like that
9 could be practicable, it just couldn't work?

10 A. I had never seen a certificate before, Mr. Costelloe, 14:21
11 prior to that or since that, that's all I can say about
12 the cert.

13 387 Q. My question to you is: why didn't you just leave it up
14 to the chief medical officer to make enquiries of
15 Dr. Kiely? 14:22

16 A. Again, I was asked by Chief Superintendent Dillane.

17 388 Q. Yes.

18 A. And I saw no issue whatsoever with having a discreet
19 enquiry with the doctor and I wasn't in full uniform.

20 389 Q. We'll come to the uniform in a moment. Right. Let's 14:22
21 stick with this now for a second. I am just going to
22 make an assumption but you tell me if I am wrong. You
23 don't have a medical degree?

24 A. No, I don't.

25 390 Q. You're not a psychologist or a psychiatrist? 14:22

26 A. No.

27 391 Q. Okay. You're going to speak to the general
28 practitioner who has issued a medical certificate from
29 my client about something that she has said is not to

1 happen in order to protect him, you have raised no
2 issue with your chief superintendent about going and
3 making those enquiries and what I am asking you is, why
4 didn't you leave it up to the chief medical officer?
5 A. Chief Superintendent Dillane asked me to do a job for 14:22
6 him. And any time I am asked to do something by a
7 superior, I would do it and that's why I went there
8 that morning, Mr. Costelloe. And I think Chief
9 Superintendent Dillane wanted to get the ball rolling,
10 to start right away and see what is happening with 14:22
11 this. Because we had never seen a certificate that
12 would tell somebody you are fit to go to work but you
13 can't enter the workplace.
14 392 Q. Had you ever gone to a doctor's surgery before to query
15 the content of a medical certificate that had been put 14:23
16 in by a guard?
17 A. No. No.
18 393 Q. Had you ever had cause before to query the medical
19 advice or the medical statement of a doctor who was
20 acting for a guard? 14:23
21 A. No. Mr. Costelloe, honestly, but having said that, I
22 never saw a certificate like the one that we're talking
23 about.
24 394 Q. With all due respect, inspector, given the unique
25 nature of that clause and given what was going on at 14:23
26 the time, wouldn't the sensible thing have been to wait
27 for the chief medical officer to pick up the phone to
28 Dr. Kiely and say, what are you at, what's this all
29 about?

1 A. Mr. Costelloe, I didn't see an issue with it, being
2 honest with you. And even today I don't see an issue
3 with it because I carried out a discreet enquiry.

4 395 Q. Why is whether it's discreet or not relevant there?

5 A. I am just saying that I didn't go in in full uniform, 14:24
6 like I said, and say I'm here, I'm checking out -- this
7 thing was done very discreetly and I had a jacket over
8 my blue shirt and I told the receptionist, I'm a guard.

9 396 Q. Dr. Kiely has given her own statement, it's in the
10 records, she has expressed how she felt about you 14:24
11 attending at her surgery. Her view is that you were in
12 full uniform and she has described herself as being
13 unnerved by your attendance there that day?

14 A. It is my understanding, Mr. Costelloe, from my visit to
15 Dr. Kiely on the date in question, there was no issue 14:24
16 raised by her. The only time I have seen issue raised
17 by Dr. Kiely is in the May '22 notes. And Dr. Kiely,
18 if she says she was unnerved, I would dispute that.
19 She walked on to her next patient as soon as -- and I
20 said thank you and I walked out the door. And I didn't 14:24
21 see anything unnerved about Dr. Kiely. I thought she
22 was very nice to me, because I actually said to the
23 receptionist, if I can't see her in the next ten
24 minutes, I have to be in court for half ten in Fermoy.
25 I said I would come back and I expected that to happen 14:25
26 but in fairness to Dr. Kiely, she came back to me
27 within five minutes and I was back down in time for the
28 court.

29 397 Q. I am going to move on but before I do I am going to put

1 it to you that in fact you went there that day at the
2 direction of Chief Superintendent Dillane in order to
3 see whether or not the document, the medical
4 certificate had been forged or manipulated by somebody
5 other than the doctor, that's the first thing I am 14:25
6 putting to you?

7 A. Can I answer that?

8 398 Q. Please do, yes.

9 A. I have said it before. I worked with Mr. Barry. He
10 would never do something like that. And to have you 14:25
11 suggest that I thought that after working for eight
12 years with Mr. Barry, that never crossed my mind, that
13 that was a forgery. Mr. Barry would not do something
14 like that, to be fair to him.

15 399 Q. However you may have felt about Mr. Barry, Chief 14:25
16 Superintendent Dillane was calling the shots here and
17 he was the one sending you to make these enquiries?

18 A. But I don't -- I cannot speak for Chief Superintendent
19 Dillane. But I do not think that Chief Superintendent
20 Dillane thought it was a forgery. 14:26

21 400 Q. Well, as you said yourself, you can't speak for him?

22 A. Okay, sorry.

23 401 Q. I am putting it to you that that was part of why you
24 were there?

25 A. I don't believe Chief Superintendent Dillane either 14:26
26 believed it was a forgery.

27 402 Q. And the other thing I am putting to you is that you
28 made enquiries about the content in the sense of the
29 clause, if you will, within the medical certificate, do

1 you want to respond to that?

2 A. Yeah, I did. I said the clause, and the doctor
3 confirmed it was correct and maybe I said something
4 about the CMO would be in touch or something.

5 403 Q. And I am then finally putting it to you on this before 14:26
6 I move on, that the appropriate thing in that scenario,
7 where you're saying you're only going to enquire about
8 this along with the other issues, but that content,
9 that clause, would have been to leave it up to the CMO
10 to make the enquiries himself? 14:26

11 A. I actually didn't see an issue with it, Mr. Costelloe,
12 being honest. I did not see an issue with it. I think
13 Mr. Dillane, in fairness to him, wanted to get that
14 ball rolling quick. And I think that he was hit with a
15 certificate in front of him saying, I have a person 14:27
16 that's fit to work but he can't enter the workplace.

17 404 Q. We'll move on, please, inspector, we'll move to the
18 meeting with my client on the 9th April 2013, okay?

19 A. Thanks.

20 405 Q. This is the occasion upon which you attended at the 14:27
21 request of Chief Superintendent Dillane and then met
22 with my client, initially in the car park but I think
23 you went into the station with him, have I got that
24 right?

25 A. That's correct. 14:27

26 406 Q. Okay. There is, and I absolutely am not going to spend
27 any time on this with, a disagreement as to whether or
28 not Chief Superintendent Dillane was in full uniform,
29 full formal battle dress, as you describe it. My

1 client says he was, including wearing a Sam Browne
2 belt, you emphatically say he was not, correct?

3 A. No. Chief Superintendent Dillane had that Sam Browne
4 belt on him once in 2016 in the Kent memorial and he
5 had no Sam Browne belt on the night in question. And 14:27
6 the reason we were in the car park, Mr. Costelloe, is
7 the garda station is closed, Mr. Dillane wanted to
8 speak to him about the day before, he had to meet
9 Mr. Barry somewhere. The station was closed and the
10 appropriate time was to meet him on the way into the 14:28
11 station.

12 407 Q. Can I just suggest to you then, given the context of
13 everything that happened, given the context of you
14 having spoken with Mr. Barry on the 29th, of you having
15 spoken to his doctor on the 5th, turning up at this 14:28
16 time of the night with Chief Superintendent Dillane was
17 unnerving and, in fact, put my client in a situation
18 where he felt intimidated by virtue of the fact that
19 the two of you are there and he's on his own and you're
20 waiting for him to turn up in the parking lot, in the 14:28
21 car park that night?

22 A. Mr. Costelloe, Mr. Dillane had documents to discuss
23 with Mr. Barry. Mr. Barry was commencing nights at
24 9pm. There was no other way, to be fair to
25 Mr. Dillane, he was leaving Cork City, there was no 14:29
26 other way he could do this. If he arrived at ten
27 o'clock, Mr. Barry could be gone out to a call, there
28 is no one in the garda station, he could delay. The
29 appropriate time would be start of duty, and it was no

1 inspection like that.

2 408 Q. I understand that that's why you are saying that that
3 meeting happened that night at that time?

4 A. Sorry?

5 409 Q. I understand that's your reasoning for why the meeting 14:29
6 happened there and at that time?

7 A. That is the reason.

8 410 Q. What I am putting to you is: Given the circumstances
9 it put my client in a position where he felt
10 intimidated by two more senior officers turning up, 14:29
11 waiting for him in the car park before he starts his
12 tour of duty on the night in question?

13 A. I don't believe Mr. Barry would ever be intimidated by
14 me. We worked together for eight years. And the
15 reason Mr. Dillane, in fairness to Mr. Dillane that 14:29
16 night, he had to give the documents to Mr. Barry. He
17 couldn't ring Mr. Barry to come to Fermoy Garda Station
18 because the doctor said he can't enter the building.
19 Where else could he meet Mr. Barry to give the
20 documents? Unless he set up a checkpoint and gave them 14:30
21 to him.

22 411 Q. Couldn't he ring him and say, I'll meet you in
23 Mitchelstown Garda Station between nine o'clock in the
24 morning and noon on a given day?

25 A. I don't know, you'll have to ask -- I can't speak for 14:30
26 Chief Superintendent Dillane.

27 412 Q. I'm sorry, you're throwing out suggestions here, I
28 suggest to you, inspector, that this is the only way
29 this could have been done. In reality, the only

1 problem, the only issue was Mr. Barry going to Fermoy
2 Garda Station, the man could have been met on the side
3 of the road or at a petrol station and documents could
4 have been given to him, a phone call could have been
5 had saying, we're going to swing by Mitchelstown Garda 14:30
6 Station between the hours of blank and blank on the day
7 of blank, please be there and the documents handed
8 over. What's wrong with that?

9 A. Mr. Costelloe, can I answer that? It's my
10 understanding that the chief was in Dublin the day 14:30
11 before, Chief Dillane, and he got certain things to do.
12 Mr. Barry happened to be working the following night,
13 starting at 9pm. He was not going to start ringing
14 Mr. Barry at home during the day. I cannot speak for
15 Mr. Dillane, I see no issue of coming in to 14:31
16 Mitchelstown Garda Station, sitting in a car park and
17 going in to speak to the members and they starting
18 duty. I don't see any issue whatsoever.

19 413 Q. I understand you see no issue with it, inspector, I
20 can't challenge you or cross you on what you see an 14:31
21 issue with or not. I am simply saying to you that you
22 have said now on many occasions that this was the only
23 way this could have been done, that transfer of
24 documents from Chief Superintendent Dillane to my
25 client, the only way it could have been done was at 14:31
26 nine o'clock at night approximately in the car park of
27 the Garda station. And what I am saying to you is,
28 there were a myriad of other ways in which it could
29 have been done, all of which probably would have been

1 more appropriate than waiting for the man in the depths
2 of the evening, in the dark, in the car park in order
3 to serve upon him documents where two senior officers
4 turn up and he's on his own?

5 A. I don't believe there was an issue with meeting -- and 14:32
6 I often met people in a garda station at nine o'clock
7 when they were starting. I don't see an issue with
8 that. I actually don't see any issue.

9 414 Q. We'll move on. We have the meeting itself. We have
10 the fact that you're present. You're clearly there in 14:32
11 order to be a witness to what is said and what is done
12 during the meeting, would you agree with me?

13 A. Mr. Dillane asked me that day, saying that he was
14 going, calling to meet Mr. Barry at 9pm, would I go
15 with him, and he was my boss, I went with him. 14:32

16 415 Q. And the reason you were there is in order to be a
17 witness as to what is said and what is done during the
18 meeting, correct?

19 A. I didn't ask Mr. Dillane, I presumed so, he wanted
20 somebody with him. 14:32

21 416 Q. All right, fair enough, you presumed so. So you went
22 there and you were in fact a witness to the meeting?

23 A. I was there.

24 417 Q. But we've established you didn't take any notes or jot
25 down any record of what was said at that meeting? 14:32

26 A. No, that's correct.

27 418 Q. And when you make a statement to the tribunal you make
28 no reference to my client uttering anything about,
29 it'll be the super who has to go, I'm not going

1 anywhere, isn't that correct?

2 A. That is correct.

3 419 Q. And subsequently, after disclosure has been made to
4 you, after you have received documents from the
5 tribunal, you are asked questions by the investigator 14:33
6 for the tribunal a couple of months back, and then for
7 the first time ever you say, Mr. Barry said in that
8 meeting it's the super who is going to have to go, I'm
9 going nowhere. That's correct isn't it?

10 A. That was said. 14:33

11 420 Q. Okay. I am suggesting to you that nothing like that
12 was said by Mr. Barry, okay?

13 A. I heard what was said.

14 421 Q. And I am suggesting to you that, in fact, you have
15 inserted that from a false memory or for some other 14:33
16 reason into the narrative of what happened that night
17 because it works with what you're trying to convey to
18 the tribunal was the tone and the tenor of my client's
19 response to Mr. Dillane that evening?

20 A. Mr. Costelloe, to answer you, I would never do 14:33
21 something like that. I made out my original statement,
22 I know nothing about tribunals, only what I read in the
23 paper. We got a folder -- I actually didn't believe
24 there was a tribunal going to happen. We got a folder
25 and basically we were told read the folder, anything 14:34
26 that concerns you, you should make a statement about
27 it. And I did my best. I was investigated here by the
28 tribunal investigator, obviously they asked me more
29 probing questions, what happened at the meeting, and I

1 told them what happened at the meeting and I honestly
2 told them what happened at the meeting and that's what
3 happened.

4 422 Q. How confident are you in relation to the recollection
5 of the words that were used about my client? 14:34

6 A. 110% confident.

7 423 Q. 110%?

8 A. Mr. Barry was getting up himself and he said, I'm not
9 moving, I'm going nowhere. As he turned around to the
10 door he said, I was right alongside him, he said, you 14:34
11 can move the super, and he walked right out the door.

12 424 Q. You have cut to the quick of it again, as appears to be
13 your want, you have anticipated exactly where I am
14 going. In your statement to the investigators you used
15 the words, I'm not going, the verb is to go, the super 14:34
16 will have to go. Yesterday it was put to you that that
17 was what you said and you agreed and then subsequently
18 you said, what he actually said was, I'm not moving,
19 the super will have to move and you just said it again
20 there? 14:35

21 A. I'm not moving, the super has to move. That's it.

22 425 Q. Well, which is it? Did he say, I'm not going, the
23 superintendent will have to go, or did he say, I'm not
24 moving, the superintendent will have to move?

25 A. He said, I'm not moving, the superintendent has to 14:35
26 move.

27 426 Q. So when you said to the investigator for the tribunal a
28 couple of months ago without the benefit of any notes
29 that he had used the words to go, you were wrong and in

1 fact you're 110% certain now here today that the words
2 that he used were move?

3 A. It was. Move.

4 427 Q. Okay. And that's not at all in any way impacted or
5 influenced by virtue of the fact that you would have 14:35
6 had sight at that stage of the statement of Chief
7 Superintendent Dillane, who referenced the fact that he
8 says in that meeting my client said it was the super
9 who would have to go, that he wasn't going anywhere?

10 A. I heard what Mr. Barry said that night, and I would not 14:35
11 come into any tribunal and say that if I didn't hear
12 it.

13 428 Q. Well, I will move on, but can I just ask you this last
14 question: Where you're telling us you're 110% certain,
15 are you 110% certain now or were you 110% certain a 14:36
16 couple of months ago when you were talking to the
17 investigator?

18 A. I'm 110% certain that Mr. Barry said he wasn't moving
19 or going and the super has to move.

20 429 Q. Moving or going, so now we have two different versions? 14:36

21 A. It's the same word.

22 430 Q. With all due respect, inspector, that's a matter for
23 the Chairman. I'm suggesting to you that it most
24 definitely is not the same word. I am suggesting to
25 you, inspector, that you are changing your narrative as 14:36
26 to what you are saying happened that night?

27 A. Mr. Barry said, I'm going nowhere, and he was going out
28 the door he said, you can move the super. That was the
29 last word he said going out the door. And I was

1 standing to the right of the door at this stage.

2 431 Q. The very last thing before we move on from this
3 meeting, inspector, can we agree at least on this?
4 There was definitely a discussion at that meeting about
5 the transfer at public expense or a transfer at private 14:36
6 expense?

7 A. There was.

8 432 Q. And you remember that, you're a member of An Garda
9 Síochána for 35 years plus?

10 A. That's right, yeah. 14:37

11 433 Q. You remember that conversation?

12 A. Yes.

13 434 Q. We will move on then?

14 A. Can I say, Mr. Costelloe, how I remember that is
15 Mr. Dillane was begging Mr. Barry. He said, this 14:37
16 cannot go on, he said you're not reporting to Fermoy in
17 the morning or the evening or answering phones to the
18 superintendent. And he was asking on a number of
19 occasions, I can't let this go on, and they were trying
20 to get a compromise of a transfer. 14:37

21 435 Q. Thank you, inspector. I really wasn't looking for the
22 surround, if you will, as to why it came up, I just
23 wanted to confirm with you before I moved on that it
24 definitely was discussed and the distinction between
25 transfer at the private expense and at the public 14:37
26 expense was mentioned?

27 A. It was discussed.

28 436 Q. And obviously, as has come out now on a number of
29 occasions, this is because if you ask for a transfer,

1 it comes out of your own pocket when you move, whereas
2 if you are told you're transferring, the public pays?
3 A. The public pays, yeah, thanks, that's correct.
4 437 Q. We are coming close to the end. So I am going to move
5 onto the force majeure? 14:38
6 A. Thanks.
7 438 Q. It sort of blends in with, bleeds into the issue of
8 leave, but I am going to try and keep the two as
9 distinguished as I can. So, obviously as you have
10 shown you're well able to do, if you're not clear on 14:38
11 any question I ask, you tell me?
12 A. I will, thanks, Mr. Costelloe.
13 439 Q. Dealing with the force majeure then, my understanding
14 is that the application for leave was made at late
15 notice, according to you, for dates in April of 2013, 14:38
16 have I got that right?
17 A. Yeah, but Mr. Costelloe, to be fair to Mr. Barry, it
18 could have been in the public office a couple of days,
19 so I do not know what date he applied.
20 440 Q. I appreciate the distinction, thank you for correcting 14:39
21 me. So a request is made, it goes into the public
22 office and it's a request for leave on days in April of
23 2013?
24 A. That's correct.
25 441 Q. Okay. And again, this is a distinction that I am going 14:39
26 to have to put to you in a moment, but just so we are
27 completely clear, you were emphatic in correcting
28 Ms. McGrath this morning about this very issue. You
29 say that insofar as you took over any role in relation

1 to documents or matters pertaining to Mr. Barry, that
2 was in April 2014, not April 2013?

3 A. I believe that's the following year.

4 442 Q. And again, in this instance you gave us a very detailed
5 explanation as to how you say you came to refuse leave 14:39
6 for certain dates in 2013, isn't that correct?

7 A. That's correct.

8 443 Q. Okay. As I understand your evidence, what you're
9 telling the Chairman is, the reason you would have been
10 dealing with the leave application in April 2013 must 14:39
11 have been because you were the acting DO, the
12 superintendent perhaps being otherwise engaged or not
13 working or on holidays or whatever, is that right?

14 A. Yeah. When I found that leave sheet, Mr. Costelloe,
15 Mr. Barry wasn't long back at work, and I wanted peace 14:40
16 and harmony. I take it, I went up to the district
17 office that evening, Superintendent Comyns could have
18 been finished, but that leave was done that evening by
19 the clerk in the district office for me.

20 444 Q. But the reason you made sure to get it done was because 14:40
21 you were acting in the place of Superintendent Comyns?

22 A. I would presume that I was.

23 445 Q. And again, this isn't because of some arrangement as
24 far as you're concerned between yourself and
25 Superintendent Comyns where you would interject 14:40
26 yourself between Mr. Barry and Superintendent Comyns,
27 that didn't happen until a year later on your evidence?

28 A. No, that's correct.

29 446 Q. Yeah. Could we go, please, Mr. Kavanagh to the

1 statement of Mr. Comyns, page 555. My monitor has gone
2 off.

3 CHAIRMAN: Have you got that in front of you?

4 MR. COSTELLOE: On my own screen, but I don't have it
5 on the tribunal's screen, I don't think anyone else 14:41
6 does either, on my row nobody else seems to have it,
7 we're all gone dark. Do I need to do something?

8 CHAIRMAN: No, it's nothing to do with you,
9 Mr. Costelloe. We don't have anybody at the moment.

10 447 Q. MR. COSTELLOE: well, what I am going to, do inspector, 14:41
11 I am going to read -- it's only one sentence.

12 A. That's fine.

13 448 Q. If you in any way feel like you're not comfortable with
14 me adopting this method?

15 A. I am comfortable, thanks. 14:41

16 449 Q. Thanks very much, inspector, it will help us get
17 through this quicker. Superintendent Comyns makes a
18 statement, it's a lengthy statement, at one particular
19 point in the statement he's talking about -- and this
20 is down at the bottom of page 554 and into the 14:42
21 beginning of page 555 of the documents, he's talking
22 about the 19th April 2013, in which he forwarded a
23 report to Chief Superintendent Dillane, we know it to
24 be Dillane, setting out details of force majeure leave
25 taken by Sergeant Paul Barry on the 15th, 16th, 17th of 14:42
26 April 2013, okay?

27 A. That's correct.

28 450 Q. If you will, that's the scene set, okay.

29 A. Thanks.

1 451 Q. So he's dealing with those dates, he's dealing with the
2 force majeure, he's dealing with the fact that
3 Mr. Barry didn't turn up for work on giving days then.
4 He goes on to say:

14:42

5
6 "I forward the report for the information of the
7 district officer and I also outlined my difficulty
8 performing my duty as DO, as district officer."

9
10 He then goes on to say, and this is the relevant
11 portion I am reading to you now:

14:42

12
13 "In terms of the application for force majeure leave,
14 Sergeant Barry had applied for leave which had been
15 refused. I had delegated Inspector O'Sullivan to
16 process the application and make the decision. He was
17 acting district officer for the purposes of the leave
18 application."

14:43

19
20 Do you wish to say anything about that?

14:43

21 A. If Mr. Comyns says that, that's correct.

22 452 Q. Okay.

23 A. Mr. Costelloe, I should clarify this. If Mr. Comyns
24 was aware somewhere --

25 453 Q. Sorry, I can't hear you, inspector?

14:43

26 A. Sorry. If Superintendent Comyns was away on some other
27 job, right, not in Fermoy, I could be in Mallow, come
28 back at three o'clock or four o'clock to sign the post
29 and I would have got that, I believe I got that leave

1 sheet. So if Mr. Comyns said I was acting district
2 officer that day, I accept that I was.

3 454 Q. Yes. I am going to come to the next part of the
4 process of explaining what's going on here, but I just
5 wanted to put that to you first, okay. What he says 14:43
6 is, "I had delegated Inspector O'Sullivan to process
7 the application and make the decision. He was acting
8 district officer for the purposes of the leave
9 application."

10 14:44

11 That's what he says about it, okay? He doesn't explain
12 it, he just says what's happening. Okay

13 A. Thanks.

14 455 Q. If we move on then to the actual report just referred
15 to, which is the report I think it was opened earlier 14:44
16 today. It was sent by Superintendent Comyns on the
17 19th April 2013, it's to be found at, I hope, page 746.
18 Now, again you don't have the benefit of this on the
19 screen?

20 A. It's okay, you can read it to me, Mr. Costelloe, I'm 14:44
21 happy with that.

22 456 Q. In fact, you've already had some of it read to you, but
23 I'm going to --

24 A. Thanks.

25 457 Q. Just to be clear this, is a letter or, if you wish, a 14:44
26 report which is sent to the chief superintendent, Cork
27 North, we know that to be Mr. Dillane, and it was sent
28 by Mr. Comyns and it's sent on the 19th April 2013,
29 okay, right?

1 A. Thanks, yeah.

2 458 Q. It's in his statement, as I've just read it to you, he
3 says that he sent -- Mr. Comyns says he that he did in
4 fact send this report to Chief Superintendent Dillane
5 because of the fact that my client was, whichever way 14:45
6 you look at it, out on force majeure or absent without
7 leave. So this is the report that he sends up the
8 ladder. And in it he says, in the first substantive
9 paragraph he says:

10

11 "Sergeant Barry had applied for annual leave on the
12 15th, 16th and 17th April 2013 along with numerous
13 other dates."

14

15 That's the first part of the paragraph. He then goes 14:45
16 on and this is the applicable part that I want you to
17 listen to.

18

19 "Due to the ongoing investigation by Chief
20 Superintendent Kehoe, I did not deal with this 14:45
21 application."

22

23 So there he's giving his explanation as to why he
24 didn't deal with the application for annual leave in
25 April. He is saying to his superior officer, it's 14:46
26 because of the act that Chief Superintendent Kehoe is
27 conducting the investigation, okay?

28 A. That's a matter for Superintendent Comyns.

29 459 Q. Yes. But it's a matter for you in the sense that this

1 would suggest that you have been delegated the person
2 to deal with the leave applications because of the fact
3 that Superintendent Comyns feels he cannot do so given
4 the ongoing investigation?

5 A. No, Mr. Costelloe, I came in to the public office in 14:46
6 Fermoy Garda Station and I found a leave sheet
7 belonging to Mr. Barry in my tray. It could have been
8 there two days, three days, I don't know. And I did my
9 best with the leave that evening and I basically
10 granted two days that I wouldn't have granted if it was 14:46
11 submitted -- if arrived to me as acting district
12 officer and I refused two out of three days, the 15th
13 and the 16th and I actually said, because you can't go
14 changing the dates on the leave sheet, I asked him to
15 resubmit the 17th and there's no issue to be granted. 14:47

16 460 Q. Nobody disputes any of the fact of you dealing with the
17 leave application, okay. However, what I am putting to
18 you is that it wasn't a case of Superintendent Comyns
19 being out on vacation himself, it wasn't an instance of
20 Superintendent Comyns just delegating you on a one-off 14:47
21 basis to act as the delegated district officer. In
22 fact, what was going on was that as early as April 2013
23 Superintendent Comyns was directing you to deal with
24 leave applications being brought by Mr. Barry because
25 of the fact that there was an investigation being 14:47
26 conducted --

27 A. No.

28 461 Q. -- by Chief Superintendent Kehoe?

29 A. All I can say, Mr. Costelloe, I had no knowledge of

1 that in 2013 and I found Mr. Barry's leave sheet in a
2 public office in Fermoy.

3 462 Q. Okay. So without getting into a scenario whereby I am
4 asking you to interrogate the mind of Superintendent
5 Comyns, the most you can tell me, the most you can 14:48
6 agree with, is that you were never told by
7 Superintendent Comyns in April of 2013 that you were to
8 deal with leave applications by Paul Barry because of
9 the fact that Superintendent Comyns was being
10 investigated by Chief Superintendent Kehoe? 14:48

11 A. I had no knowledge of that.

12 463 Q. You've already, many times now, explained what happened
13 about the phone call, you actually picked up the phone
14 to Paul Barry and said to him, I can't grant you leave
15 on certain dates. You made the effort of contacting 14:48
16 him, and then you followed through on that by sending
17 him a letter subsequently, all of this has been opened
18 to you and I think you accept all of that, isn't that
19 right?

20 A. I did. I did. I wanted to pass it on to him, that I 14:48
21 couldn't grant him the leave.

22 464 Q. Were you aware of the fact that my client's wife had an
23 ongoing issue with her back?

24 A. No. And Ms. McGrath asked me that this morning. I had
25 no knowledge of ██████████ Barry having issues with her 14:49
26 back.

27 465 Q. And again, I suspect that there's not really any reason
28 to spend much time on this, because it's a simple
29 divergence, but I am just going to put it to you, that

1 my client in that conversation on the phone said to you
2 that if he didn't get the leave he could end up having
3 to take force majeure because he might be needed at
4 home due to his wife's condition?

5 A. Mr. Costelloe, 110% that did not happen. And if it did 14:49
6 I would have not -- I would have told Superintendent
7 Comyns when he asked me, listen here, Mr. Barry said to
8 me about his wife, and I would have rang Mr. Barry.
9 But I know Superintendent Comyns would tell me, ring
10 Mr. Barry. That did not happen. 14:49

11 466 Q. Was it not odd that he didn't explain to you why he
12 wanted leave on those dates then?

13 A. Sorry?

14 467 Q. Was it not odd to your mind that he didn't explain to
15 you why he wanted leave on the dates that you were not 14:49
16 able to give him?

17 A. I think Mr. Barry was applying for various dates of
18 leave, if you look at that, there was a block leave,
19 maybe five or six different dates that came in to me.
20 I had no discussion with Mr. Barry. And do you think, 14:50
21 Mr. Costelloe, for one minute if I thought that
22 Mr. Barry said that to me, that I would make a
23 statement to Superintendent Lehane saying I had no
24 knowledge of it, or that I wouldn't tell Superintendent
25 Comyns, he mentioned about his wife's back to me, that 14:50
26 he might be off. We would have rang him.

27 468 Q. I know you mean that as a rhetorical question and we're
28 not going to get into a situation of you asking me
29 questions?

1 A. That's my answer.

2 469 Q. I understand your answer, inspector, okay. Again,
3 before I move on, I am formally putting it to you on my
4 instructions that during that conversation Mr. Barry
5 explained to you that if he didn't get leave he could 14:50
6 be left in a situation where he might have no
7 alternative but to take force majeure because of the
8 fact that his wife may very well be incapable of
9 performing certain household functions and he'd have to
10 step into the breach? 14:50

11 A. Mr. Costelloe, 110% that conversation never took place
12 and if it did, I wouldn't have made a statement that I
13 made, or I would have told Superintendent Comyns.

14 470 Q. It occurs to me I should, because as an experienced
15 guard you may want to comment on this or you may feel 14:51
16 you can comment on this: Obviously by definition force
17 majeure is something where you notify after the fact,
18 you can't anticipate, if you will, you can't send in a
19 notification saying, I'm taking force majeure on blank
20 day of blank? 14:51

21 A. That's accepted. That's accepted. It's something that
22 happens.

23 471 Q. And you've referenced it yourself there a moment ago
24 about Superintendent Lehane and his enquiries
25 afterwards. My client has always asserted that he 14:51
26 phoned on the morning into Mitchelstown and spoke to
27 somebody, he doesn't remember who, to say that he
28 wouldn't be in because his wife was sick. Do you know
29 anything about that?

1 A. That's my understanding, that there was a phone
2 printout, it's a small garda station, 20 members,
3 nobody remembers who took the call and Mr. Barry
4 couldn't remember who he rang.

5 472 Q. I think you're aware of the fact that there was a call 14:51
6 noted?

7 A. That was said about a call, yeah.

8 473 Q. Sorry?

9 A. I heard mention about a call.

10 474 Q. Sorry, if you don't know, you don't know, I'll move on, 14:52
11 but there was an actual investigation as to whether or
12 not there was an official record of the call and
13 there --

14 A. I don't know anything about the investigation, sorry,
15 Mr. Costelloe. 14:52

16 475 Q. That's fine, that's fine, we'll move on. Moving then
17 to the actual issue of annual leave itself. Again now
18 I am fast forwarding a month. So now we're into May of
19 2013 and my client is looking for annual leave. Okay?

20 A. That's correct, Mr. Costelloe. 14:52

21 476 Q. Again, I am just setting the scene so that there is no
22 misunderstanding that I have moved on. Now, in this
23 particular instance my client made the leave
24 application on the 17th May 2013 but this leave
25 application was dealt with by Superintendent Comyns, 14:52
26 did you know anything about that?

27 A. I think, Mr. Costelloe, going by the timeframe, and I
28 said it this morning to Ms. McGrath, based on what
29 Ms. Gould has said in her statement, I would have found

1 the leave again in the public office in the tray.
2 After I do my best by sending Superintendent Comyns'
3 report or instructions, for want of a better word, and
4 I think I explained this morning the way the leave
5 system worked in the superintendent's office. I 14:53
6 believe I put that into the super's post myself.
7 Because I could be leaving the building, I could have
8 been going anywhere.

9 477 Q. And insofar as Ms. Gould references this entire
10 incident, she certainly seems to think that you took it 14:53
11 and put it into the super's pigeonhole?

12 A. Yeah, I accept that. I accept that. I wasn't happy
13 about the situation and I tried to resolve an issue.

14 478 Q. Because you brought it up there, let's deal with it?

15 A. Yeah. 14:53

16 479 Q. We have a situation where a woman who had worked as a
17 clerical officer within An Garda Síochána for many
18 years felt compelled to write down a record of her
19 interaction with you pertaining to this entire thing
20 because she felt that it was necessary to keep a record 14:53
21 of it. I mean, that must be unprecedented in your
22 experience, is it?

23 A. Mr. Costelloe --

24 480 Q. Sorry, inspector, is that unprecedented in your
25 experience? 14:54

26 A. I don't know who keeps notes, being honest with you,
27 Mr. Costelloe. But can I say in relation to that, I
28 don't know if Ms. Gould is giving evidence or not, I
29 did not abuse Ms. Gould. I asked her, and specifically

1 what I said this morning, that Mr. Barry must comply
2 with the regulations by the superintendent. And it
3 came to the situation where I removed my postbox, and I
4 accept that, because I wanted harmony for my own life
5 as well. 14:54

6 481 Q. The situation had got to the point where you had to go
7 to the extreme of removing your own postbox so you can
8 could remove yourself from the ongoing issue between
9 Superintendent Comyns and Mr. Barry?

10 A. No. Mr. Costelloe, can I answer that? 14:54

11 482 Q. I hope so.

12 A. If there is an ongoing issue between Mr. Barry and
13 Superintendent Comyns, I tried to resolve that about
14 the leave when I sent over a report. Mr. Barry, not
15 alone not complying with Mr. Comyns, he was now not 14:54
16 complying with the inspector as well, and that is why
17 his leave sheet for his holidays ended up inside in my
18 tray. I don't know how many days it was there.

19 483 Q. Okay. We have a situation where Ms. Gould records her
20 dealings with you around this event and she describes 14:55
21 you as "becoming excited" and says in her note that you
22 "started raving" about what was going on and about the
23 fact that Paul Barry was leaving in his leave
24 application to you and as far as you were concerned it
25 should be sent to Superintendent Comyns? 14:55

26 A. There was no doubt I said that Mr. Barry should comply
27 with the instructions of Superintendent Comyns. I
28 don't believe I was raving. People don't describe me
29 as an excitable man. I don't believe -- but I probably

1 was frustrated and I ended up by saying -- she said,
2 I'm going to comply with Mr. Barry's instructions,
3 after I asking to him to comply with Superintendent
4 Comyns and I said, okay, you know how I'll solve the
5 problem, I'll take my postbox, and that's what I did. 14:55

6 484 Q. We have heard that, inspector, okay. Obviously,
7 therefore, you must agree with me that Superintendent
8 Comyns dealt with this particular leave application,
9 you didn't deal with it, isn't that right?

10 A. I put it in an envelope and put in the superintendent's 14:56
11 post.

12 485 Q. Yes.

13 A. I may have been off. I don't know was I going out the
14 door, was I going in the door, but I did put it in the
15 super's post. 14:56

16 486 Q. You are, of course, quite right to correct me there,
17 because you don't know what Superintendent Comyns did.
18 But to the extent to which anything was done about this
19 leave application in May 2013, you didn't process the
20 leave application? 14:56

21 A. No, nothing to do with it.

22 487 Q. And we have a situation then, would you agree with me,
23 where in the month previous you dealt with the leave
24 application, you say that this was because
25 Superintendent Comyns was unavailable to do so and you 14:56
26 were the acting district officer, he says for a
27 different reason, but then fast forward a month, when
28 Mr. Barry hands in his leave application to you, you
29 take the view that has got nothing to do with you, you

1 take down your postbox and you give the leave
2 application in to Superintendent Comyns?

3 A. Mr. Costelloe, again I will say to you, I tried to
4 resolve the leave issue, because the leave is given in
5 the superintendent's office, the computer is there, 14:57
6 it's logged on. And I tried to explain the best way I
7 could this morning about Mr. Barry looked for Friday
8 off and the days, and he's doing it on the Sunday. If
9 it's in my tray -- Mr. Costelloe, it is very, very
10 relevant, I tried my best in relation to annual leave. 14:57
11 I went to the pain of getting out Superintendent
12 Comyns' instructions again and I asked him to please
13 comply with them instructions. I came back again,
14 probably I might have been in court that day, I came
15 back into the public office and found the leave sheet 14:57
16 there again.

17 488 Q. This is in relation to May now I'm talking about?

18 A. Yeah.

19 489 Q. Not April?

20 A. No, I'm talking about the May one. Because in the May 14:57
21 one, contrary to the instruction that I sent out in
22 April, it's a total --

23 490 Q. And insofar as, we have already covered this, but just
24 to round it off and we will move onto the next topic
25 then. Insofar as Superintendent Comyns is telling 14:57
26 Chief Superintendent Dillane on 19th April 2013 that
27 you have been delegated to deal with leave applications
28 because of the ongoing investigation by Superintendent
29 Kehoe, you had no knowledge of that, and when we move

1 forward to May of 2013, as far as you're concerned it's
2 got nothing to do with you, the application should be
3 made to the superintendent on duty?

4 A. That's the May 2013?

5 491 Q. Yes. 14:58

6 A. May 2013, I found that envelope in my postbox again. I
7 put it in an envelope. I put it in the super's tray.
8 The end result of all of that, I had to remove my
9 postbox.

10 492 Q. We'll move on. The last thing I want to ask you, I 14:58
11 think the last thing I wish to ask you any questions
12 about, deals with the TOIL/Haddington Road/extra duty
13 situation?

14 A. Thanks.

15 493 Q. Can you help me please with a document, you referenced 14:58
16 it this morning and we had some conversation or some
17 evidence rather about this previously, it's the A85
18 document?

19 A. Yeah.

20 494 Q. It's if we move to -- I hope this is an example that's 14:58
21 useful to us. Let's start with the document at page
22 5494, if we could have that, please, Mr. Kavanagh.
23 Now, this particular document here, this is the A85,
24 isn't it?

25 A. Yeah. 14:59

26 495 Q. This is the application for -- or rather the document
27 that notes when people perform extra duties, matters to
28 that effect, isn't that right? Is that right,
29 inspector?

1 A. Sorry, Mr. Costelloe, that's correct.

2 496 Q. No, not at all.

3 A. That's correct.

4 497 Q. Could we scroll down, please, Mr. Kavanagh, to the
5 signature at the bottom right of that page. Do you 14:59
6 recognise that signature, inspector?

7 A. Oh yeah, that's me.

8 498 Q. Okay. It's quite hard to discern, but do you see the
9 dates there over on the far left column, can you see
10 any of them? 15:00

11 A. I can't actually, but if you tell me the date.

12 499 Q. All right. Well, I might be able to find a better
13 example, there was one, it just doesn't seem to want to
14 cooperate with me right now. Let me see if I can get
15 this one to work? 15:00

16 A. If you tell me the date, I will accept that.

17 500 Q. Well, I don't want to be putting words in your mouth
18 so... would you scroll up two pages, Mr. Kavanagh, so
19 we should be coming to page 5902?

20 CHAIRMAN: Is it that you can't read the date, 15:00
21 Mr. Costelloe?

22 MR. COSTELLOE: It is, Chairman.

23 CHAIRMAN: Wait now. Mr. Kavanagh, there's a series of
24 buttons on the top, including one that says minus and
25 one that says plus, could we try to press the plus one. 15:00
26 Get the relevant form. Now, do you see up, up, up,
27 there we are. Press that button, again, again, again.
28 Again, again, again. Now, magic. Now everybody can
29 see the date.

1 A. Thanks.

2 CHAIRMAN: Or at least see some of the dates.

3 MR. COSTELLOE: Thank you very much, Chairman.

4 501 Q. Sp we're looking there at dates August into September
5 of 2013, yeah? 15:01

6 A. Yes.

7 502 Q. Okay. Excuse me, Mr. Kavanagh, would you mind, please,
8 going down to page -- no, I am going to have to do it a
9 different way, because I just simply can't read what is
10 on my own copy, and there's no point doing this. So 15:01
11 we're going to go to a different page.

12 CHAIRMAN: Mr. Costelloe, what I am suggesting is, once
13 we have identified the date and how it's possible to
14 get the date, we can then ask Mr. Kavanagh to reduce
15 it, so that you are able to use it and see the normal 15:01
16 thing.

17 MR. COSTELLOE: I appreciate the assistance, Chairman,
18 but if you just bear with me for one second.

19 CHAIRMAN: Stay out of it, leave it to you. Okay.

20 MR. COSTELLOE: It's ever so slightly tedious if I -- 15:02
21 CHAIRMAN: Mr. Costelloe, do it your way.

22 503 Q. MR. COSTELLOE: I am grateful, thank you.
23 Mr. Kavanagh, let's start again with a different
24 document entirely, page 5503, please. This was the one
25 I was looking for. This is again an A85, isn't that 15:02
26 right, inspector?

27 A. That's correct.

28 504 Q. Mr. Kavanagh, could you help me, please, would you
29 scroll down to the bottom right of it and we see a

1 signature there. Do you recognise that signature?

2 A. That's my signature on the right-hand side.

3 505 Q. Okay. And this pertains to dates in again August and
4 into September 2013, isn't that right?

5 A. That's correct. 15:02

6 506 Q. You have that there, yeah. Okay. If we go down two
7 pages thereafter, sorry, three pages thereafter, to
8 page 5505. This page, exactly. Is there a way to get
9 all of that on the screen at one time, I wonder? Could
10 we reduce maybe to 100%, please? Perfect. Thank you 15:03
11 very much, Mr. Kavanagh. So, inspector, what's this
12 document here?

13 A. Sorry, that's a document that's extra hour duty. It's
14 a document that runs with A85. "Application for extra
15 duty". 15:03

16 507 Q. Yes. In the context of that document we have various
17 columns with prepopulated indicators as to what they
18 are supposed to signify, so we have date, period of
19 extra duty involved, normal tour duty, number of hours,
20 full description of the duty. In this particular 15:03
21 instance it says "Haddington Road agreement" you see
22 that there, don't you?

23 A. That's correct.

24 508 Q. And it says "In relation to a crime investigation,
25 aggravated burglary, 11th August 2013", the next column 15:03
26 is "signature of sergeant in charge approving of the
27 extra duty involved" and date. Do you see that column?

28 A. I do.

29 509 Q. Do you recognise the name of the sergeant there?

1 A. I would, is it Sergeant Hallahan?
2 510 Q. I think it might be.
3 A. James Hallahan, I would think.
4 511 Q. I think you may be correct. But in any event, somebody
5 has written something in into that column, it appears 15:04
6 to be a signature. Then the last one over is signature
7 of district officer sanctioning the extra duty
8 involved. Now, do you recognise that signature?
9 A. I do, that's my signature.
10 512 Q. Okay, and is there a date there? 15:04
11 A. There is. 10/9/13.
12 513 Q. Would you agree with me that that appears to come after
13 the date that the extra duty, the Haddington Road duty
14 was carried out, was performed?
15 A. I accept that but what I explained this morning 15:04
16 Mr. Costelloe --
17 514 Q. Yes.
18 A. -- any time Haddington Road was signed off on, it was
19 done verbally over the phone. And if I signed 10/9/13
20 on that, and just for argument's sake, if it was 15:04
21 Superintendent Comyns on that date that Sergeant
22 Hallahan, 7th September. Sergeant Hallahan would have
23 rang me or rang Superintendent Comyns and he said,
24 said, look, I'm going to use ten hours of my Haddington
25 Road. And if it was Superintendent Comyns got a phone 15:05
26 call in relation to that, it is my understanding that
27 if I was doing them forms on the day above in the
28 station, I would ask Superintendent Comyns, did you
29 sanction that. And I said this morning that if there

1 three Haddington Road applications, that Superintendent
2 Comyns often came out to my portacabin in the backyard
3 and said, did you sanction these. And if I said I
4 sanctioned two out of three, Mr. Comyns would sent back
5 the other one, to say who sanctioned it. 15:05

6 515 Q. The column which is the second from the end on the
7 right?

8 A. That's correct.

9 516 Q. The signature of sergeant in charge, approving of the
10 extra involved and the date. In this particular 15:05
11 instance, this example before us, it's signed, we think
12 it might be Sergeant Hallahan, he appears to be working
13 at that time, but in any event, some sergeant had
14 signed off on there, isn't that right?

15 A. Well, I think -- he is the sergeant in charge, that is 15:05
16 Sergeant Hallahan. What I am saying to you, there is
17 no other sergeant above him, Mr. Costelloe. But I can
18 tell the tribunal that if that was sanctioned, that was
19 pre-sanctioned verbally by someone.

20 517 Q. What I am suggesting to you is that in fact what this 15:06
21 document discloses is that somebody has to do a crime
22 investigation in relation to an aggravated burglary?

23 A. That's correct.

24 518 Q. They have to perform extra service and they're putting
25 it down as their Haddington Road agreement service, and 15:06
26 that the person who signs off on that is in fact, as is
27 written on that form, signature of sergeant in charge
28 approving of extra duty involved and date, and in this
29 instance we think it is Sergeant Hallahan. Thereafter,

1 just to finish the question?

2 A. Yes.

3 519 Q. Thereafter, it having been approved by the sergeant,
4 you sign off on it after the fact, noting that a
5 sergeant has given permission for that Haddington Road 15:06
6 duty to be performed?

7 A. Mr. Costelloe, can I explain that? And I think I
8 explained it this morning. That if Haddington Road --
9 my recollection, when Superintendent Comyns came to
10 Fermoy, it was in 2010, I think it was the month of 15:06
11 July, and I don't know what month the Haddington Road
12 was signed off, but certainly all the hours were
13 sanctioned. They may not -- and I said that this
14 morning, they may not be sanctioned by date on the form
15 but as I said to you, if it came in for sanction you 15:07
16 could take it from me Sergeant Hallahan rang me or rang
17 Superintendent Comyns to get pre-sanction for that.
18 Everybody was treated the same with Superintendent
19 Comyns.

20 520 Q. Thank you, inspector, just one moment. Just so there 15:07
21 can't be any suggestion I didn't give you an
22 opportunity to comment on this particular letter, there
23 is a document, Mr. Kavanagh, would you mind going to
24 page 5520, please, and you might just get the date of
25 it, it should be the 26th August 2013. I don't know if 15:07
26 everybody has that captioning box in the middle of
27 their screen but I have in mine?

28 CHAIRMAN: Peter, would you make this 100%, please, so
29 I can read it. Do you see the plus.

1 MR. COSTELLOE: I don't think it will accept commands
2 until okay is clicked, Chairman.

3 CHAIRMAN: Thanks very much. Thank you. No, 100 will
4 do fine. Thank you.

5 521 Q. MR. COSTELLOE: This is a document which is dated 26th 15:08
6 August 2013. You have that, inspector?

7 A. I have that, Mr. Costelloe, thanks.

8 522 Q. Excellent. It's addressed to the superintendent at
9 Fermoy, at that time we know that that was
10 Superintendent Comyns, isn't that right? 15:08

11 A. It would be.

12 523 Q. And it's in reference to an application for TOIL, time
13 off in leave, made by a certain sergeant.

14

15 "I wish to apply for 15 hours time off in lieu of duty 15:08
16 performed by me on 26/8/13 in accordance with the
17 Haddington Road agreement. I worked a ten-hour extra
18 tour of duty on 26/8/13, from 9am to 7pm, during the
19 course of which I performed three two-hour checkpoints
20 with RSA inspectors in Fermoy district. I wish to 15:09
21 apply for TOIL as follows."

22

23 And I think it's a he, he sets it out. "Friday 30th
24 August 2013, from 7am to 12 midday; Saturday 31st
25 August, from 7am to 5pm." And in brackets thereafter, 15:09
26 five hours, ten hours, and someone in ink has written a
27 tick as in an approval tick or a yes tick next to each
28 of those hours, isn't that right

29 A. That's correct.

1 524 Q. It's stamped as having come from the sergeant in charge
2 of the traffic corps on the 26th August and it's
3 received, we know from a stamp from the
4 superintendent's office on the same day, the 26th
5 August, isn't that right? 15:09

6 A. That's correct.

7 525 Q. If you continue down, Mr. Kavanagh. Actually, sorry, I
8 beg your pardon, you have already, you're ahead of me.
9 Do you see that ink underneath all of that, in blue
10 ink? 15:10

11 A. Yeah, my name, is it?

12 526 Q. Could I suggest to you that that again is your
13 signature?

14 A. Oh that's my signature.

15 527 Q. Could I suggest to you that it seems to have all been 15:10
16 written by the same person, sergeant in charge --
17 CHAIRMAN: It's obviously written by you. There's no
18 mystery in it.
19 MR. COSTELLOE: I just didn't want again to be
20 presuming anything. 15:10

21 CHAIRMAN: I think it's safe -- I'm presuming it,
22 Mr. Costelloe.

23 A. Mr. Costelloe, can I point out one thing in relation to
24 this.

25 528 Q. CHAIRMAN: Let Mr. Costelloe ask his question. 15:10

26 A. Sorry.

27 529 Q. CHAIRMAN: The writing in blue, including the
28 signature, is yours?

29 A. Yes, Chairman. No doubt about that.

1 530 Q. CHAIRMAN: But it's right to check it out. You confirm
2 all that.

3 A. I do, Chairman. There's no doubt.

4 CHAIRMAN: Now, let Mr. Costelloe ask his question.

5 531 Q. MR. COSTELLOE: I know you know where I am going with 15:10
6 this, doesn't this seem to suggest that after the fact
7 you're sanctioning these hours?

8 A. No, you see, Mr. Costelloe, if you look at that
9 document, that document is application for time off in
10 lieu of Haddington Road hours that were previously 15:10
11 sanctioned. Can you look at the document again now?
12 There's no issue, this man is saying, I have worked up
13 so much hours. No doubt there is another form there
14 that that was sanctioned. He's asking for time off
15 instead of it. That's the difference. This man has 15:11
16 worked up them hours. There's a form somewhere in the
17 district office to say he did them hours. Do you see
18 the way it is ticked there as well, they're satisfied
19 that them hours were done.

20 532 Q. I see what's in front of us there, inspector, but -- 15:11
21 A. No, but, Mr. Costelloe, just to be fair now, they are
22 for time off in lieu, that's cost nothing. That is
23 hours that have been worked and had been sanctioned and
24 the person is asking instead of annual leave, I want to
25 stay at home them days. 15:11

26 533 Q. Well, before we get to that then, do we at least agree
27 that this is a request being made in accordance with
28 the Haddington Road agreement?

29 A. But it's for time off in lieu.

1 534 Q. Certainly you're making the distinction there, I
2 understand you're making the distinction between time
3 off in lieu and other things, other things would be
4 working the shift that is required under the Haddington
5 Road agreement and then perhaps working extra hours and 15:12
6 getting paid for it, isn't that right?
7 A. That's correct.

8 535 Q. In this instance it's time off in lieu?
9 A. It's time off in lieu.

10 536 Q. So all I am asking you is, this being an example of 15:12
11 somebody under the Haddington Road agreement looking
12 for time off in lieu, you appear to be sanctioning that
13 after the fact?
14 A. No, Mr. Costelloe, sorry. If we just go up again to
15 the top of it. "I wish to apply for 15 hours time off 15:12
16 in lieu of duty performed on the 26th August in
17 accordance with Haddington Road."
18
19 Right. That duty on the 26th August is sanctioned
20 somewhere else, Mr. Costelloe. The person has the 15:12
21 hours done, that's my understanding, and he's then
22 making an application, can I stay at home and take time
23 off in lieu of the hours I worked. That's my
24 understanding of it.

25 537 Q. Well, we can go to the page where it appears to be 15:12
26 dealt with, Mr. Perry has found it for me there?
27 A. Yeah, bring up the page.

28 538 Q. It's 5523?
29 CHAIRMAN: Just a minute. 5523?

1 MR. COSTELLOE: 5523.

2 CHAIRMAN: Thanks very much.

3 539 Q. MR. COSTELLOE: I am going to suggest to you, sergeant,
4 that there doesn't appear to be any prior sanctioning
5 there. 15:13

6 A. And you're talking about the 28th and 20th.

7 540 Q. The dates that are there in front of you?

8 A. Sorry, is that the 28th, 20th August. Am I on the same
9 screen as you?

10 541 Q. I believe you are. 15:13

11 CHAIRMAN: Hold on. Let's go back to 5520 for a
12 moment.

13 MR. COSTELLOE: So you have dates there where you
14 have --

15 CHAIRMAN: Sorry, Mr. Costelloe, just a moment now. 15:13
16 Let's go down to the dates. Just a moment.

17 MR. COSTELLOE: So, we see on that letter there that
18 the dates applicable are the 30th and the 31st August.

19 CHAIRMAN: No, they're the dates he's looking for.

20 MR. COSTELLOE: Yes. Sorry, I thought that's what I 15:13
21 said, I beg your pardon, Chairman, if I misspoke. He
22 references the fact that on the 26th August 2013 he'd
23 worked a ten-hour extra shift.

24 CHAIRMAN: Yes.

25 MR. COSTELLOE: You see that there, inspector? 15:14

26 A. I do.

27 542 Q. Again, it's entirely possible --

28 CHAIRMAN: That's the 26th of August. Can we go back
29 now to the other one you were talking about,

1 Mr. Costelloe.

2 MR. COSTELLOE: Yes.

3 CHAIRMAN: Just for the benefit of the slower members
4 of the thing, including myself, now the 26th August and
5 we're going to find the date of the 26th August. 15:14

6 MR. COSTELLOE: Well, we have to scroll down a tiny
7 bit.

8 CHAIRMAN: We will, we will, indeed.

9 MR. COSTELLOE: And inspector, you have dates written
10 in there, the 20th August, the 28th August, there's 15:14
11 insertions put in, performance of traffic duty
12 supervision.

13 CHAIRMAN: Keep going down, Peter, we want the 26th
14 August.

15 MR. COSTELLOE: No, no, sorry, don't go. 15:14

16 CHAIRMAN: Sorry.

17 MR. COSTELLOE: No, again, sorry, Chairman --

18 A. Can I help you, Mr. Costelloe? Can I?

19 MR. COSTELLOE: Before you do, inspector --

20 543 Q. CHAIRMAN: Don't help for the moment, let Mr. Costelloe 15:14
21 proceed and ask questions.

22 A. Sorry, Chairman.

23 544 Q. MR. COSTELLOE: Before you do help me, you see the
24 insertions for the dates there, the 20th and the 28th.

25 A. I do. 15:15

26 545 Q. You signed off on that, that's not what we are dealing
27 with, obviously?

28 A. Okay.

29 546 Q. Go down then to the two underneath that. What's going

1 on there? That's somebody who was in the process of
2 looking for sanctioning or somebody has inserted and
3 crossed it out, is that it?

4 A. Yes, that's what it looks like. But, Mr. Costelloe,
5 what I said this morning is, where I signed that form 15:15
6 10/9/13 and 10/9/13, either Superintendent Comyns or I
7 would have given prior verbal sanction for that.
8 Didn't I say it this morning, that Superintendent
9 Comyns could come out with three Haddington Road forms
10 like that to me and say, did you sanction them? And if 15:15
11 I said I sanctioned two, he'd send the other one back
12 out.

13 547 Q. Well then it seems that the content of these particular
14 documents is of no use, because what you are saying is
15 they reference conversations which are had that there's 15:15
16 no note of, there's no record of, we can only go with
17 you saying that you would have done this sometime prior
18 to this?

19 A. If Mr. Comyns prior sanctioned to somebody on the phone
20 he would remember it. And, Mr. Costelloe, if somebody 15:16
21 was out at a traffic accident, was trying to build up
22 his Haddington Road hours, it wasn't practical for him
23 to drive to Fermoy Garda Station and get a form signed
24 in advance. He would have rang either one of us and
25 said, look, I want to use up some Haddington Road 15:16
26 hours, is it okay what I am doing. And Superintendent
27 Comyns or I would know what they were doing.

28 548 Q. Okay. The duty is performed on the 26th August 2013.
29 If we go to the document one page up from the one that

1 is currently on -- no, I beg your pardon, 5519. So
2 four pages up. Can you scroll down a tiny bit. Do you
3 see the entry 26th August 2013?
4 A. Yes.
5 549 Q. You see that it says that it's from 9am to 7pm? 15:16
6 A. Yeah.
7 550 Q. You see that it is the tour of duty, what does that
8 mean, RD?
9 A. That's an operation of the RSA, is it? RD is a rest
10 day. Sorry, RD is a rest day. 15:17
11 551 Q. CHAIRMAN: Rest day?
12 A. Yeah.
13 552 Q. MR. COSTELLOE: Sorry, would you say that again, sorry,
14 inspector.
15 A. Sorry, he would be off that day. But what I am saying, 15:17
16 Mr. Costelloe, is --
17 553 Q. CHAIRMAN: He worked the days on a rest day.
18 A. Rest day.
19 554 Q. MR. COSTELLOE: Rest day.
20 A. If I sanctioned that and I signed it the 10th -- 15:17
21 555 Q. Slow down.
22 556 Q. CHAIRMAN: Don't jump ahead for a second.
23 A. Sorry, Chairman.
24 557 Q. CHAIRMAN: All he asked was what is RD, because he
25 wants to ask another question. 15:17
26 A. A rest day.
27 CHAIRMAN: Now, Mr. Costelloe.
28 558 Q. MR. COSTELLOE: So it's a rest day, it's down that he's
29 worked ten hours, that's the next column?

1 A. That's correct.

2 559 Q. And then we have HGV, heavy goods vehicle operation
3 with RSA, Road Safety Authority. Inspectors 10am to 12
4 midday, 2pm to 4pm, 4pm to 6pm. Is all of that right
5 so far? 15:17

6 A. That's correct.

7 560 Q. Okay. Isn't that what we saw in that earlier document,
8 where he references having worked a ten-hour extra tour
9 of duty on the 26th August 2013?

10 A. That's correct. 15:17

11 561 Q. Okay. Then we move on to the sergeant in charge
12 column, it appears to be filled in by a sergeant, isn't
13 that right?

14 A. That's correct.

15 562 Q. And then we see a signature which appears to be your 15:17
16 signature, would you accept that's your signature?

17 A. It is, I accept that is my signature.

18 563 Q. And the date on that signature is 10th September 2013?

19 A. I do, I accept that.

20 564 Q. Okay. So again, I understand you're telling me that 15:18
21 you approved this in advance, I know you're telling the
22 Chairman that that's what would have been done, but
23 from this document all we can ascertain is that on that
24 date, which is after the fact, you appear to have
25 written in your signature in the column sanctioning the 15:18
26 extra duty, isn't that correct?

27 A. You would find that in many forms. It's correct.

28 565 Q. Okay. And what you said to me was, how could you
29 expect somebody to call in advance, to sanction hours

1 in advance because sure there could be a car accident
2 and you would have to respond to an emergency - wait
3 for it please, inspector - and what we have here is a
4 clear demonstration of an operation which must have
5 been planned in advance, it's a HGV operation with the 15:18
6 Road Safety Authority, there's nothing emergence about
7 this, this is something planned, and I am saying to you
8 that in this instance there would have been every
9 reason for the person to get sanctioned in advance and
10 get approved in advance and for you to sign and give a 15:19
11 date in advance, if that in fact was what was
12 happening?

13 CHAIRMAN: Now, what do you think.

14 A. Mr. Costelloe, I can assure you where I signed my name
15 10/9/13, sanctioning that, that it was either 15:19
16 sanctioned by Superintendent Comyns or I verbally. And
17 if Haddington Road was used, if a garda who was behind
18 in paperwork and files, if a garda rang me on the phone
19 and he said I have five hours to do, I'm falling behind
20 with my file, I'd say, no problem, it's sanctioned but 15:19
21 I need to see those files before the end of the week.

22 566 Q. CHAIRMAN: But, Mr. Costelloe's point, as I understand
23 it, inspector, is: Accepting the difficulty of
24 somebody being in the middle of a duty and it being
25 impractical to go back. He's not challenging that 15:19
26 proposition, as I understand it. But irrespective of
27 that, here's a thing that was clearly coming up in
28 advance and where there would be no difficulty in
29 securing advance sanction and yet it is retrospectively

1 apparently sanctioned. That's my understanding of what
2 he is saying.

3 A. Yes.

4 567 Q. CHAIRMAN: what do you say to that?

5 A. Chairman, to explain that, what I would say is: I 15:20
6 accept it's retrospectively in biro, in that form, but
7 what I am saying is, any Haddington Road hours in
8 Superintendent Comyns' time were pre-sanctioned either
9 verbally or in writing. And I'm sure if we dug in the
10 garda station we would get ones that were 15:20
11 pre-sanctioned as well. These are examples after the
12 fact. And I will accept that I signed that after the
13 date. But I --

14 568 Q. CHAIRMAN: So there are some -- I'm sorry to interrupt
15 you? 15:20

16 A. Sorry, Chairman.

17 569 Q. CHAIRMAN: There are some cases where it was sanctioned
18 in advance in writing?

19 A. Oh yeah, there would be. That would be my
20 understanding. 15:20

21 CHAIRMAN: Thank you, Mr. Costelloe.

22 570 Q. MR. COSTELLOE: Thank you, Chairman. The very last
23 thing I want to ask you, I don't know if we can agree
24 on this, maybe we can, and see if we can finish with an
25 agreement between us. I'm not necessarily quibbling 15:21
26 there was sanctioning in advance, I am suggesting to
27 you that that was done by the sergeants and that a
28 guard or another sergeant would go to the sergeant and
29 say, I need to do X number of hours in compliance with

1 this or that or the other, I need to do it in order
2 to -- I need you to sanction it, is that okay, and the
3 sergeant would sanction it, would tell you after the
4 fact and you would then sign off on it, assuming you
5 were happy that the work had been done. 15:21

6 A. Mr. Costelloe, I think it was July 2013 Superintendent
7 Comyns came to Fermoy. There was no sergeant
8 sanctioning Haddington Road.

9 571 Q. So in every instance, even when - there's nothing
10 pejorative meant by this expression, I am just using it 15:21
11 to distinguish - even when an ordinary guard wants to
12 Haddington Road hours approval, they make contact with
13 you or they make contact with the superintendent, they
14 don't go to their skipper or they don't go to the
15 sergeant in charge of the station? 15:22

16 A. I regularly got calls from a skipper or from a guard
17 saying that he wanted to do so many hours Haddington
18 Road. And I would ask them, what is he doing. And if
19 a garda said to me, look, I have a file, it's getting
20 late, I said, no problem, but I need to see that file 15:22
21 tomorrow.

22 572 Q. Inspector, we have been told that every single guard
23 was obligated to perform an extra ten hours of duty and
24 do another extra ten hours of duty for which they would
25 get something in return, so ten hours free and another 15:22
26 ten hours that they'd get something for?

27 A. That was my understanding, that was all sanctioned.

28 573 Q. So, are you telling the Chairman that every single
29 guard in the district would have come to either you or

1 Superintendent Comyns to get that authorisation, would
2 not have gone to their skipper in advance?
3 A. That's my understanding.
4 CHAIRMAN: Skipper being?
5 MR. COSTELLOE: Excuse me, Chairman, their sergeant in 15:22
6 advance.
7 CHAIRMAN: I'm not familiar with that nomenclature.
8 574 Q. MR. COSTELLOE: Sorry?
9 A. I suppose, Mr. Costelloe, the sergeant might even ring
10 on their behalf, but I have taken phone calls from 15:23
11 guards and from sergeants in advance. And, as I said
12 this morning, I would sign off on it, some of it would
13 be after the date.
14 MR. COSTELLOE: Thank you very much, inspector.
15 A. Thanks, Mr. Costelloe. 15:23
16
17 END OF EXAMINATION
18
19 CHAIRMAN: Thank you. Now, wait till I see. who is
20 next now? 15:23
21 MR. O' HIGGINS: Chairman, I have one or two questions
22 for the witness.
23
24 MR. ANTHONY O' SULLIVAN WAS CROSS-EXAMINED BY MR.
25 O' HIGGINS, AS FOLLOWS: 15:23
26
27 575 Q. MR. MÍCHEÁL O' HIGGINS: As you know, I don't act for
28 you but I act for senior members of An Garda Síochána,
29 other senior members and the commissioner. Firstly can

1 I ask you, in your role as inspector in Fermoy, and
2 occasionally as acting superintendent, you had dealings
3 from time to time with Chief Inspector Dillane?
4 A. I did, that's correct, chief superintendent.
5 576 Q. Chief superintendent, excuse me. Can you tell the 15:24
6 Chairman, what impression did you form over that period
7 of his management style?
8 A. I had no issues whatsoever with Chief Superintendent
9 Dillane. I think he was an efficient officer.
10 577 Q. Did he have a reasonable management style as far as you 15:24
11 were concerned?
12 A. Oh very reasonable. I never had any issue with Chief
13 Superintendent Dillane.
14 578 Q. All right. I want to ask you about one specific 15:24
15 matter, the meeting on the 9th April 2013 at
16 Mitchelstown Garda Station, that is to say between
17 yourself, Chief Superintendent Dillane and Mr. Barry?
18 A. Yes.
19 579 Q. This is the first time, according to Mr. Barry, that he 15:24
20 was subjected to victimisation or targeting, all right.
21 My question for you is: Did you victimise or target
22 him on that occasion?
23 A. The 9th April, that's the meeting with the chief?
24 580 Q. Yes.
25 A. No. There was no -- Mr. Dillane had documents to give 15:25
26 him, there was no inspection or ambush. The only place
27 he could meet him was in the station yard, I believe.
28 If he wanted to meet him -- because he wanted to move
29 on with this as quickly as possible and he being in

1 Dublin the day before. That was my understanding.

2 581 Q. As far as you were concerned did CS Dillane target or
3 victimise him in any way on that occasion?

4 A. There was no one targeted in my presence. The chief
5 superintendent did not. 15:25

6 582 Q. Lastly then, did you at any point throughout the period
7 under investigation by the Chairman, did you at any
8 hear anyone in Garda management or see anyone in Garda
9 management oppress or victimise or target Mr. Barry?

10 A. I did not. 15:25

11 583 Q. Thank you.

12 A. Thanks.

13 584 Q. CHAIRMAN: Inspector, could I just check with you.

14 A. Thank you.

15 585 Q. CHAIRMAN: Did you say the station was closed? 15:25

16 A. You see, Chairman --

17 586 Q. CHAIRMAN: In Mitchelstown?

18 A. The Mitchelstown Garda Station, when I was the sergeant
19 there it closed actually at 6pm in the evening. So the
20 only people are there are the working guards. So the 15:26
21 unit were coming on at nine o'clock. Mr. Dillane asked
22 me to go to Mitchelstown station. I think he wanted to
23 move this thing on as soon as he could. So Mr. Barry
24 was coming back on nights and he decided, will you go
25 to Mitchelstown with me at nine o'clock. 15:26

26 587 Q. CHAIRMAN: I have that. But was there nobody in the
27 station when you guys got there?

28 A. No. Because what happens, Chairman, is, the unit that
29 are finishing at nine will roll in. That station was

1 in darkness that night, if the station was opened I
2 would have went in. That's why we sit in the car.

3 588 Q. CHAIRMAN: So who was going to open up the station?
4 A. whatever first member back from work, take out his key,
5 they all have keys. 15:26

6 589 Q. CHAIRMAN: Each one would have a key?
7 A. Actually, I suppose there would have been a key in
8 Fermoy garda station if I wanted to bring it, but I
9 didn't think of it. There would be a key there.

10 CHAIRMAN: Thank you very much. I wasn't sure I was 15:26
11 understanding that correctly.

12 END OF EXAMINATION

13

14 CHAIRMAN: Now, who is next? where am I looking next.
15 Mr. McGarry, have you any guess. 15:27

16 MR. MCGARRY: I don't have any questions, thank you.

17 CHAIRMAN: who is next?

18 MR. HARTY: I have no questions, Chairman. Thank you.

19 CHAIRMAN: Mr. Carroll doesn't seem to be around. I'm
20 sorry, okay. So nobody else has any questions, very 15:27
21 good.

22 MS. McGRATH: No, Chairman.

23 CHAIRMAN: Have you any more questions, Ms. McGrath?

24 MS. McGRATH: There's nothing arising.

25 CHAIRMAN: Thanks very much, inspector. You're 15:27
26 finished now, you're free now. You can follow it
27 on-line or on your phone as much as you like.

28 THE WITNESS: Thank you very much.

29 CHAIRMAN: But you are free to go.

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THE WITNESS THEN WITHDREW

MR. MARRINAN: Chairman, former Assistant Commissioner Fintan Fanning was to be the next witness but none of the parties require him to give evidence and in those circumstances the tribunal isn't going to call him. Therefore, the next is Mr. James Fitzpatrick, please.

15:27

CHAIRMAN: Right. Thank you very much.

15:28

MR. JAMES FITZPATRICK, HAVING BEEN SWORN, WAS DIRECTLY EXAMINED BY MR. MARRINAN, AS FOLLOWS:

CHAIRMAN: Thanks very much.

MR. MARRINAN: Mr. Fitzpatrick's statement is at page 1757 of the material and also at page 1760 of the material. He answered a short questionnaire by tribunal investigator Mr. Ryan and that commences at page 1925 of the material.

15:28

590 Q. I think, Mr. Fitzpatrick, you retired from An Garda Síochána in 2016, isn't that right?

15:28

A. That's correct, Mr. Chairman.

591 Q. I think that you held the rank of detective garda, is that right?

A. That's correct, Mr. Chairman.

15:29

592 Q. And you were attached to Mitchelstown Garda Station and you had been there from 1987 until your retirement, isn't that right?

A. That's correct, Mr. Chairman.

1 593 Q. And I think that you were the sole member of the
2 detective branch until Detective Garda Denis Ryan was
3 attached to your unit and then subsequently Detective
4 Garda Denise Fitzgerald, isn't that right?
5 A. That is correct, Mr. Chairman. 15:29

6 594 Q. Now, the statement that you gave to the tribunal, the
7 second statement that you gave to the tribunal is the
8 one we're concerned about, concerns a conference that
9 was to be held in Mitchelstown Garda Station concerning
10 I think it may have been two rape investigations, is 15:29
11 that right?
12 A. That is correct, Mr. Chairman.

13 595 Q. One rape investigation that was being investigated by
14 Detective Garda Denise Fitzgerald and the other by
15 Garda Rosemary O'Connell, is that right? 15:30
16 A. That is correct.

17 596 Q. And I think that this conference was called by
18 Superintendent Michael Comyns, is that right?
19 A. That is correct, Mr. Chairman.

20 597 Q. Now, you indicate in your statement that you were 15:30
21 contacted by Superintendent Comyns on Friday, 30th
22 January 2015, to organise this conference, isn't that
23 right?
24 A. That is correct, Mr. Chairman.

25 598 Q. Will you just tell us what he said to you on the 15:30
26 Friday?
27 A. I got a phone call from -- I was probably just -- I
28 think I was resting for the previous number of days. I
29 got a phone call from Superintendent Comyns to discuss

1 the rape, he decided to organise, that we should
2 organise a meeting/case conference. So at his
3 suggestion, he wanted Friday or Monday, after the
4 conversation, Friday or Monday. I think I wanted to be
5 off Monday, so we tried Friday. I rang him back -- I 15:31
6 rang Rosemary O'Connell, she couldn't make it Friday,
7 she was minding kids, so she had no one to mind the
8 kids. So back to the superintendent. Decided for 12
9 o'clock on Monday, when everybody would be in involved
10 in the case. So I told Rosemary O'Connell Monday it 15:31
11 was, and then I told Sergeant Barry as well about the
12 conference date.

13 599 Q. Why did you tell Sergeant Barry?
14 A. Because he was the supervising sergeant.

15 600 Q. And would he normally attend at a case conference? 15:31
16 A. He normally would attend a case conference, yes.

17 601 Q. Were you aware at that time of difficulties, friction
18 between --
19 A. I was, yes.

20 602 Q. -- Sergeant Barry and Superintendent Comyns? 15:31
21 A. Yes.

22 603 Q. Were you aware of the extent of those?
23 A. I was aware that there was friction and basically that
24 there was no contact between Sergeant Barry and
25 Superintendent Comyns. 15:32

26 604 Q. In those circumstances were you surprised at the
27 suggestion that Sergeant Barry should attend?
28 A. Well, I can't remember, but yeah, well surprised in the
29 sense that Superintendent Comyns was trying to run the

1 show, so I guess he wanted Sergeant Barry there and the
2 rest of the investigating team there also.

3 605 Q. So in any event, are you absolutely certain that you
4 notified Sergeant Barry of this?

5 A. I am indeed, Mr. Chairman. 15:32

6 606 Q. You know that he takes issue with that?

7 A. I'm aware of that.

8 607 Q. He has given evidence to say that he wasn't notified.
9 He also points out that had he been notified he still
10 wouldn't have attended the conference, but he says that 15:32
11 he wasn't notified on the Friday by you, are you
12 certain that you did notify him?

13 A. I am certain I notified him.

14 608 Q. Do you recall his response?

15 A. I don't actually. All I know is I did tell him and I 15:33
16 spoke with Rosemary O'Connell also, to tell her the
17 date of 12 midday on Monday. I can't recall what he
18 said, probably in one ear with me, out the other. But
19 he was told.

20 609 Q. Right, okay. 15:33

21 610 Q. CHAIRMAN: Sorry, when did you tell him?

22 A. I'd say around four-ish on the Friday evening in the
23 station at Mitchelstown.

24 611 Q. CHAIRMAN: Okay.

25 A. The phone call from Superintendent Comyns would have 15:33
26 taken maybe five minutes, I would have rang Rosemary
27 O'Connell, it would have taken two or three minutes to
28 discover she wasn't available Friday, so it was back to
29 Monday.

1 612 Q. CHAIRMAN: Sorry, Mr. Marrinan. So that was Detective
2 Garda O'Connell, is that right?
3 A. Well Garda Rosemary O'Connell.
4 613 Q. CHAIRMAN: I'm sorry. So that's her accounted for.
5 You phoned her and discovered that she was unavailable? 15:34
6 A. Yeah.
7 614 Q. CHAIRMAN: What about Mr. Barry then? What was the
8 nature of the engagement with him?
9 A. I think after that conversation with Rosemary
10 O'Connell, I probably rang the super, he said yeah, run 15:34
11 it for Monday, 12 midday, everybody is in and then
12 would I have conveyed that to Sergeant Barry.
13 615 Q. CHAIRMAN: When you say I would have, I know that is a
14 usage that many people employ, but can you just tell me
15 what you did? 15:34
16 A. I told Sergeant Barry.
17 616 Q. CHAIRMAN: That's not a criticism. I am too well aware
18 of the usage that says, I would have done this and I
19 would have done that, which sounds conditional but it
20 isn't. Would you just tell me what you actually did. 15:34
21 As I said, that is not a criticism?
22 A. I understand that, Mr. Chairman, thank you. I told
23 Sergeant Barry of the conference date, Monday 12
24 o'clock in the station.
25 617 Q. CHAIRMAN: Can you remember where that conversation 15:35
26 took place.
27 A. From memory it was in the sergeant's office, I think.
28 But I'm not a hundred percent.
29 CHAIRMAN: Okay, thank you very much.

1 618 Q. MR. MARRINAN: So in any event, the conference
2 commenced at 12 midday on the Monday, is that right?
3 A. That is correct.

4 619 Q. And who was in attendance at the conference?
5 A. In attendance was Superintendent Comyns, myself 15:35
6 obviously, Garda Rosemary O'Connell, Denise Fitzgerald
7 and Sergeant Tony O'Flynn, he was the crime sergeant.

8 620 Q. At the commencement of the conference did
9 Superintendent Comyns enquire as to whether or not you
10 had notified Sergeant Barry of the conference? 15:35
11 A. He did, indeed. He said, where's Sergeant Barry? Now
12 he might have said -- I don't know whether he said to
13 go get him or whatever, but anyway, I went
14 downstairs --

15 621 Q. Well, first of all, did he ask you had you notified 15:35
16 Sergeant Barry?
17 A. Not at that stage.

18 622 Q. Right?
19 A. So I goes downstairs, I was aware Sergeant Barry was in
20 the station. Now I'm not a hundred percent certain on 15:36
21 this, but from thinking about it, I think I met
22 Sergeant Barry in the hallway, and I said, Paul, the
23 conference is on upstairs, come on up. And he just
24 opened the back door and went out, exited the station.

25 623 Q. Yes, go on, you went back up to the conference? 15:36
26 A. Went back up to the conference, I just did this to
27 Superintendent Comyns, shrugged. The conference went
28 ahead. It didn't last long. When the conference was
29 over, Superintendent Comyns called me and said, did you

1 tell him, Sergeant Barry that is, and I said, yeah, I
2 told him twice. Or, he was told twice. He was told
3 twice, that's what I said.

4 624 Q. Okay. would you answer any questions, please?

5 A. Thank you, Mr. Chairman.

15:36

6

7 END OF EXAMINATION

8

9 MR. JAMES FITZPATRICK WAS CROSS-EXAMINED BY MR.

10 COSTELLOE, AS FOLLOWS:

15:36

11

12 625 Q. MR. COSTELLOE: Good afternoon, Mr. Fitzpatrick.

13 A. Good afternoon.

14 626 Q. I just have a couple of questions for you. I represent
15 Paul Barry so a couple of questions for you, okay.

15:37

16 You, just in response a moment ago to Mr. Marrinan's
17 question about what happened once the conference had
18 begun on the Monday, said that you went downstairs and
19 although you weren't one hundred percent certain, on
20 reflection you felt that you bumped into him in the
21 hallway, this is Paul Barry, and that you informed him
22 again and that he just turned and walked off?

15:37

23 A. That is correct, Mr. Chairman.

24 627 Q. Just it's curious because you made a statement to the
25 tribunal dated 11th March 22022, yes?

15:37

26 A. That's correct.

27 628 Q. You remember making that statement? We're talking
28 about three and a bit months ago, yes?

29 A. That's correct.

1 629 Q. When you're relating about this, when you're saying
2 about this, you deal with it, it's down the very bottom
3 of your statement, you say:
4
5 "On Monday, 2nd February 2015, at approximately 12 15:37
6 midday, the conference commenced. To the best of my
7 recollection at the onset of the conference
8 Superintendent Comyns asked me where was Sergeant Barry
9 and also asked if he was informed of the conference
10 details." 15:37
11
12 That appears to coincide with what you said just a
13 moment ago. And then you said in your statement a
14 couple of months ago:
15 15:38
16 "I confirmed that I had informed him and I went
17 downstairs to try and locate Sergeant Barry, to no
18 avail."
19 A. On reflection, since I made that statement obviously it
20 was running through my mind, and from thinking about 15:38
21 what happened and running my mind through the
22 conference, that is now my recollection.
23 630 Q. It's a fairly extraordinary thing to remember and not
24 tell anybody about in advance of giving your evidence,
25 isn't it? 15:38
26 A. Well, this is my recollection.
27 631 Q. Yes, well your recollection three months ago was
28 different?
29 A. I agree with that.

1 632 Q. Your recollection about being asked this exact question
2 when preparing a statement to deal with this exact
3 issue was that having gone downstairs and looked for
4 him, you couldn't find him?
5 A. I think to no avail, is what I said. 15:38
6 633 Q. Does that mean something other than you couldn't find
7 him?
8 A. Well it was -- in my mind, I looked back on this, at
9 the time it was my first recollection of it, then I had
10 further recollection of my recollections, and that's 15:39
11 what I recollect.
12 634 Q. Oh boy, you have recollections of your recollection,
13 okay. You didn't tell anybody involved with the
14 tribunal that in fact your evidence as given in your
15 statement was wrong until you came here this afternoon? 15:39
16 A. I spoke to counsel this morning.
17 635 Q. And did you inform counsel for the tribunal that your
18 statement was incorrect?
19 A. I didn't say that my statement was incorrect, no, I
20 told him what I recollected. 15:39
21 636 Q. So did you tell counsel for the tribunal that you had
22 made an error in relation to this exact issue and that
23 in fact upon recollection you had met with my client
24 and that as far as you could recall, having told him
25 again on the basis of your recollection, he turned 15:39
26 around and walked out of the station?
27 A. I'm trying to be as truthful as I can to the tribunal,
28 that is now my recollection.
29 637 Q. Did you take any notes about any of this at the time?

1 A. Well, notes in what sense?

2 638 Q. So I am not asking you about notes to do with the
3 conference, obviously you're a detective, you're an
4 experienced man, you took notes to do with the
5 conference. I'm asking you did you take notes about 15:40
6 informing my client the preceding Friday or about
7 bumping into him in the hallway on the subsequent
8 Monday?

9 A. Did I take any?

10 639 Q. Notes? 15:40

11 A. No.

12 640 Q. Did you use your Garda notebook to record that you had
13 spoken to my client, as you had been asked to do, and
14 that he had been told he was to go there, did you make
15 any note of that? 15:40

16 A. I made no notes, Mr. Chairman.

17 641 Q. Okay. So to the extent in which we are relying on your
18 evidence, it is entirely based on your memory of what
19 happened at the time?

20 A. On my memory, that's correct. 15:40

21 642 Q. And your memory so far as three months sets out was
22 wrong, you say, and your memory now, as you say here
23 this afternoon, is correct?

24 A. Obviously I am thinking about giving evidence to the
25 tribunal, I a scratching my head, this is going through 15:41
26 my head and this is what I remember now.

27 643 Q. Is it possible then that you weren't thinking about
28 giving your evidence when you made your statement back
29 in March?

1 A. Well, obviously if I was making a statement I was going
2 to be giving evidence in March.

3 644 Q. You must have thought about it, correct?
4 A. I thought about it then.

5 645 Q. And having thought about this exact issue, what you 15:41
6 said was you went looking for him "to no avail"?
7 A. To no avail.

8 646 Q. Okay. I just have to put it to you that your
9 recollection, be it your recollection or your
10 recollection of your recollection, I've lost count 15:41
11 myself now, but in any event your memory of what
12 happened is wrong, I am putting that to you?
13 A. That is incorrect, Mr. Chairman.

14 647 Q. I am putting it to you that you did not speak to him in
15 the hall on the 4th, on the Monday and tell him -- 15:41
16 sorry, it's not the 4th, but on the Monday --
17 CHAIRMAN: On the Friday.
18 MR. COSTELLOE: No, I am dealing with the day of the
19 conference.
20 CHAIRMAN: I'm sorry, forgive me. 15:41
21 MR. COSTELLOE: Not at all.
22 CHAIRMAN: Mr. Costelloe, sorry, totally my mistake.

23 648 Q. MR. COSTELLOE: So there's two occasions upon which you
24 say you informed my client that he needed to go to the
25 conference. One predates the conference and one 15:42
26 happens while the conference is happening. You say you
27 bump into him in the hall downstairs and he about faces
28 and walks off.
29 A. As I said, Mr. Chairman, I'm not one hundred percent

1 sure, but that is now my recollection. That I recall
2 meeting him in the hallway, I says, Paul, come on up,
3 or towards to that effect, and he goes out the back
4 door.

5 649 Q. well, I suppose that I will concede that you're trying 15:42
6 to be fair there, Mr. Fitzpatrick, that you are saying
7 it's to the best of your recollection. The point I am
8 trying to make is that three months ago your
9 recollection was very different?

10 A. I agree with that. 15:42

11 650 Q. Okay. And what I am suggesting to you is that in fact
12 you did not meet with him on the day of the conference
13 to tell him that the conference was going on upstairs
14 and tell him to go up and he did not turn around and
15 walkout of the station? 15:42

16 A. well, my recollection is that I went downstairs, meets
17 him in the hall way, says, Paul, the conference is on
18 upstairs, come on up, and he walks out the back tour.

19 651 Q. Did you discuss your evidence or the issue upon which
20 you were going to be examined with anyone prior to 15:43
21 coming here this afternoon?

22 A. No, I did not.

23 652 Q. Have you read any of the transcripts online off what's
24 being going on in the tribunal?

25 A. At the start of this I went through the transcripts, if 15:43
26 my name was mentioned or whatever, but then I flicked
27 through them. I didn't really, no, I didn't.

28 653 Q. well, in fact, your name is mentioned, it's mentioned
29 on Day 177, at page 72, line 18 of the transcript. And

1 that's the specific occasion upon which this entire
2 issue is dealt with and your name is mentioned then.
3 Did you read about yourself there?
4 A. What was that in relation to?
5 654 Q. Effectively my client says that he was never told by 15:43
6 you that he had to turn up at a conference the
7 following Monday?
8 A. Well, I have to say he was told.
9 655 Q. Because you had been given a direct order, a direct
10 command by Superintendent Comyns to tell him to do so, 15:43
11 isn't that right?
12 A. Well no, in fairness, from Superintendent Comyns, it
13 was a request just to organise.
14 656 Q. Okay. I don't want to get into quibbling with you
15 about the nomenclature but you had been asked by 15:43
16 Superintendent Comyns to tell my client?
17 A. That is correct, Mr. Chairman.
18 657 Q. And obviously if you didn't do that, it would be an
19 issue between yourself and Superintendent Comyns, isn't
20 that correct? 15:44
21 A. If I didn't. Well I was asked to do it and I did it.
22 658 Q. Yes. I am saying to you if you hadn't done it, having
23 been asked to do it by Superintendent Comyns, that
24 would have created a problem vis-à-vis yourself and
25 Superintendent Comyns? 15:44
26 A. Yes, I guess.
27 659 Q. And all of this is happening in the background of a
28 very, if I phrase it as neutrally as I can,
29 uncomfortable environment between Superintendent Comyns

1 and my client that everyone knows about that's ongoing
2 at that stage?

3 A. That's correct.

4 660 Q. Can I suggest to you that you may very well had been
5 told by Superintendent Comyns to tell my client to 15:44
6 attend the conference on the following Monday, but that
7 in fact you did not?

8 A. I was asked by Superintendent Comyns to, or requested.

9 661 Q. Yes.

10 A. And I told Sergeant Barry. 15:44

11 662 Q. And last thing, Mr. Fitzpatrick, I am just formally
12 putting it to you that you never in fact told my client
13 that he was to attend that conference?

14 A. I told Sergeant Barry on the Friday and on the -- well,
15 mentioned it on the Monday. 15:45

16 663 Q. Thank you, sir?

17 A. Thank you.

18 664 Q. CHAIRMAN: Might I just explore two points? You say
19 about the Monday encounter, meeting, you say about the
20 meeting with Sergeant Barry, that you're not a hundred 15:45
21 percent sure?

22 A. I'm not a hundred percent sure.

23 665 Q. CHAIRMAN: Okay.

24 A. It's in my mind.

25 666 Q. CHAIRMAN: I understand. I am not trying to sort of -- 15:45
26 I understand, this is a time ago and so on and counsel
27 have been asking you questions about it. But can you
28 help me as to the reason, if you like, why is it not a
29 hundred percent? What is it about it that makes it --

1 do you understand my question? Is that a stupid
2 question? Perhaps it is stupid. We all know sometimes
3 that we're not so certain about something, but is there
4 any reason you can think of why you're less than sure
5 about it? 15:46

6 A. Shall we say, when I made the statement back in March I
7 was thinking about it, then I couldn't think, couldn't
8 remember, but I knew. Then I remembered the fact that
9 I thought there was one conversation with
10 Superintendent Comyns but I actually had two after the 15:46
11 conference, where I said he was told twice. Then I was
12 scratching my head, I remember going downstairs. And
13 then, it's not like voila or whatever, it's just the
14 fact that I just recall that.

15 667 Q. CHAIRMAN: Is there something in your mind that causes 15:46
16 you to be less than certain, am I understanding that
17 correctly?

18 A. Not less than certain, I'm...

19 668 Q. CHAIRMAN: Can you understand why I am asking you that?

20 A. I'm fairly certain that that's what happened. 15:46

21 669 Q. CHAIRMAN: That's an answer. Now, the other point I
22 was going to ask you is this: You got a phone call
23 from Superintendent Comyns, is that right?

24 A. Superintendent Comyns.

25 670 Q. CHAIRMAN: And you had your own office, did you? 15:47
26 A. Yeah, I had my own office. Now, it probably was on my
27 mobile phone. Probably.

28 671 Q. CHAIRMAN: Right, okay.

29 A. But I'm not a hundred percent sure.

1 672 Q. CHAIRMAN: So the most likely thing is that he phoned
2 you and it was on your mobile phone he rang you.
3 A. Mobile phone.

4 673 Q. CHAIRMAN: That would be the normal way, is that right?
5 A. Well, in fairness, Superintendent Comyns could ring the 15:47
6 office phone as well, it could have been, but I'm not a
7 hundred percent sure.

8 674 Q. CHAIRMAN: So it could have been either, but your best
9 recollection is that it was on your mobile phone?
10 A. Mobile. 15:47

11 675 Q. CHAIRMAN: Did you immediately go -- no, you first rang
12 Garda --
13 A. Shall we say, the conference day would have suited me
14 better on the Friday, not on the Monday.

15 676 Q. CHAIRMAN: Sure. 15:47
16 A. I ring Rosemary because she was the investigating
17 member, first of all.

18 677 Q. CHAIRMAN: That didn't suit her?
19 A. That didn't suit her. So I had to go with her. And
20 then it had to be a Monday then. So I think I rang 15:47
21 Superintendent Comyns back. He said, yeah, Monday, he
22 says, arrange that, he says tell whoever, and Sergeant
23 Barry as well. Now, I can't remember whether he asked
24 me to ask the others but it wouldn't have been an issue
25 because they were all going to be working Monday 15:48
26 anyway.

27 678 Q. CHAIRMAN: So you were to notify, you were to organise
28 the conference, is that right?
29 A. Basically.

1 679 Q. CHAIRMAN: And he was asking you would you organise it,
2 is that right?

3 A. Yeah. He was asking me. But I mean, it'd be a bit --
4 it was a meeting more than a conference. It wasn't a
5 -- 15:48

6 680 Q. CHAIRMAN: We won't get hung up on whether it was a
7 conference?

8 A. Yeah.

9 681 Q. CHAIRMAN: Did you notify all the other people?
10 A. Well, I notified definitely Rosemary O'Connell, I 15:48
11 notified Sergeant Barry, I can't recall notifying
12 Denise Fitzgerald. Superintendent Comyns probably
13 would have notified Tony O'Flynn, I assume.

14 682 Q. CHAIRMAN: In any case, you were reassured that they
15 were all going to be on duty, so that wasn't a 15:48
16 particular worry.

17 A. Exactly.

18 683 Q. CHAIRMAN: Again, I know it's a long time ago, did
19 Sergeant Barry have an office in the station?

20 A. Yeah, there was a sergeant's office downstairs, the 15:49
21 detective branch office was upstairs.

22 684 Q. CHAIRMAN: Okay. Can you recall how that happened?
23 Did you go to his office?

24 A. I probably --

25 685 Q. CHAIRMAN: Or did you bump into him? 15:49
26 A. No, I'd say I probably went to the sergeant's office
27 and I probably told him about the meeting.

28 686 Q. CHAIRMAN: Okay.
29 A. Stroke conference.

1 687 Q. CHAIRMAN: I'm detecting, I don't know if I am correct,
2 but I am understanding a certain amount of -- sorry, I
3 will put that -- I am understanding a degree of
4 uncertainty about where you met Sergeant Barry, am I
5 right about that? 15:49

6 A. You're right, yeah. It probably was in the sergeant's
7 office, I'm not a hundred percent sure.

8 688 Q. CHAIRMAN: Okay. Thanks very much.

9

10 END OF EXAMINATION 15:49

11

12 CHAIRMAN: Now, Mr. O'Higgins, have you any questions?

13 MR. O'HIGGINS: I have no questions, Chairman, thank
14 you.

15 CHAIRMAN: Thanks very much. I don't suppose you have 15:50
16 any questions?

17 MR. MCGARRY: No.

18 MR. HARTY: I have one very --

19 CHAIRMAN: Certainly. Thanks very much.

20 15:50

21 MR. JAMES FITZPATRICK WAS CROSS-EXAMINED BY MR. HARTY,
22 AS FOLLOWS:

23

24 689 Q. MR. HARTY: Thank you. Just in relation to that
25 conversation, it was in relation to a investigation of 15:50
26 a serious offence, isn't that correct?

27 A. That's correct, Chairman.

28 690 Q. Just from the point of view of your experience in
29 general, are these conferences valuable in the

1 investigation of offences of this nature, meetings of
2 this nature?

3 A. Obviously rape is -- it was a rape investigation, two
4 rape investigations, so yes.

5 691 Q. And in terms of directing people on the ground and 15:50
6 everything else, is it of assistance to have the senior
7 officers there as well as the people who are, shall we
8 say, sergeants or detectives involved in the
9 investigation?

10 A. Oh yes, it is, yes. 15:50

11 692 Q. And in relation to those investigations, would you
12 agree with me that such conferences, meetings, are an
13 important part of ensuring that such serious matters
14 are properly investigated?

15 A. Yes, indeed. 15:51

16 693 Q. I have no further questions, thank you,
17 Mr. Fitzpatrick?

18

19 END OF EXAMINATION

20

21 CHAIRMAN: Thanks, Mr. Harty. Mr. Costelloe, you don't
22 want to come back on anything that I raised?

23 MR. COSTELLOE: No.

24 CHAIRMAN: I realised I ventured off on some of the
25 same lines that you had done. 15:51

26 MR. COSTELLOE: Thank you, no.

27 CHAIRMAN: Mr. Marrinan, you have no questions?

28 MR. MARRINAN: No, no further questions.

29 CHAIRMAN: Thank you very much, Mr. Fitzpatrick.

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You're free to go now. As I say, you're welcome to attend any part of it but you have no obligation to do so. Thank you very much for coming.

THE WITNESS: Thank you, Mr. Chairman.

15:51

THE WITNESS THEN WITHDREW

CHAIRMAN: where does that leave us, Mr. Marrinan?

MR. MARRINAN: That is all our witnesses for today. We have sitting at 11am on Tuesday morning.

15:51

CHAIRMAN: Very good. Okay.

THE HEARING THEN ADJOURNED UNTIL TUESDAY, 21ST JUNE 2022 AT 11 A.M.

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