

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
THE PROTECTED DISCLOSURES ACT 2014 AND CERTAIN OTHER
MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
SEANAD ÉIREANN ON 16 FEBRUARY 2017

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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 TUESDAY, 21ST JUNE 2022 - DAY 188

188

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

APPEARANCES

SOLE MEMBER: MR. JUSTICE SEAN RYAN,
FORMER PRESIDENT OF THE COURT OF
APPEAL

REGISTRAR: MR. IAN MURPHY

FOR THE TRIBUNAL: MR. DIARMAID McGUINESS SC
MR. PATRICK MARRINAN SC
MS. SINÉAD McGRATH BL

INSTRUCTED BY: MS. CIARA WALSH
SOLICITOR FOR THE TRIBUNAL

FOR SERGEANT PAUL BARRY: MR. SHANE COSTELLOE SC
MR. DAVID PERRY BL
MS. LYDIA DALY BL

INSTRUCTED BY: MS. DEBORAH CODY
MR. ADRIAN CAREY
MICHAEL KELLEHER SOLICITORS
149 JAMES STREET
DUBLIN 8

FOR THE COMMISSIONER
OF AN GARDA Síochána: MR. SHANE MURPHY SC
MR. MÍCHEÁL P O' HIGGINS SC
MR. JOHN FITZGERALD SC
MR. DONAL McGUINESS BL
MS. SHELLEY HORAN BL
MS. KATE EGAN BL

INSTRUCTED BY: MS. MAIREAD BURKE
MR. CORMAC FORRISTAL
CHIEF STATE SOLICITOR'S OFFICE
OSMOND HOUSE
LITTLE SHIP STREET
DUBLIN 8

FOR MICHAEL COMYNS: MR. MARK HARTY SC
MR. JOHN FERRY BL

INSTRUCTED BY: MR. CARTHAGE CONLON
O'MARA GERAGHTY McCOURT
51 NORTHUMBERLAND ROAD
DUBLIN 4

FOR FINTAN FANNING
& ANTHONY O' SULLIVAN:

MR. PAUL MCGARRY SC
MR. PATRICK O' BRIEN BL

INSTRUCTED BY:

MR. ANDREW FREEMAN
SEAN COSTELLO & COMPANY SOLICITORS
HALIDAY HOUSE
32 ARRAN QUAY
SMITHFIELD
DUBLIN 7

FOR JOHN QUILTER:

MR. PAUL CARROLL SC
MR. BREFFNI GORDON BL

INSTRUCTED BY:

MR. ROBERT PURCELL
ME HANAOE SOLICITORS
SUNLIGHT CHAMBERS
21 PARLIAMENT STREET
DUBLIN 2

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 21ST JUNE
2 2022:

3
4 CHAIRMAN: Good morning, yes.

5 MR. McGUI NNESS: Chairman, the first witness this 11:01
6 morning is Mr. Jack Nolan.

7 CHAIRMAN: Thank you. Thanks very much. Good morning
8 again, Mr. Nolan. We haven't seen you in a while.

9 THE WITNESS: Good to see you as well, Chairman.

10
11 MR. JACK NOLAN, HAVING BEEN SWORN, WAS
12 DIRECTLY-EXAMINED BY MR. McGUI NNESS, AS FOLLOWS:

13
14 1 Q. MR. McGUI NNESS: Good morning, Mr. Nolan. Just for the
15 record, Chairman, Mr. Nolan's statement is to be found 11:02
16 in volume 19 of our papers, at page 5699 onwards.

17 CHAIRMAN: Thank you.

18 MR. McGUI NNESS: It is also followed by a question and
19 answer interview, at pages 5701 onwards.

20 CHAIRMAN: Thank you very much. 11:02

21 2 Q. MR. McGUI NNESS: Mr. Nolan, I think you joined An Garda
22 Síochána in 1977, I think?

23 A. That's correct, Chairman.

24 3 Q. When you retired ultimately in 2017, in April, I think
25 you had served for virtually 40 years in the guards, is 11:02
26 that correct?

27 A. Just about 40 years, yes.

28 4 Q. I think you retired at the rank of assistant
29 commissioner in charge of the Dublin metropolitan

1 region?

2 A. That's correct, Chairman.

3 5 Q. with additional responsibilities for community
4 relations and public safety?

5 A. That's correct, Chairman. 11:03

6 6 Q. At the time that we're concerned with, I think you were
7 the assistant commissioner for the Southeastern Region?

8 A. That's correct, Chairman.

9 7 Q. Between the years 2012 and 2015?

10 A. That's correct. 11:03

11 8 Q. And as such you were based in the Cork area, isn't that
12 correct?

13 A. I would have been based in -- my headquarters station
14 would have been Kilkenny at that time.

15 9 Q. In Kilkenny? 11:03

16 A. Yes.

17 10 Q. Now, the tribunal has heard of the submission of a
18 complaint by Sergeant Barry, as he then was, to HRM,
19 which was received by them in October of 2012, and I
20 think you received correspondence from Chief 11:03
21 Superintendent Grogan, who was chief superintendent HRM
22 at the time, around the 9th October 2012. Could we
23 just ask you to confirm that. If we look at page 2485
24 of the tribunal's papers. If we scroll down there.
25 Do you recall receiving that? 11:04

26 A. Yes, I recall receiving that, yes.

27 11 Q. Obviously the second paragraph recites in a general way
28 the nature of the allegations. And did you consider
29 that it was your function at that point in time to

1 investigate the allegations or any of them?

2 A. I was requested by assistant commissioner HRM to
3 investigate this report.

4 12 Q. Yes. And I think you received it and on the 12th
5 October, you instructed Superintendent Lordan to assist 11:05
6 you, if we look at page 2483. Just scroll down the
7 page.

8 A. That's my signature, yes.

9 13 Q. Yes.

10 A. I appointed Superintendent Lordan at the time, yes. 11:05

11 14 Q. Yes. We know that in the following month he met with
12 Sergeant Barry, as he then was, who went through the
13 statement and confirmed it formally. I think you
14 received a request from Chief Superintendent Grogan, if
15 we go to page 2484, as to what progress was being made. 11:05
16 The next page, indeed. And he's asking you if an
17 investigator has been appointed to deal with it and if
18 so, the identity of same and the current status of it.
19 I think you follow that up with Superintendent Lordan,
20 if we look at page 2486, and you sought an update in 11:06
21 relation to that. And at page 2487, you were in a
22 position to reply to Chief Superintendent Grogan and
23 you offered this opinion, you say:

24

25 "I have studied the complaint of Sergeant Barry 11:06
26 Mitchelstown Garda Station in some detail and I am of
27 the opinion there are issues of both a bullying and
28 harassment perspective and possibly a discipline
29 perspective that merit investigation. I have appointed

1 Superintendent Pat Lordan, Thurlles, to assist me with
2 this investigation and he has obtained a statement for
3 Sergeant Barry which in general confirms the contents
4 of the complaint made to you on 2nd October 2012.

5
6 With regard to the discipline/criminal aspect of this
7 complaint, I met with chief superintendent Internal
8 Affairs in this regard and we concluded that a meeting
9 with you may be appropriate before advancing this
10 investigation to the stage of interview with
11 Superintendent Comyns. "

12
13 If we just scroll down there. You suggest a suitable
14 date for that meeting and you have not to date
15 contacted Superintendent Comyns for the above stated
16 reasons. Now, can I just ask you, does that help you
17 in recollecting? What was your state of mind at the
18 time? Were you regarding yourself as tasked to conduct
19 the first stage of it and then querying how the second
20 stage would be dealt with?

21 A. I actually don't recall this memo, but I accept what it
22 says. But I would at all times have considered that I
23 would be appointing somebody to conduct the
24 investigation on my behalf. It wouldn't ever have been
25 my intention to actually do the investigation myself,
26 based on the volumes of work that an assistant
27 commissioner with multiple portfolios would have.

28 15 Q. Yes. I was going to ask you that question, indeed, and
29 we will come to it. This seems to be endorsed by

1 Superintendent Grogan's note on the 12th December
2 there:

3
4 "Spoke with A/C Nolan by phone. Advised him two
5 separate investigations -- criminal and bullying and 11:08
6 harassment."

7
8 In writing:

9
10 "Inform Comyns and appoint chief for bullying and 11:09
11 harassment. JG 12/12."

12
13 Does that assist your recollection of having discussed
14 it with Chief Superintendent Grogan on the phone?

15 A. I don't believe I saw that note, that handwritten note 11:09
16 before today.

17 16 Q. All right. It's his note obviously?

18 A. Obviously, it's Chief Superintendent Grogan's memo,
19 yes.

20 17 Q. Yes. You did write in any event to Sergeant Barry on 11:09
21 the 4th January, if we look at page 2489, and you say
22 there in the first paragraph that you:

23
24 "...have been appointed by assistant commissioner HRM
25 to investigate your complaint of unacceptable behaviour 11:09
26 alleged against Superintendent Michael Comyns. Further
27 to your meeting with Superintendent Pat Lordan on the
28 21/11/12 and in accordance with the provisions of 8.5
29 of above policy, I wish to seek an extension of time to

1 1st March 2013 to conduct my investigation."

2
3 Now, the first paragraph there, it seems to be clear
4 perhaps on an interpretation that you certainly may
5 have thought or perhaps unwittingly conveyed to the 11:10
6 sergeants that you were in fact examining it yourself
7 under the policy, referring to the policy and section
8 8.5 and then the extension issue?

9 A. Yes, I can see how it could be interpreted in that
10 fashion, but it would never have been my intention to 11:10
11 actually physically conduct the investigation myself.
12 As I said, volumes of work, pressures, et cetera
13 wouldn't have allowed that to happen.

14 18 Q. Yes. If we look at page 4290. This is you writing to
15 the assistant commissioner in HRM. The next page. 11:11
16 2490. If we scroll down the page. This is a letter on
17 the same date, the 4th, and you're reporting back there
18 to Assistant Commissioner Fanning, I think that was at
19 that point in time. And you say you were appointed on
20 the 9th October, as I've set out there. You appointed 11:11
21 Superintendent Lordan. And then in the third paragraph
22 down, you say:

23
24 "With reference to investigation into a sexual abuse
25 case where it believes that Superintendent Comyns 11:11
26 manipulated the nature of the investigation and gave
27 ambiguous instructions, withheld critical information
28 from him as the segment investigating the matter. The
29 matter is I believe outside the terms of the Garda

1 policy. "

2

3 Et cetera

4

5 "I wish to secure advice if a separate investigation 11:12
6 has been commenced in relation to this issue. "

7

8 Then it concludes by saying that:

9

10 "I have advised both Sergeant Barry and Superintendent 11:12
11 Comyns that you are investigating the alleged bullying
12 aspect of the complaint. "

13

14 And just to look, you did write, actually, to
15 Superintendent Comyns as well, 2491. It's headed, as 11:12
16 you will note there, in relation to the bullying
17 policy, and again it just recites the matters set out
18 there and you're seeking an extension of time. So it
19 may be at that point in time you had perhaps decided
20 that you were doing it and then subsequently came to 11:12
21 the realisation that your workload, et cetera, wouldn't
22 allow you to do that

23 A. Well, as I said, Chairman, it would never have been my
24 intention to actually do an investigation. I would
25 always have appointed somebody to conduct it on my 11:13
26 behalf. The phrase "I have been appointed" is a
27 standard phrase that's generally used in
28 correspondence --

29 19 Q. Yes.

1 A. -- back to the assistant commissioner HRM.
2 20 Q. We have heard that Sergeant Barry wouldn't agree to
3 this extension and he sent an e-mail on the 14th
4 January 2013, if we look at page 957. And if we just
5 go down. This is him referring to the letter which you 11:14
6 had sent to him on the 4th, and it's in reference to
7 where it was addressed to. He recites there at the
8 end, he doesn't agree to the extension. And if we just
9 go up to page 955. This is sent to the commissioner
10 HRM. He is raising these issues in relation to the 11:14
11 investigation and he complains he has been treated
12 unfairly and that he hasn't had a return call in
13 relation to the matter. I think you -- this was
14 brought to your attention by Chief Superintendent
15 Grogan and I think if we look at page 954, if we just 11:15
16 go down there towards the bottom of the page. Chief
17 Superintendent Grogan refers to the e-mail below and
18 then if we just scroll back up. I think this is you
19 replying to Chief Superintendent Grogan there and
20 you're suggesting that he advise Sergeant Barry as 11:15
21 follows:

22
23 "Assistant Commissioner Nolan has been attempting to
24 progress the investigation due to a variety of factors
25 including workloads, regional branch, other 11:15
26 investigation, annual leave of assisting member, it has
27 not been possible to conclude the investigation. The
28 fact that Sergeant Barry's bullying complaint contains
29 possible criminal and disciplinary content, the advice

1 of A/C HRM has been sought on whether a separate
2 investigation should be commenced into this aspect. As
3 such, as advice is not yet to hand, it is difficult to
4 progress investigation to completion. I have sought
5 the agreement of Superintendent Comyns, Sergeant Barry 11:16
6 to an extension of time to complete the investigation.
7 It is regrettable that Sergeant Barry is not inclined
8 to this course of action. Once the advice sought is
9 available, the matter will be progressed accordingly."

10
11 That reflects that you had written off earlier on the
12 4th January looking for that advice, isn't that
13 correct?

14 A. It appears to suggest that. I don't recall this e-mail
15 exchange, I have to be honest. 11:16

16 21 Q. If we go up to see what Chief Superintendent Grogan's
17 reply was, it's there, further up that page. Now, the
18 reply that Superintendent Grogan issued in fact just
19 stated that the matter had been brought to your
20 attention. But I think you pursued the matter with 11:17
21 Assistant Commissioner Fanning's office, if we look at
22 page 2495. You wrote a reminder, saying that you were
23 anxious to progress it as soon as possible. You were
24 obviously conscious, as we've seen, of the time limits.
25 But can I ask you at this stage, you did realise 11:17
26 obviously the serious nature of the allegation
27 concerning the criminal investigation and obviously
28 also the bullying and harassment, had you a view at
29 that stage or had you considered which might go first

1 or how they would normally be conducted?

2 A. I don't recall thinking about that at that time now. I
3 just can't recall that. It's nine years ago at this
4 stage.

5 22 Q. I understand, yes. You did pursue it with a further 11:18
6 reminder on the 4th February, if we look at that, page
7 2496, the next page. Now, it would appear that this
8 perhaps crossed with the reply from chief
9 superintendent HRM to you, if we look at 2493. In
10 fact, if we look at 2494 first. This is Chief 11:18
11 Superintendent Grogan's report to Assistant
12 Commissioner Fanning and he says there in the second
13 paragraph:

14
15 "Assistant commissioner southeastern region should 11:18
16 appoint a chief superintendent to carry out an
17 investigation under the Garda policy and procedures on
18 harassment, sexual harassment and bullying and any
19 criminal offences identified.

20 11:19
21 In the light of the Gibbons judgment consideration
22 should be given to the appointment of a chief
23 superintendent under the discipline regulations to
24 investigate allegations that Superintendent Comyns
25 interfered with the investigation into alleged sexual 11:19
26 abuse which was reported at Mitchelstown Garda Station
27 on the 2nd February 2012."

28
29 Now, that's dated 16th January but it's forwarded to

1 you by Assistant Commissioner Fanning on the 29th
2 January, if we look at 2493. And that's sent on to you
3 then. Chief Superintendent Kehoe said that you asked
4 her on the 7th February, you informed her that you
5 would be appointing her and I take it you don't
6 disagree with that? 11:19

7 A. I remember appointing Chief Superintendent Kehoe to
8 investigate this matter, indeed, yes.

9 23 Q. I think a letter had come in from Mr. Costello, the
10 solicitors, on behalf of Sergeant Barry at the time. 11:20
11 If we perhaps look at that, 2497. And if we go down to
12 2498 there. Again they're raising the issue but at
13 that stage it would appear that they had been advised,
14 as per the last two lines of the first paragraph, that
15 "Assistant Commissioner Nolan due to a variety of 11:20
16 factors, including workload, is not in a position to
17 conclude the investigation". That certainly appears to
18 be consistent with what you had written in the e-mail
19 to Chief Superintendent Grogan a fortnight before that,
20 perhaps? 11:21

21 A. Again, I don't think I would have seen this particular
22 item of correspondence.

23 24 Q. Yes. In any event, can I ask you to look at an e-mail,
24 or sorry, a document at page 2501. Again this is sent
25 to Assistant Commissioner Fanning, but it's being 11:21
26 forwarded on in connection with that and an e-mail from
27 Mr. Barry on the 18th February, if we look at 2504.
28 And this appears to be directed to you I think and it's
29 raising the issue of a lack of contact and not having

1 given a progress report and issues of delay, et cetera.
2 And I think you did reply to that on the same day, if
3 we look at page 2503. And you're indicating, in the
4 third paragraph there in one sentence:

5
6 "The issues raised in that statement are complex in
7 nature requiring significant investigation. These
8 investigations are currently in progress.

11:22

9
10 I understand that you have had regular contact on your
11 complaint with Chief Superintendent Grogan HRM Garda
12 Headquarters.

11:22

13
14 If you have anything further to add to your statement,
15 please do not hesitate to contact me."

11:23

16
17 And I think you confirmed to HRM then within a couple
18 of days that you had formally appointed Chief
19 Superintendent Kehoe, if we look at page 2505. You've
20 referred to the appointment and requesting her to
21 complete the investigation as a matter of urgency. And
22 you saw it as urgent at all stages, I take it?

11:23

23 A. As with all investigations, it'd be dealt with as
24 speedily and as urgently as possible.

25 Q. Yes. Could we look at document, page 2513. This is an
26 e-mail which is sent on to you, it would appear.
27 Actually it's sent on to Chief Superintendent Kehoe in
28 the first instance, but this related to the issue of a
29 further extension in the context of what had gone

11:23

1 before, it is agreed to in that context. And if we
2 just go back up to page 2512, Assistant Commissioner
3 Fanning asks for a minute to be sent to you to
4 establish the current position. And I think you got
5 such a minute and you responded to that at 2515, which 11:25
6 is on the 25th March. And this appears to have been
7 sent on your behalf or by you to Chief Superintendent
8 Grogan and you're saying:

9
10 "Hi John, this is still in progress at the time. Chief 11:25
11 Superintendent Kehoe is conducting the investigation
12 and has divided it into parts as follows: Bullying and
13 harassment allegations of Sergeant Barry; criminal and
14 disciplinary allegations of Sergeant Barry. As
15 indicated at the outset, the nature of the complaint, 11:25
16 particularly part 2, will require some time yet. I
17 understand that Chief Superintendent Kehoe and her team
18 have met all parties involved at this stage. I also
19 understand that Sergeant Barry has been made aware of
20 the situation on several occasions." 11:25

21
22 And that would seem to reflect, you may not have any
23 recall of it, a discussion with Chief Superintendent
24 Kehoe about how they were being progressed or the
25 order. Does that assist you? You seem to be putting 11:26
26 the bullying and harassment first there, and the other
27 one perhaps taking more time?

28 A. I don't recall this chain of correspondence.

29 26 Q. Yes.

1 A. Like, I have no doubt it happened, but it would appear
2 to be part of the overall discussions about the
3 investigation.

4 27 Q. Yes.

5 A. But the actual content of them, it's so long ago, I 11:26
6 don't recall it.

7 28 Q. Yes. Obviously there are express time limits in the
8 bullying and harassment policy and would you have
9 considered it normal and acceptable for Chief
10 Superintendent Kehoe to have dealt with that first, 11:26
11 before proceeding to the second set?

12 A. That's an approach that is plausible, yes. The
13 bullying and harassment, I think if I recall, there was
14 a large number of allegations of bullying and
15 harassment and then the final element related to 11:27
16 criminal and disciplinary allegations.

17 29 Q. Yes. In any event, I think you were informed by Chief
18 Superintendent Kehoe that she had completed her
19 investigations and she submitted a file to you in May
20 of 2013, if we look at page 1085. That's dated the 11:27
21 30th May, addressed to you. And they're are two
22 volumes there. Could I just ask you to perhaps just
23 explain to the tribunal, what was your function then as
24 the appointing officer, having received such a report?

25 A. My function, having appointed Chief Superintendent 11:28
26 Kehoe, would be to forward a file to HRM, which was the
27 section that manages all of the human resource
28 management issues within the organisation. I would
29 have had no other function in that process.

1 30 Q. Yes. You did obviously do that and perhaps we'd look
2 at your report to HRM, it commences at page 2519, sent
3 on the 17th June of 2013, in which you appear to have
4 given it lengthy consideration and your imprimatur here
5 in the first number of paragraphs there. Do you see in 11:28
6 the second paragraph you say:
7
8 "I am satisfied that all the appropriate steps have
9 been taken and that a thorough and impartial
10 investigation has been carried out in accordance with 11:29
11 the policy and procedures, harassment, sexual
12 harassment, bullying, working together to create a
13 positive working environment."
14
15 So that was your own review of it, is that correct? 11:29
16 A. That's most likely my review of the file, at that
17 stage, yes.
18 31 Q. Yes. You do go on to set out the chief
19 superintendent's examination on each of the
20 allegations. It's probably a long time since you saw 11:29
21 that, obviously. But you also wrote to Sergeant Barry,
22 I think on the same date, if we look at page 2527.
23 Again, that would be part of your function. If we go
24 down to the bottom, we see that's your signature on
25 page 2534. So you signed off on that, and a similar 11:30
26 letter to Superintendent Comyns --
27 A. That's my signature, yes.
28 32 Q. -- went out on the same day. Obviously any issue of an
29 appeal wasn't a matter for you?

1 A. No, the appeal process is set out in the policy
2 document.

3 33 Q. Yes. An issue did arise from the point of view of
4 Chief Superintendent Kehoe's perspective later in the
5 year, as to whether it was proper for her to continue 11:30
6 with it, whether she had in some way been prejudiced by
7 reason of events that had happened, and she wrote to
8 you I think on the 9th October 2013, if we look at page
9 1102. And if we just go back up to the previous page.
10 She recites the various appointments, et cetera. And 11:31
11 if we scroll down then, she refers to submitting the
12 file to you with her findings. And then in the final
13 paragraph she said:

14
15 "In correspondence received from Assistant Commissioner 11:31
16 Twomey dated 13th August 2013, I have become aware that
17 an appeal has been lodged and the views sought on the
18 specific grounds put forward by Sergeant Barry."

19
20 Then if we continue on down: 11:31

21
22 "Having reviewed the content of this document, which I
23 have addressed under separate cover of 9th October
24 2013, I am firmly of the view that that to continue
25 with the criminal investigation as directed by you 11:32
26 would be prejudicial to any findings in the case.

27
28 Therefore I would ask that consideration be given to
29 the appropriateness of me continuing in this

1 investigation. "

2

3

Now, you wrote back and asked for reasons, if we look at page 1104. Was that an unusual request or did it seem to be one that was troubling you?

11:32

6

A. Obviously I enquired what the reasons were.

7

34 Q. Yes.

8

A. Again, this is so long ago, unfortunately I don't have access to the detail that you have, so...

9

10

35 Q. Yes. In any event, she wrote back to you with reasons,

11:32

11

if we look at 1106 and 7, and she sets out the

12

rationale in numbered paragraphs, the first one there,

13

she was appointed on the particular day to do this. If

14

we go down then, she submitted the investigation;

15

number 3, the grounds were not upheld; number 4,

11:33

16

Sergeant Barry appealed the findings; number 5, "as

17

part of the appeal process I was supplied with Sergeant

18

Barry's grounds for appeal. It was evident from

19

examining this document that Sergeant Barry had access

20

to my findings.

11:33

21

22

To continue my investigation into the disciplinary

23

matters and any criminal matters arising could in my

24

view compromise the investigation as I am now fully

25

aware of Sergeant Barry's views in respect of my

11:33

26

investigation into the bullying and harassment aspect

27

of the case and hence my impartiality could be brought

28

into question. "

29

1 And she is seeking your advices there. You replied on
2 the 18th November, if we look at page 1109, to the
3 effect that you didn't see that she was compromised and
4 you conclude by saying:

5
6 "I therefore believe that you should continue your
7 investigation in those elements and report in as early
8 a course as possible, taking your other significant
9 responsibilities into consideration."

11:34

10
11 So you didn't think that she should be or should be
12 seen to be affected by what she had advanced?

11:34

13 A. That's what that minute suggests, yes.

14 36 Q. She did reply, though, and bring another issue into
15 play, which was specifically whether there had been or
16 might perceived to have been an issue under Regulation
17 14(5) of the discipline regulations by reason of a
18 prior involvement and she wrote to you in that regard
19 on the 21st November, if we look at page 1111. You
20 were presumably familiar with this as an issue, that a
21 person appointed shouldn't have any prior factual
22 engagement with the matter that they're then
23 subsequently appointed to investigate. And I think you
24 wrote back promptly on the 23rd, if we look at page
25 1113. And you say, you believe that "you should
26 continue to investigate and report in early course",
27 isn't that correct? The concluding paragraph there.
28 It would appear from Chief Superintendent Kehoe's notes
29 that she had a phone call with you on 8th January in

11:34

11:35

11:35

1 connection with this, presumably you have no
2 recollection of that?

3 A. Afraid not.

4 37 Q. But it does appear perhaps to have prompted you to
5 write on the 15th January, if we look at page 1117, 11:36
6 because this is, I think, correspondence from you to
7 HRM, raising an issue. And you're just looking for, I
8 suppose, reassurance there about the continuation of
9 it?

10 A. That's what it appears to suggest in that memo, yes. 11:36

11 38 Q. Yes. It appears not to have prevented Chief
12 Superintendent Kehoe from pressing on, if we look at
13 page 1119. This is her note in relation -- it's a note
14 for the events of the 19th February, where she's
15 speaking to Chief Superintendent Tony McLoughlin there, 11:37
16 and then she appears to have spoken with you in the
17 evening and advised you that she was "pressing on with
18 the investigation despite not receiving any clarity of
19 my query concerning appointment". Presumably you were
20 happy that she was doing that at that point in time? 11:37

21 A. Sorry.

22 39 Q. I'm just saying, presumably you were happy that she was
23 doing that?

24 A. Yes, it would appear the memo suggests that I was in
25 favour of her continuing the investigation. 11:37

26 40 Q. Yes.

27 A. Yes.

28 41 Q. I think you formally were in a position to write to
29 her, having got advices on the 2nd April of 2014, if we

1 look at 1121. And you're forwarding here a reply that
2 you had got. If we just scroll down then. I'm sorry,
3 that's not the correct document. I will come back to
4 that, if necessary. But, she did pursue the
5 investigation. I don't know whether you have any 11:39
6 recollection of being informed by her of the submission
7 of a criminal file and the directions of the director
8 at any point in time, but she subsequently wrote to you
9 seeking to be appointed to another aspect of the
10 discipline inquiry. If we look at page 1180, she wrote 11:39
11 to you on the 21st October of 2015. She recites that
12 she had sought the agreement from Superintendent Comyns
13 to put the disciplinary aspect of the complaint into
14 abeyance pending the outcome. And she says she's now
15 continuing with the disciplinary proceedings, but in 11:39
16 doing so she says "I have observed that my appointment
17 of the 11th February 2013 restricts me to the matters
18 arising from the investigation into an alleged sexual
19 assault that the gardaí in Mitchelstown received on the
20 2nd February 2012 - appendix B. 11:40

21
22 Within that aspect of the complaint, however, Sergeant
23 Paul Barry also alleged that having completed his
24 investigation into the alleged sexual assault and
25 submitted it to his district officer, that within two 11:40
26 days he was subject to discipline proceedings under
27 Regulation 10 for his failure to be on time for duty
28 despite his explanation to the contrary.
29

1 I now request an additional appointment to allow me
2 explore all avenues of the complaint that arise out of
3 the ninth ground of Sergeant Barry's complaint,
4 please."

5
6 I think you receive that and you appointed Chief
7 Superintendent Kehoe to extend the discipline inquiry
8 to include that, which was a matter complained of in
9 the ninth complaint made by Sergeant Barry. And I
10 think you did that on the 12th November 2015, if we
11 look at page 850. This is the formal 1A(L)11. If we
12 go down to the bottom, we see your signature there at
13 the bottom of page 850. And that's your letter,
14 your --

15 A. That's my signature, yes.

16 42 Q. Under the regulations?

17 A. Yes.

18 43 Q. And I think she ultimately reported to you in relation
19 to the discipline and I think as the appointing officer
20 you informed the parties formally of the result on the
21 17th May of 2016, on page 857. And that was sent out
22 both to Superintendent Comyns and to Sergeant Barry,
23 isn't that correct? If you scroll back up, do you see
24 whom that's addressed to? And then on to page 858,
25 that's the report of it then, which formally has to be
26 served, isn't that correct? And I think if we go to
27 page 306, you wrote to chief superintendent Internal
28 Affairs, which has to be done, closing off the file, as
29 it were. If we go down the page, you say:

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"This concludes Chief Superintendent Kehoe's investigation into all aspects of this case."

And that's dated 25th May 2016. I think that brought to an end your involvement in any aspect relating to the investigation of Sergeant Barry's complaints?

11:43

A. Most likely. Most likely, yes.

44 Q. The concerns that the chief superintendent whom you appointed had at different stages, would you care to offer a view as to whether it was reasonable and necessary for her to seek clarification of her entitlement to continue, the propriety of continuing or otherwise?

11:44

A. I think Chief Superintendent Kehoe's queries showed her thoroughness in how she approached the investigation in all aspects of it and I would have attempted to have provided clarity and guidance, where possible, within my remit.

11:44

45 Q. In relation to the issue of delay, obviously all investigations take time and some of them are often not completed within any time expected or desired. Were these investigations, in your view, unduly delayed or improperly delayed for any purpose connected with punishing Sergeant Barry for his disclosures?

11:44

A. Absolutely not, to my knowledge.

46 Q. Have you any knowledge of any targeting of Sergeant Barry that you can offer to the tribunal in respect of --

11:45

1 A. I have absolutely no knowledge of any targeting of
2 Sergeant Barry.

3 47 Q. Perhaps you would answer any questions any other
4 parties may have.

5 11:45

6 END OF EXAMINATION

7

8 CHAIRMAN: Now, Mr. Costelloe.

9

10 MR. JACK NOLAN WAS CROSS-EXAMINED BY MR. COSTELLOE, AS 11:45

11 FOLLOWS:

12

13 48 Q. MR. COSTELLOE: Good morning, Mr. Nolan.

14 A. Good morning.

15 49 Q. My name is Shane Costelloe, I am one of the barristers 11:45
16 instructed to act for Mr. Barry. I just have very few
17 questions to put to you, okay?

18 A. Okay.

19 50 Q. It seems to be the case, as Mr. McGuinness has just 11:45
20 brought you through your evidence there, that you were
21 asked by A/C HRM, as they then were, subsequently
22 becoming HRM PD, but you were asked to initiate an
23 investigation in or about the beginning October. You
24 were asked and appointed investigator Superintendent
25 Lordan on the 12th October 2012, isn't that correct? 11:46

26 A. That appears to be correct, yes.

27 51 Q. Yes. I mean, if I just pause there for a moment, this
28 appears to be a very clear example of delegation; you
29 yourself did not conduct the investigation, you caused

1 the investigation to be conducted?

2 A. That's fair, yes.

3 52 Q. Yes. Again, it seems to be the case that in respect of
4 the bullying and disciplinary investigation which began
5 on the 9th October 2012, you asked that Chief 11:46
6 Superintendent Kehoe begin an investigation and that
7 request was made on the 21st February 2013, have I got
8 that right?

9 A. I accept your dates, yes.

10 53 Q. Okay. We won't quibble if I am out by a day or two 11:47
11 approximately?

12 A. Yes.

13 54 Q. It seems that in respect of the bullying investigation,
14 if I can phrase it that way, that concluded in or about
15 the 30th May 2013, but the criminal aspect to the 11:47
16 investigation didn't conclude until the 28th August
17 2015, do you agree with me?

18 A. I accept your dates, yes.

19 55 Q. Okay. And then in respect of the final matter, the
20 disciplinary investigation, that concluded, it seems, 11:47
21 on the 12th May 2016?

22 A. Again, I accept your dates, yes.

23 56 Q. To what extent were you keeping yourself abreast of the
24 manner in which all or any of those investigations were
25 progressing? 11:47

26 A. It would be my understanding that Chief Superintendent
27 Kehoe would have supplied updated reports periodically.

28 57 Q. It seems from my reading of the papers, but now is your
29 opportunity if you can recall, if you can't recall just

1 tell us, but if you can recall just tell me if I have
2 got this wrong, it looks like you sought an update on
3 the 7th July 2013, so a little over a year after the
4 commencement of the criminal investigation and then, a
5 year later, on the 1st April, approximately a year 11:48
6 later, on the 1st April 2015, you sought another
7 update. It seems that those were the only two letters
8 you wrote looking for updates?

9 A. I don't recall those incidents, but I accept what you
10 have to say. 11:48

11 58 Q. Okay. I just want to put it to you that the period of
12 time that it took to complete the criminal
13 investigation and the disciplinary breach allegation
14 investigation was inordinate and amounted to, I am
15 putting it to you, an excessive amount of time, it was 11:48
16 in fact overly delayed, they were overly delayed. Do
17 you wish to reply to that?

18 A. I don't believe it was delayed by any deliberate act of
19 any person. Investigations take a period of time and
20 that's the period of time they took. 11:49

21 59 Q. Okay. Could I just then finally deal with the
22 allegation into the breach of discipline. Now, this
23 was an investigation that you caused to be commenced
24 pursuant to part 2 of the regulations. Part 2
25 signifies a less serious breach allegation, you agree 11:49
26 with me so far?

27 A. Part 2 of the disciplinary regulations referred to less
28 serious breaches, yes.

29 60 Q. In distinction to part 3, which referred to serious

1 but I wonder if I could raise one query at this point,
2 as to whether this question is relevant to the issue
3 for determination by the tribunal?
4 CHAIRMAN: what do you say to that?
5 MR. COSTELLOE: I think it would largely depend on the 11:51
6 answer I get to the question that I just put, Chairman.
7 CHAIRMAN: Mr. Murphy's question does not depend on
8 the -- sorry, submission, does not depend on the
9 answer. His query is: In what way is this relevant to
10 any issue the tribunal has to decide? 11:51
11 MR. COSTELLOE: well, my response, Chairman, is that it
12 is of course my client's suggestion that the failure to
13 investigate all of the allegations, including the
14 disciplinary breach allegation, promptly and
15 appropriately amounted to targeting and I am suggesting 11:52
16 here in the way in the way in which I am putting this
17 question that it was an inappropriate method of
18 inquiring into the breach of discipline, by going under
19 part 2 as opposed to part 3.
20 CHAIRMAN: Mr. Costelloe, suppose the tribunal said, 11:52
21 yes, Mr. Costelloe is right about that, wouldn't that
22 mean that the report would say that Assistant
23 Commissioner Nolan failed in some way in his duty or
24 targeted Mr. Barry? wouldn't that follow? I mean
25 isn't that the whole point of the question? 11:52
26 MR. COSTELLOE: well, in fact, where I was going, where
27 I was going, I don't mind the witness hearing,
28 essentially the last question was, I was going to ask
29 the witness whether anybody ever queried with him that

1 perhaps the inquiry should have been conducted under
2 part 3. Because there is in fact reference in
3 Superintendent Lordan's letter to this witness that he
4 viewed the allegation as being one of a serious breach
5 and I wanted to ask the witness what his views were on 11:53
6 that.

7 CHAIRMAN: I understand. But Mr. Murphy's point, as I
8 understand it, is this: where is this going? And I
9 can tell you where this is going, because where this is
10 going is to suggest that the inquiry should have been 11:53
11 directed under part 3 and not under part 2, that there
12 was accordingly a failure on the part of Assistant

13 Commissioner Nolan to do his job properly, and that
14 that in some way was targeting or discrediting of
15 Mr. Barry. That's where this is going. Because if 11:53
16 it's not going there, it's not going anywhere. And if
17 it is going there, it doesn't seem to me to come in
18 under any issue that I have to decide. In other words,

19 if the tribunal were to write, and this is just a
20 theoretical, I am not suggesting that this would be the 11:54
21 case, but if the tribunal were to write that Assistant
22 Commissioner Nolan should have decided this otherwise
23 and that he was wrong in doing so, the tribunal would
24 have no authority to do that. Mr. Nolan would be

25 entitled to write in and say, hold on, there's no case 11:54
26 against me, I was never notified of any allegation
27 against me. How can I be impugned? How can I have a
28 report saying I didn't do my job properly? Do you
29 follow? I mean, that's the logic, that's where I -- I

1 see your point, but I am constrained by the terms of
2 reference and the issues that we've set out to
3 investigate, Mr. Costelloe, that's the problem.
4 MR. COSTELLOE: well, Chairman, if you will allow me to
5 take Mr. Murphy's interjection as an objection. 11:55
6 CHAIRMAN: Yes.
7 MR. COSTELLOE: I have given my response and I take
8 your comments as a ruling and I wouldn't pursue the
9 question any further in those circumstances.
10 CHAIRMAN: I think that is right, Mr. Costelloe. If 11:55
11 you would like to return to the matter and make a
12 submission about it or make an argument about it, I
13 have no problem with that, I am simply responding to an
14 issue and it's an issue that arises because if you
15 envisage downstream, when the report is written, if the 11:55
16 report were to have a heading Assistant Commissioner
17 Nolan and it said, now let's look at his decision to go
18 under part 2 rather than part 3, would that not be a
19 breach of fair procedures?
20 MR. COSTELLOE: well, as I said, Chairman, insofar as 11:55
21 that's a ruling, I know you were --
22 CHAIRMAN: I suppose I am inviting -- I am teasing out
23 the logic, Mr. Costelloe.
24 MR. COSTELLOE: I know are you, Chairman.
25 CHAIRMAN: So if it comes to that, yes, it is a ruling 11:56
26 but I don't want to give a ruling, if you like, without
27 laying it out before you, laying out the logic before
28 you of where I stand and what the job that I have to
29 do, the tribunal has to do, and to say, if there's

1 anything wrong in that, please let me know, but sort
2 of, if there's nothing further to add, and I don't want
3 to put you on the spot or imply any criticism because
4 none is intended, but I have to make a decision
5 ultimately as to what's relevant and as to the fairness 11:56
6 of the procedures for everybody involved. So that's
7 the way I see it.

8 MR. COSTELLOE: Yes. I don't feel on the spot at all,
9 Chairman. In fact, I feel the contrary, I regard it as
10 very helpful, you are giving me your opinion rather 11:56
11 than making a ruling initially. All I am saying is
12 that I can't advance my argument any further, so I am
13 not pursuing that any further.

14 CHAIRMAN: That's very fair. Thank you very much,
15 Mr. Costelloe. You understand what's going on I take 11:57
16 it, Mr. Nolan.

17 THE WITNESS: Yes.

18 CHAIRMAN: And that's not an offensive thing to say,
19 but I don't think that there's any issue that involves
20 -- I'm not investigating any issue whereby you are 11:57
21 criticised.

22 THE WITNESS: I understand.

23 CHAIRMAN: So that's the point.

24 THE WITNESS: I understand, Chairman.

25 CHAIRMAN: Anyway, that's where we are. 11:57

26 MR. MURPHY: May it please you, Chairman.

27 CHAIRMAN: Thanks very much, Mr. Costelloe.

28 MR. COSTELLOE: In the circumstances, Chairman. Thank
29 you, Mr. Nolan, I have nothing further.

1 CHAIRMAN: Thank you.

2

3 END OF EXAMINATION

4

5 CHAIRMAN: Now, anybody else with any questions? Yes, 11:57
6 Mr. Murphy, have you any questions?

7 MR. MURPHY: I have no questions, Chairman.

8 CHAIRMAN: Thank you very much. Anybody else have any
9 questions?

10 MR. HARTY: No thank you, Chairman. 11:57

11 CHAIRMAN: Thank you very much, Mr. Nolan, or assistant
12 commissioner, thank you very much indeed.

13 THE WITNESS: Thank you very much.

14 CHAIRMAN: You're free to go now.

15

11:57

16 THE WITNESS THEN WITHDREW

17

18 MR. MARRINAN: Chairman, the next witness is
19 Dr. Margaret Anne Kiely. We are receiving her evidence
20 via video-link. 11:58

21 CHAIRMAN: Yes.

22 MR. MARRINAN: which Mr. Barry has very kindly set up.

23 CHAIRMAN: Morning or good afternoon Dr. Kiely, can you
24 hear us?

25 REGISTRAR: Good morning, Dr. Kiely, can you hear me? 12:00

26 THE WITNESS: Yes I can.

27

28

29

1 DR. MARGARET KIELY, HAVING BEEN SWORN, WAS
2 DIRECTLY-EXAMINED BY MR. MARRINAN, AS FOLLOWS, VIA
3 VIDEO LINK:

4
5 CHAIRMAN: Thank you. Good morning, Dr. Kiely. I am 12:00
6 the Chair of the inquiry, and thank you for joining us
7 by video-link, I appreciate and everybody here
8 appreciates how busy you are, I think. Now,
9 Mr. Marrinan will ask you questions on behalf of the
10 tribunal first of all. 12:00

11 THE WITNESS: Judge, could I just clarify something
12 with you?

13 CHAIRMAN: Certainly.

14 THE WITNESS: As the evidence I will be giving will be 12:00
15 in relation to a patient's medical details, I am bound
16 by the tribunal and by yourself to answer these
17 questions, because obviously with patient
18 confidentiality, that would be my concern.

19 CHAIRMAN: Yes. Well, I think you may assume, doctor, 12:01
20 that we would be -- we are very conscious of your
21 professional obligations to your patient and for my
22 part I would only be satisfied to allow questions that
23 would impinge on that or interfere with that if it were
24 strictly necessary.

25 THE WITNESS: Thank you. 12:01

26 CHAIRMAN: So unless it's strictly necessary, and if
27 you feel that an issue arises which inhibits you from
28 answering, then please let us know the situation and we
29 will then consider it. As I say, in the end of the

1 day, if it's a vital issue which requires an answer,
2 but that is quite a high bar for anybody to surmount.
3 Okay.

4 THE WITNESS: Yes, thank you.

5 CHAIRMAN: Thanks very much. Now, Mr. Murrinan. 12:02

6 64 Q. MR. MARRINAN: Yes, Dr. Kiely. If it is of any help to
7 you as well, Mr. Barry has consented to the disclosure
8 of all his confidential medical reports and is
9 therefore consenting, as it were, to you making a
10 statement to the tribunal and you giving evidence in 12:02
11 relation to these matters. Do you understand?

12 A. Yes, thank you.

13 65 Q. Yes. Now, your statement to the tribunal is at page
14 5670. Just before we come to that, you very helpfully
15 disclosed your notes in relation to your dealings with 12:02
16 Mr. Barry and they are to be found at page 4771 of the
17 material. If we could have those up on the screen
18 there. You should be able to see those, can you see
19 those notes?

20 A. I can but they're actually quite tiny. I am just going 12:03
21 to see if I remove myself on the spotlight will that
22 bring -- oh yes, now I have them.

23 66 Q. Yes. I am not going to go through this, if we just
24 scroll down there, Mr. Murphy, I am not going to go
25 through these in any detail at all. But in the first 12:03
26 instance, I think that Mr. Barry had been a patient of
27 yours for some considerable period of time before these
28 notes commenced, isn't that right?

29 A. Yes. He had been, Mr. Barry had been attending me

1 since December of 2000.

2 67 Q. Yes. And I think that these notes that you disclosed
3 to the tribunal were at the request of the tribunal and
4 the request was in relation to notes that you had from
5 August of 2012 up until today's date effectively, isn't 12:03
6 that right?

7 A. Yes. I suppose they weren't quite to today's date,
8 because the request came in, so I think what you are
9 furnished with was up until sometime in 2021.

10 68 Q. Yes. If we can scroll up there, Mr. Murphy, we will 12:04
11 see that the first note that we have there is the 10th
12 August of 2012. And if we just scroll down through
13 that, you can take it that the tribunal is familiar
14 with the complaint that Mr. Barry was making at that
15 time and we're not going into the content of his 12:04
16 complaints. But if we scroll down, we'll see that this
17 consultation seems to have gone on for some
18 considerable period of time, would that be fair to say?

19 A. Yes, judging from the length of my note a lot of topics
20 were covered during the consultation. 12:04

21 69 Q. And Mr. Barry wasn't just indicating to you that he was
22 having trouble at work; he seems to have gone into
23 considerable detail into the nature of the trouble that
24 he was then encountering, isn't that right?

25 A. Yes. 12:05

26 70 Q. And it seems to be fairly clear from a review of the
27 notes that one of the primary concerns he has, he had
28 at the time, was as to how a sexual assault case was
29 being investigated, isn't that right?

1 A. Yes.

2 71 Q. And I think that he identified in particular that he
3 was having trouble with his superintendent, isn't that
4 so?

5 A. Yes. 12:05

6 72 Q. And he regarded some of the actions of the
7 superintendent as constituting bullying and harassment
8 of him, isn't that right?

9 A. Yes. In his opinion, yes.

10 73 Q. Yes. Now, as a result of that, I think that you 12:05
11 certified that he wasn't fit to attend work and you
12 prescribed various drugs for him, that we needn't go
13 into. But then perhaps if we could just scroll over to
14 the next page, at 4772 of the material. And then if we
15 just stop there, I think we note then on the 10/9/2012 12:06
16 you had a consultation with him and you note that
17 Mr. Barry said to you that "the superintendent had
18 requested an inspector to look into why Paul was on
19 sick leave."

20 12:06

21 And then you note that he indicated to you that:

22

23 "Solicitor advised him not to meet with the inspector
24 as he wasn't independent."

25 12:06

26 And then there's a reference to further discussion in
27 relation to that, isn't that right?

28 A. Yes, that's correct.

29 74 Q. Now, if we could then scroll over to page 4773 of the

1 material. And before we look at your notes in relation
2 to that, I think that the previous year you had in fact
3 referred Mr. Barry to Dr. John Dennehy, consultant
4 psychiatrist, who was attached to St. Michael's unit in
5 the Mercy University Hospital in Cork, isn't that 12:07
6 right?

7 A. Yes.

8 75 Q. And I think that you had received various reports that
9 I don't intend to open from Dr. Dennehy, isn't that
10 right? 12:07

11 A. Yes, that's correct.

12 76 Q. If you just bear with me one moment. If we just
13 perhaps look then at page 1517 of the material. This
14 is a letter that you wrote on the 12th December of 2012
15 to Dr. Oghuvbu, who was the assistant chief medical 12:08
16 officer in An Garda Síochána. And in the final
17 paragraph there you say:

18
19 "I feel his current mental health illness has been
20 triggered by work-related events and he is suffering 12:08
21 from a work-related condition."
22

23 And that was your opinion at that time, isn't that
24 right?

25 A. Yes. 12:08

26 77 Q. Perhaps then if we could have page 4783 up on the
27 screen, please. This is a letter that was sent a few
28 days later, on the 18th December, by Dr. Dennehy. I
29 think it was forwarded to you and again it's to

1 Dr. Oghuvbu. And if we scroll to page 4784, the next
2 page, we see there on the second last paragraph he
3 says:

4
5 "In my opinion he is experiencing a depressive 12:09
6 adjustment disorder predominantly and in my view this
7 is clearly related to his work experiences."

8
9 And so, that was a view that was shared by Dr. Dennehy
10 at that time, isn't that right? 12:09

11 A. Yes, that's correct.

12 78 Q. Now, if we just go back then to the notes that you made
13 available to the tribunal. If we can look, yes, at
14 page 4773 of the material. This might be of help to
15 you when giving your evidence. If we just scroll down 12:10
16 there, we see an entry on the 28th March of 2013.
17 Could you just tell us, Mr. Barry saw you on that date,
18 isn't that right?

19 A. Yes, that's correct.

20 79 Q. And he had been out sick certified as suffering from 12:10
21 work-related stress by you, up until the 28th March
22 2013, isn't that right?

23 A. Yes.

24 80 Q. And an issue arose in relation to him returning to work
25 at that time? 12:11

26 A. Yes.

27 81 Q. Did he indicate to you whether or not he felt that he
28 was in a fit state to return to work?

29 A. Well, from the notes that I recorded and my

1 recollection, was that he didn't actually feel able to
2 return to the same position that he had been in but
3 that he felt he didn't have any choice, he described to
4 me how he was under severe financial pressure, he
5 hadn't been able to pay his mortgage and that the only 12:11
6 reason he was returning to work was for financial
7 reasons, that he felt he had no choice. He was quite
8 tearful during the consultation, as I recorded, and
9 that his sleep had become broken again. And he told me
10 that he intended to use annual leave to only work 12:11
11 nights for as long as possible to avoid coming in
12 contact with the superintendent. And I had asked him
13 as a safety net in practice that if there was any
14 deterioration in mood or any thoughts of self harm that
15 he should represent to me immediately. 12:12

16 82 Q. Yes. So it would appear there, that there was a
17 discussion in relation to concern that he of had of
18 having interact with his superintendent, is that right?

19 A. Yes, that's correct. My medical opinion at the time
20 was that I didn't feel he was fit to return to work to 12:12
21 the same circumstances.

22 83 Q. Yes.

23 A. My concern was that it would re-trigger the
24 difficulties that he had had a few months previously,
25 as you mentioned, when I was very concerned and had 12:12
26 referred him to Dr. Dennehy, a consultant psychiatrist,
27 because I was very concerned for his mental health. I
28 think it was around October 2012.

29 84 Q. Then if we look, on the 4th April 2013 you received a

1 telephone call from Mr. Barry, isn't that right?

2 A. Yes, that's correct.

3 85 Q. Will you just tell us what was of concern to him at
4 that time?

5 A. Yes. So I will speak from my notes. So, Mr. Barry 12:13
6 phoned me and, you know, I recorded that he had planned
7 to return to work for financial reasons, he told me
8 that he had been told by the inspector that day that he
9 couldn't return without a letter from me stating that
10 he was fit for work and Mr. Barry told me that he 12:13
11 informed the inspector that I had said I couldn't
12 provide that as in my opinion he wasn't fit to return
13 to the same position. And what Mr. Barry told me was
14 that the inspector said to put these conditions on a
15 letter. So I discussed that with the patient and I 12:13
16 formulated the letter while I was on the phone to him,
17 because -- now I don't recollect that, but the fact
18 that I recorded "discussed with patient and happy with
19 recording" means that I -- because that would be my
20 practice, if somebody was looking for something 12:14
21 particular, I would do it while they were with me and
22 then read it to ensure that they were happy with the
23 content.

24 86 Q. And if we then just look at page 3938 of the material,
25 please. This is the certificate that you provided to 12:14
26 Mr. Barry, isn't that right, if we just scroll down?

27 A. Yes.

28 87 Q. We see that, if you scroll up there, it's dated 4th
29 April 2013, but that's been crossed out and 28th March

1 of 2013 has been inserted there. Is that your writing,
2 do you know?

3 A. No, it's not, no. That's not my write.

4 88 Q. Right.

5 A. If I was to cross something out, I would initial it, 12:14
6 and generally I wouldn't cross -- you know, if I was
7 changing something I would normally redo it, rather
8 than changing it. But if I did, I would initial it.

9 89 Q. So we then look at the body of it there, you say:

10

12:14

11 "Mr. Barry is fit to return to under certain
12 circumstances. Mr. Barry should not work or attend at
13 Fermoy Garda Station and he should not come into
14 contact with Superintendent Michael Comyns."

15

12:15

16 When you wrote that, were you aware of the fact that
17 Superintendent Comyns was stationed in Fermoy Garda
18 Station?

19 A. I can't recollect, but that would have been why I was
20 saying he shouldn't go to Fermoy Garda Station, was to 12:15
21 avoid coming into contact with Superintendent Michael
22 Comyns there.

23 90 Q. Now, I think that the following day, on the 5th April
24 2013, you had a visit from Inspector Anthony O'Sullivan
25 of Fermoy Garda Station, isn't that right? 12:16

26 A. Yes, that's correct.

27 91 Q. Will you just tell us about that visit that you had
28 from Inspector O'Sullivan and what you recall?

29 A. Well, I suppose most of the recollection is from my

1 notes because it was a long time ago, but I do remember
2 that he called to the surgery in what appeared to me to
3 be full uniform and had requested to speak with me. I
4 brought him into my office to speak with him there in
5 privacy. I recall that he was asking me if I had 12:16
6 produced that sick cert, which I confirmed that I had.
7 I reiterated that I wouldn't be able to discuss Paul
8 Barry with him as that would be breaching patient
9 confidentiality. And I know, from my notes, I don't
10 recollect him saying that the note wouldn't be 12:17
11 acceptable, but I had recorded in my notes at that time
12 that he had said that the note, the conditions I had
13 put on it wouldn't be accepted and that the
14 occupational health physician would be phoning me and I
15 said that I was happy to speak with the occupational 12:17
16 health physician.

17 92 Q. Now, were you happy with the visit that you'd received
18 from Inspector O'Sullivan?

19 A. I suppose I wasn't. I was surprised. It was very
20 unusual. Usually if an employer or a manager had an 12:17
21 issue with something that we would provide, they would
22 go through their occupational health department or an
23 outside occupational health. It's very unusual, like,
24 you know, I don't recall ever having a manager or an
25 employer come to the surgery to speak with me. 12:17

26 93 Q. Well, there seemed to be two concerns, or were there
27 two concerns that Inspector O'Sullivan had: First of
28 all, the contents of the document insofar as your view
29 that Mr. Barry wasn't to attend at Fermoy Garda Station

1 or come into contact with Superintendent Michael
2 Comyns. Inspector O'Sullivan clearly indicated to you
3 that that wasn't something that would be accepted by
4 the chief medical officer, is that right?

5 A. Yes. 12:18

6 94 Q. And that was a matter that you weren't going to discuss
7 with him because of client confidentiality, isn't that
8 right?

9 A. Yes, that's correct.

10 95 Q. Yes. Then there's the second thing, as to the 12:18
11 authenticity of the document itself. Did he raise any
12 concerns as to whether or not this was a document that
13 had been produced by you?

14 A. Yeah, my recollection is that I did feel he was
15 questioning had I actually written the note. So I 12:19
16 thought that he was referring more to the conditions in
17 it and I did wonder was he implying perhaps that
18 retired Sergeant Barry had in some way made the note.
19 It was just, I felt he was questioning validity, as to
20 whether or not it was a genuine note. 12:19

21 96 Q. Okay. Certainly he then left and you didn't raise any
22 issue in relation to his visit to you. You didn't
23 think it so appropriate as to make a report or a
24 complaint to the superintendent, isn't that right?

25 A. That's right. I just made a note on the file. It 12:19
26 wasn't exactly medical, but I made a note on the file
27 because it was unusual and also, I realised that I
28 hadn't been clear in the note. Usually, my usual
29 practice when I would write a sick note, would be to

1 say that a person is fit to return to work from such a
2 date and I would have that in the body of the note, or
3 else I would say is fit to return to work at the above
4 stated date. And I had actually left that out of that
5 particular sick note. I'm not sure why. Perhaps 12:20
6 because I was more concerned about the conditions I was
7 putting in. So, I amended the sick note then for
8 clarification, so that it did state from what date
9 retired Sergeant Barry to return to work under certain
10 circumstances. 12:20

11 97 Q. Yes. We have that at page 5672 of the material please,
12 Mr. Murphy. If we just scroll down. We have the date
13 there, the 4th April and then that's the amended
14 certificate which, as you've indicated, indicates that
15 the date on which he is fit to return to work is 12:20
16 clearly identified. Now, I think the same day you
17 received a phone call from Dr. Oghuvbu, isn't that
18 right?

19 A. Yes, that's correct.

20 98 Q. And again, if we have page 4773 up on the screen, and 12:21
21 if we just scroll down there, Mr. Murphy, we will see
22 your note for the second entry for the 5th April, that
23 might assist you in giving your evidence in relation to
24 your conversation with Dr. Oghuvbu. Will you just tell
25 us what was discussed? 12:21

26 A. So, again I am going from my notes because I don't --
27 my recollection from the phone call is that Dr. Oghuvbu
28 was in agreement with me, that there were difficult
29 work circumstances that were contributing to retired

1 Sergeant Barry's difficulties with work and that he
2 felt that there were -- as I said in the note, that he
3 was going to be discussing Paul at a case conference on
4 the Monday and that he was also interested in the
5 patient's medical welfare and would not be getting 12:22
6 involved in any management issues. He told me that he
7 had a report from an independent medical adviser,
8 Dr. Tobin, and he felt that management should be able
9 to come to a mutually agreeable situation for a return
10 to work for Paul while the investigation was taking 12:22
11 place. So in essence I felt that Dr. Oghuvbu was in
12 agreement with me.

13 99 Q. Okay. And then if we just finally have page 5673 up on
14 the screen. This is a letter that you received from
15 Dr. Oghuvbu, it's dated 11th April 2013. He says: 12:22

16
17 "Further to our communication on the 5th April, I have
18 now provided recommendations to Garda management in
19 relation to the above Garda member.

20
21 My recommendations were as follows: 12:23

- 22 1. That there was no compelling medical impairment to
- 23 debar the member returning to work and policing duties.
- 24 2. Certain circumstances which are currently subject
- 25 of Garda management processes are regarded as plausible 12:23
- 26 stressors for the member at this time and this would
- 27 impact on the member's sustained wellbeing and
- 28 effectiveness.
- 29

1 On this basis facilitation with certain workplace
2 accommodation has been recommended. "

3
4 That was a matter that was of concern to you at the
5 time, isn't that right? 12:23

6 A. Yes.

7 100 Q. And were you happy with his response to your concerns?

8 A. Yes, I was.

9 101 Q. Then number 3 is a matter you've highlighted in your
10 statement: 12:24

11
12 "In the context of providing an agreeable, safe and
13 supportive workplace, as has been recommended, to
14 foster the member's wellbeing and effectiveness
15 (without prejudice to outcome of the aforesaid 12:24
16 processes) the member should be facilitated with
17 appropriate, reasonable and practicable temporary
18 workplace accommodation in relation to his place of
19 work. "

20 12:24

21 And then 4:

22
23 "The member is recommended medically fit for normal
24 policing duties, facilitated with a temporary workplace
25 accommodation as per 3 above. " 12:24

26
27 So, was it your understanding from that letter that
28 your certification, as it were, as to his workplace was
29 being taken on board by the chief medical officer and

1 the Garda authorities?

2 A. Yes. It was my understanding that Dr. Oghuvbu was, as
3 you said, taking that on board. I did feel that the
4 way he phrased the letter was in agreement with me. I
5 just felt that he was phrasing it, I suppose, in a 12:25
6 more -- I would be quite direct, so I would state it
7 very direct, whereas obviously Dr. Oghuvbu, as an
8 occupational health doctor, I think he was possibly
9 phrasing it in language that is used in that world,
10 occupational health area. 12:25

11 102 Q. Now, doctor, you then continued to see Mr. Barry over
12 the following years and up until -- your notes go up
13 until, indeed, May of last year and there's no need to
14 go through any of those. But can I just ask you this:
15 Did anybody from An Garda Síochána come back to you in 12:26
16 relation to the certificate that you had given to Paul
17 Barry in relation to his return to work and the
18 conditions that you had placed on it?

19 A. No, they did not.

20 103 Q. Thank you very much. Would you answer any questions 12:26
21 that any of the parties might have, please.

22 A. Yes.

23

24 END OF EXAMINATION

25 12:26

26 CHAIRMAN: Now, who is first? Mr. Murphy, are you the
27 appropriate person to go first?

28 MR. MURPHY: Yes, Chairman, just a few short questions
29 please.

1 MR. COSTELLOE: I beg your pardon, Chairman, excuse
2 me --

3 CHAIRMAN: Sorry, of course, Mr. Costelloe.

4 MR. COSTELLOE: I am just wondering is there a reason
5 why we are inverting the running order. I have no 12:26
6 difficulty, I just wonder if there is a particular
7 reason why Mr. Murphy would go ahead of me.

8 CHAIRMAN: Do you think it is appropriate that you
9 should go first? Mr. Costelloe, I thought that --

10 MR. COSTELLOE: Really I'm just wondering if I missed 12:27
11 something, Chairman, that's the only reason I am
12 asking.

13 CHAIRMAN: No, no, let me see what I think. I'm
14 looking at Dr. Kiely's evidence, which I am
15 understanding to be broadly supportive of Mr. Barry's 12:27
16 situation and his case, and accordingly what I had in
17 mind was to take the persons who are challenging
18 Mr. Barry's case, to offer them the opportunity of
19 cross-examining and to give you the final say, so to
20 speak, to reassert, to do anything. So it is purely a 12:27
21 matter of fairness. If you prefer me to go a different
22 way, I would be happy to consider that.

23 MR. COSTELLOE: Not at all, Chairman. Thank you for
24 the clarification. I have no difficulty with that.
25 Thank you. 12:28

26 CHAIRMAN: I think that's the way, Mr. Murphy? It
27 would seem to be fair that you are a contradictor, so
28 to speak, you are a party whose clients are in a
29 position to differ, in a position -- I'm trying to

1 use a word not hostile, antagonistic, in opposition, in
2 opposition to Mr. Barry and the same thing, I don't
3 know if Mr. Harty wants to ask some questions, but I
4 would anticipate if he did, that I would facilitate him
5 and that side of the house before coming back to 12:28
6 Mr. Costelloe. That's the way I would see it. So, my
7 thought was to invite you to examine and then to ask
8 Mr. Harty if he had any questions and so on.

9 MR. MURPHY: Chairman.

10 CHAIRMAN: Okay. 12:28

11

12 DR. MARGARET KIELY WAS CROSS-EXAMINED BY MR. MURPHY, AS
13 FOLLOWS:

14

15 104 Q. MR. MURPHY: Dr. Kiely, good morning. My name is Shane 12:29
16 Murphy.

17 A. Morning.

18 105 Q. I appear on behalf of Garda Commissioner. Just a
19 number of short questions if I might. Could I ask you
20 for you to shown document 5672, please. Doctor, you 12:29
21 may recall, this is the document Mr. Marrinan asked you
22 about a few moments ago?

23 A. Yes.

24 106 Q. Yes. And I think when you indicated your evidence on
25 that document, you indicated to us that this was the 12:29
26 form which you normally would draft in relation to a
27 sick note, is that correct?

28 A. Yes.

29 107 Q. And I think you emphasised in particular it was your

1 practice to have this structure because it specified
2 the date from which a person who is returning to work
3 was in your view fit to return to work?

4 A. Yes.

5 108 Q. Would you agree with me, in those circumstances it 12:29
6 would seem that the earlier version of the document,
7 which has 28th March on top of it, was not consistent
8 with your normal format of letter?

9 A. That's correct, it wasn't. Yes.

10 109 Q. And just coming back to that document, again I ask you 12:30
11 to confirm that I think you indicated that you
12 formulated that earlier letter while you were on the
13 phone to Mr. Barry?

14 A. Yes.

15 110 Q. And can we take it from that, that Mr. Barry was 12:30
16 talking to you as you were preparing that note on your
17 computer?

18 A. Well, I'm not sure if he was talking to me as I was
19 writing it. Like, we would have had a conversation and
20 then I would have typed it up. I'm not very good at -- 12:30
21 I can't actually listen to somebody and type. I
22 normally just make notes as somebody is speaking to me
23 and then type. So we would have had a conversation,
24 then I would have typed it, and then would I have read
25 it back to him to make sure that he was happy with the 12:30
26 wording.

27 111 Q. Yes. So again just so we get the sequence, it's very
28 helpful that we have it. Mr. Barry spoke to you, is
29 that correct?

1 A. Well, yes. I mean, again I am going from my notes on
2 what my usual practice is.

3 112 Q. Yes.

4 A. I don't specifically remember that day. Well I
5 remember -- you know, I don't remember -- I remember 12:30
6 Inspector O'Sullivan calling the following day, but I
7 don't remember the phone call.

8 113 Q. Sure.

9 A. Yes.

10 114 Q. But I think I understood you to say a minute ago that 12:31
11 you had a dialogue with him, you then prepared the note
12 and then you read the note back over to Mr. Barry, is
13 that correct?

14 A. Yes. Yes, that's correct.

15 115 Q. And would you agree with me that that was done for the 12:31
16 purposes of making sure that Mr. Barry was happy with
17 what had you put in the note?

18 A. Yes.

19 116 Q. And would you agree that would also tend to suggest 12:31
20 that Mr. Barry was indicating to you what he would like
21 to have in your note?

22 A. No, not necessarily. Like, I would formulate the notes
23 myself and then I want to check that patients are happy
24 because sometimes what you're saying in the note is
25 disclosing medical information. As in, sometimes if I 12:31
26 am doing a fit to return to work, I might say, you
27 know, and must avoid repetitive movements or, you know,
28 meets accommodations with regard to heavy lifting or
29 something like that, so I would read it back to be sure

1 that the patient was happy with what I had put in.
2 117 Q. Sure. Doctor, in terms of -- if you just take the
3 different elements, in terms of the reference to not
4 going to Fermoy, I think you'll agree that that's a
5 factual matter. Can we take it that that is something 12:32
6 that Mr. Barry indicated to you, it was something he
7 wanted?
8 A. Yes, again, I can't recollect. My feeling, my
9 impression about it would have been that would have
10 been where he would have come in contact with 12:32
11 Superintendent Comyns, so that would be why I would
12 think that particular garda station was mentioned.
13 118 Q. Yes. And then in terms of his not making contact with
14 Superintendent Comyns, can we take it that's also
15 something he said to you that he wanted to have in the 12:32
16 letter?
17 A. Well, I had said to him that I wasn't happy to provide
18 him about a fit to return to work, because I didn't
19 want him going back into the same position. Because
20 from the dealings I had had with Mr. Barry, it was 12:33
21 obvious that different incidents that had happened had
22 caused him great distress and these incidents seemed to
23 involve a superintendent. So, if he told me it was
24 Superintendent Michael Comyns was the superintendent
25 that I was referring to in my notes, then that would 12:33
26 have been why I named him.
27 119 Q. Yes. And then just finally on that point, I think
28 you've confirmed that you then read this back over to
29 Mr. Barry, can we take it from that, that was to secure

1 his approval for what was contained in the letter?

2 A. Well, to make sure that he hadn't any concerns about

3 what I was -- you know, that I wasn't revealing

4 anything that he did not want revealed.

5 120 Q. Yes. Again, perhaps just to flip that question around 12:33

6 then, I think you'll agree with me that's because

7 Mr. Barry was happy with the terms of what you'd

8 written in the letter?

9 A. I suppose you'd have to ask him, but like, I presume if

10 he -- if he wasn't content with what I had stated, that 12:33

11 he would have let me know.

12 121 Q. Thank you. And could I just move on then to one other

13 document please, which is document 5673. This is also

14 the document that Mr. Marrinan took you through a few

15 minutes ago, please. You'll recall this letter was the 12:34

16 letter from Dr. Oghuvbu?

17 A. Yes.

18 122 Q. And if I could just ask if it can be scrolled down

19 please so the doctor can see it, at paragraph 3. So

20 just in terms of that particular document, I think 12:34

21 you've indicated to Mr. Marrinan that when you received

22 that document you believed that Dr. Oghuvbu agreed with

23 you and just excuse me for being a little bit granular

24 about this, but would you agree with me that the letter

25 doesn't contain any reference to Dr. Oghuvbu agreeing 12:34

26 that Mr. Barry shouldn't go to work in Fermoy Garda

27 Station for the good of his health?

28 A. No, that's not stated anywhere in that letter.

29 123 Q. Would you agree with me that it doesn't indicate that

1 Dr. Oghuvbu believed that for the good of his health
2 Mr. Barry shouldn't come in contact with Superintendent
3 Comyns?

4 A. Well, it's not stated, no, on that letter.

5 124 Q. No. And again, I just have to suggest to you that 12:35
6 clearly the letter says what it says but that perhaps
7 in your review of the letter you may be mistaken in
8 considering that Dr. Oghuvbu agreed with what you said
9 in your report, because in fact it's not in his report?

10 A. I would disagree with you, because my impression from 12:35
11 the phone call I had with him was that he did feel that
12 there were significant events that had affected
13 Mr. Barry's mental health and that it would be better
14 if those type of circumstances could be avoided, that
15 was the impression that I had. I suppose you would 12:35
16 have to ask Dr. Oghuvbu exactly what he meant. But
17 that was the impression I had. That he was in
18 agreement and he did send me on Dr. Tobin's letter as
19 well, the independent medical adviser, who was a
20 consultant psychiatrist, who also felt that Mr. Barry 12:36
21 had experienced very severe mental distress and should
22 have accommodations made.

23 125 Q. And insofar as the word accommodations is concerned,
24 did you have any view in relation to -- or did
25 Mr. Barry indicate to you whether you had any view in 12:36
26 relation to the possibility of him being transferred on
27 a temporary basis?

28 A. No, we didn't discuss -- like, the note came from, that
29 initially he was going back to work really to the same

1 position, almost against my medical advice. Like, I
2 didn't think he should go back into the same
3 circumstances. And that when he discussed this -- when
4 he went back to work he was told he to have a note from
5 me saying he was fit for work, and that he was then 12:36
6 told that if I -- that maybe conditions should be put
7 in. So conditions actually seem to have come more from
8 the conversation that he had with the guards and then
9 when he came back to me, I was comfortable with putting
10 in conditions because I couldn't facilitate him with a 12:37
11 note saying he was just fit to return to work. As he
12 told me, he was under severe financial pressure and
13 felt he to go back, so I thought it was a reasonable
14 accommodation to make, that he could return to work
15 because he was fit to work as a garda, but that he did 12:37
16 need to avoid contact with Superintendent Comyns given
17 the previous alleged history.

18 126 Q. And doctor, in that context then, can you indicate to
19 the tribunal, did Mr. Barry tell you that he had been
20 offered or asked whether he would apply for a transfer 12:37
21 by his management?

22 A. I don't recall off the top of my head.

23 127 Q. Did Mr. Barry say to you that he wanted a transfer?

24 A. No. No, he didn't say he wanted a transfer.

25 128 Q. And so, can we take it from that, from all of these 12:38
26 extensive notes the issue of a transfer was never
27 discussed by Mr. Barry with you?

28 A. As far as I recollect. Like I would need to look at my
29 medical notes to see if I have anything written in at a

1 later date about it, but I don't -- at this moment I
2 don't recall there being a discussion about transfers.

3 129 Q. Thank you, doctor.

4

5 END OF EXAMINATION

12:38

6

7 CHAIRMAN: Now, who is next? Mr. Harty?

8 MR. HARTY: Yes, thank you, Chairman.

9 CHAIRMAN: Just identify yourself, Mr. Harty, and who
10 you are appearing for.

12:38

11 MR. HARTY: Yes.

12

13 DR. MARGARET KIELY WAS CROSS-EXAMINED BY MR. HARTY, AS
14 FOLLOWS:

15

12:38

16 130 Q. MR. HARTY: Good afternoon, Dr. Kiely, my name is Mark
17 Harty and I am representing Superintendent Michael
18 Comyns. I have some very brief questions for you, but
19 the first question that I just wish to ask is in
20 relation to your consultation notes that the tribunal
21 received, at page 4771. I take it that these notes,
22 insofar as they are typed out, they would follow the
23 chronological order in relation to the issues that are
24 raised at the time, would that be correct?

12:38

25 A. Yes, that would be correct.

12:39

26 131 Q. So, as of the consultation on the 10th August 2012, the
27 first issue that was raised by retired Sergeant Barry
28 was that "there was a new superintendent at the station
29 in Mitchelstown and he wants one of his sergeants to

1 move to Fermoy and Paul feels he often picks on little
2 things to try and encourage the move". So I take it
3 that would have been the first thing that came up in
4 the course of your consultation?

5 A. I actually couldn't clarify that. If you remember I 12:39
6 mentioned earlier, I'm not able to type --

7 132 Q. No, no.

8 A. -- as somebody is speaking to me. So I take notes, I
9 just write words.

10 133 Q. Yes. 12:39

11 A. So then I formulate the note afterwards. So I actually
12 couldn't say that that's the first thing that he said
13 to me. I don't recollect. That is how I recorded the
14 note.

15 134 Q. Okay. But it does appear to have been a significant 12:40
16 issue for him at the time?

17 A. Well, yes. Yes, I recorded it because he told it to
18 me.

19 135 Q. Yes. And in respect of Superintendent Comyns, you're
20 being very fair in the manner in which you are 12:40
21 presenting things, in that you're careful that your
22 only source of information in relation to the matter is
23 what is being told to you by your patient, isn't that
24 correct?

25 A. Yes. Other than the unusual visit from Inspector 12:40
26 O'Sullivan.

27 136 Q. Yes. No, no, and I'm not dealing with -- I'm just
28 dealing with the question of my client and the - as I
29 say, you have been very fair, you referred to alleged

1 incidents, et cetera - you certainly, it would appear,
2 met a man or were attended by a patient in significant
3 distress at the time and your concern was to treat
4 those difficulties, isn't that correct?

5 A. Yes. 12:41

6 137 Q. Now, when we move forward in time to the time of the
7 letter, did you discuss or did then Sergeant Barry
8 discuss with you the practical implication of the
9 conditions that he had discussed on going into the
10 letter?

11 A. No. 12:41

12 138 Q. I take it you have no special knowledge as to how Garda
13 management structures operate or the requirement for
14 team meetings or the requirement to inspect stations or
15 any of that?

16 A. No, I do not. 12:41

17 139 Q. And insofar as you were placing these conditions, that
18 was on the basis that the primary -- would it be fair
19 to say that the primary complaint or reaction, reactor
20 perhaps, in respect of Sergeant Barry's condition
21 appeared to be his interactions with Superintendent
22 Comyns?

23 A. Yes. 12:42

24 140 Q. And as such, I think you will agree, that from the
25 point of view of his clinician this appeared to be a
26 way of limiting, shall we say, the risk factors?

27 A. Yes. 12:42

28 141 Q. But in relation to that limitation, you weren't made
29 aware by Sergeant Barry as to practically what a that

1 meant on the ground --

2 A. No.

3 142 Q. -- in terms of him doing his job?

4 A. No, I was.

5 143 Q. Right. 12:42

6 A. And I suppose, I wouldn't be an occupational -- I'm not
7 an occupational health physician, so that would be more
8 their area, you know, that they -- I obviously just see
9 it from the patient's point of view, whereas
10 occupational health physicians look at the -- the place 12:42
11 of employment is always taken into consideration when
12 they make recommendations, as well as the person.

13 144 Q. And, Dr. Kiely, your position in relation to it is
14 right and proper, you're treating the patient, you're
15 trying to deal with the patient and provide progress 12:43
16 forward for that patient, I think is the best way to
17 describe it. And there's no criticism from my client
18 in that regard, that insofar as solving the conundrum
19 in which your patient expressed himself as being in,
20 certainly from the information that you had, this 12:43
21 appeared to be a solution to the conundrum, I think
22 would be perhaps one way to put it?

23 A. Yes.

24 145 Q. Just in relation to other matters going forward in time
25 then after that, I think you have already told 12:44
26 Mr. Murphy that there was never any discussion from
27 Sergeant Barry or with Sergeant Barry as to, shall we
28 say, more permanent workplace arrangements that might
29 both obviate Sergeant Barry's -- or eliminate or reduce

1 Sergeant Barry's stressors but at the same time allow
2 for proper Garda management. That conversation never
3 came up with you, would that be fair to say?

4 A. Yes, that would be fair to say.

5 146 Q. Thank you very much, Dr. Barry, I have no more 12:44
6 questions -- or Kiely, excuse me, sorry, Dr. Kiely,
7 apologies.

8

9 END OF EXAMINATION

10

12:44

11 CHAIRMAN: Now, Mr. McGarry, you appear for Assistant
12 Commissioner Fanning, isn't that right, and Inspector
13 O'Sullivan, is that right?

14 MR. MCGARRY: And a couple of the upcoming witnesses
15 also. 12:44

16 CHAIRMAN: Very good. But so far as relevant here,
17 it's Inspector O'Sullivan who is your client.

18 MR. MCGARRY: That's correct, Chairman, yes.

19 CHAIRMAN: Thanks very much.

20

12:44

21 DR. MARGARET KIELY WAS CROSS-EXAMINED BY MR. MCGARRY,
22 AS FOLLOWS:

23

24 147 Q. MR. MCGARRY: Dr. Kiely, Paul McGarry is my name and I 12:45
25 represent Inspector O'Sullivan. I just have a couple
26 of very short questions for you, arising out of the
27 attendance by Inspector O'Sullivan at your office, that
28 you gave evidence about a few moments ago. I think you
29 know that Inspector O'Sullivan says that he wasn't in

1 full uniform on that occasion?

2 A. I suppose he just looked formally dressed as a guard to
3 me. Maybe full uniform means something else, you know.

4 148 Q. Sure.

5 A. I don't actually know what the difference is in 12:45
6 uniforms, so to me he appeared to be in, you know, his
7 Garda uniform. I wouldn't know the difference between,
8 is there a dress uniform or a standard working uniform.
9 But he was in uniform, he wasn't in civilian clothes.

10 149 Q. Sure. And just, you said in your statement to the 12:45
11 tribunal, which I think is on the 12th May 2022, that
12 you were unnerved by the fact that he was there or the
13 fact that he was in uniform, isn't that right?

14 A. I was unnerved, yes, that he called to the surgery to
15 ask questions, I felt in relation to Garda Barry. 12:46

16 150 Q. You don't refer to the fact of being unnerved or,
17 indeed, the fact that he was in full uniform in your
18 notes. It may be quite proper for you not to do that,
19 I'm not saying there's anything wrong with that, but
20 the first reference that we get to that, am I right in 12:46
21 thinking, is a number of years later, in May 2022, when
22 you wrote to the tribunal?

23 A. Yes. Like I suppose I wouldn't consider it medically
24 relevant to retired Garda Sergeant Paul Barry's medical
25 notes at the time when I was recording it. That was my 12:46
26 own personal feelings about the visit. I didn't think
27 it needed to be part of his actual patient medical
28 record.

29 151 Q. Thank you.

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END OF EXAMINATION

CHAIRMAN: Thank you. That's everybody? Now, Mr. Costelloe, have you any questions?

12:47

MR. COSTELLOE: Thank you, Chairman.

DR. MARGARET KIELY WAS CROSS-EXAMINED BY MR. COSTELLOE, AS FOLLOWS:

12:47

152 Q. MR. COSTELLOE: Dr. Kiely, I'm Shane Costelloe I'm instructed to represent Mr. Barry at this tribunal. Fortunately, much of what I would have put to you has already been dealt with by Mr. Marrinan and my other my colleagues. So I actually only have a number of short questions for you. May I ask, Mr. Murphy, that we go to page 4773 and go down to the entry on the 4th May 2013, so two pages on from what's going on the screen at the moment, and go to the entry of the 4th April 2013. Dr. Kiely, can you see that in front of you?

12:47

12:47

A. I can, yes, yeah.

153 Q. Okay. That's a page from your notes as given to the tribunal, you have already been brought through this, but I just wanted specifically to put to you a part there that says, opposite 5/4/13 you have reference to Inspector O'Sullivan calling to your surgery, you say that "He wanted to check your medical letter stating fit to work was from me as had not put date of return work on it." You then continue:

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"Aware I cannot speak about the patient."

And then in a single quote mark "I'm just the middleman" I'm what we understand to be "I'm friends with Paul."

12:48

A. Friends.

154 Q. Why is that in a quotation?

A. Because they were words that he said to me, so they are direct quotes from Inspector O'Sullivan.

12:48

155 Q. Thank you. Would you go then, please, Mr. Murphy, to page 5671, which should be the second page of the statement provided by Dr. Kiely. Dr. Kiely, again can you see that on the page in front of you?

A. I can, yes.

12:49

156 Q. Thank you. If you go to the top there, the first paragraph, it's a continuation on from the previous page and again it seems to reference the part of your note that we've just covered there and again now in full quotation marks we have "He replied, I am just the middleman, I am friends with Paul", do we take it that again is put in quotations because those are the exact words that were said to you by Inspector O'Sullivan at the time?

12:49

A. Yes.

12:49

157 Q. So insofar as there might be any suggestion by Inspector O'Sullivan that he didn't say that or he doesn't remember saying that, you have a quotation from him recorded in your notes and repeated in your

1 statement, is that correct?

2 A. Yes. Like, I recorded it that day, so yes.

3 158 Q. You're satisfied based on that then obviously that this
4 was something specific that he said to you, that he was
5 just the middleman and that he was friends with Paul? 12:49

6 A. Yes. My usual practice is sometimes if a patient says
7 something directly, I would use their own words and put
8 it in inverted commas so that I know that's what I am
9 referring to in my notes.

10 159 Q. Sure. In relation to his -- this is Inspector 12:50
11 O'Sullivan's visit to your surgery on the 5th April,
12 are you aware whether or not he spoke with your
13 receptionist that day?

14 A. Well, he must have spoken to the -- I presume he spoke
15 to the receptionist, I don't recollect, but it would be 12:50
16 usual. I don't know how he would have access to me
17 without speaking to the receptionist first.

18 160 Q. Okay, well we can probably move on then. Can we take
19 it from that answer that you don't know if he did or he
20 didn't, you're just assuming he did because he did make 12:50
21 contact with you when he got to the surgery?

22 A. Yes.

23 161 Q. Okay. Now, Inspector O'Sullivan has described his
24 attendance at your surgery as being discreet, he says
25 that he took steps to have something on over his Garda 12:50
26 shirt uniform and that he was acting discreetly so as
27 not to be immediately identifiable as a guard. Do you
28 have anything to say in response to that?

29 A. I don't. My recollection of events and the reason I

1 feel I remember it, is because it was so unusual, was
2 that he was identifiable as a guard. And the reason I
3 saw him actually was because he was a guard. Like if
4 somebody was to -- like I think once in my career I've
5 had a manager phoned once about a patient, and wanted 12:51
6 to speak with me, and I directed the secretaries to let
7 them know that I couldn't speak to them in relation to
8 the patient because it would be a breach of patient
9 confidentiality. But like, if gardaí were to call to
10 the surgery we would always see them, because they 12:51
11 could be calling for, you know, official business.

12 162 Q. Yes. Obviously you've already told us that you might
13 not be au fait with the distinctions between different
14 types of Garda uniform, but insofar as you can
15 recollect, was Inspector O'Sullivan wearing the 12:52
16 standard or, if you will, the usual Garda shirt with
17 the epaulettes indicating his rank when he called to
18 your surgery that day?

19 A. Yes. Well, my recollection is that he was in a Garda
20 uniform. 12:52

21 163 Q. Yes.

22 A. So what would I recognise as a Garda uniform, would be
23 the thirty and the cap and...

24 164 Q. Yes, in fact, Dr. Kiely, it strikes me that that would
25 have been a better way for me to ask that question. 12:52
26 why don't you just as best as you can tell us what he
27 was wearing as your recollection allows and then we
28 will just move on from that?

29 A. Well, like, again being honest, from it being so long

1 ago, but like, I just picture a garda as wearing, you
2 know, navy pants, the shirt and -- I can't recollect if
3 he had a jacket on or not, if he did it must have been
4 open for me to be able to see, I can't recollect if he
5 was wearing, you know, a more formal blazer, I don't 12:53
6 remember it. But I remember I -- my recollection of it
7 was that a garda who introduced to as Inspector
8 O'Sullivan was in uniform and it seemed very official,
9 a very official visit to me.

10 165 Q. Just again before we move on, because you did refer to 12:53
11 it a moment ago?

12 A. Yes.

13 166 Q. And just to give you an opportunity to see if you can
14 say anything further about this: Do you remember
15 whether he had his Garda cap? 12:53

16 A. I thought he did. But, you know, I couldn't say
17 absolutely a hundred percent. My recollection is that
18 he did have his cap. You know the way they wear it,
19 you know, they tuck it under their arms, but you
20 know... That's my recollection, but it's a long time 12:54
21 ago.

22 167 Q. Insofar as in your statement you refer to yourself as
23 being unnerved by Inspector O'Sullivan's attendance at
24 your surgery, he disputes that, he has told the
25 Chairman that he disputes that you were unnerved by his 12:54
26 attendance at your surgery. Do you wish to say
27 anything in response to that?

28 A. Well, I suppose, I am a professional person, within the
29 confines of my office people disclose all kinds of

1 things to me, part of my role as a professional would
2 be not to let personally emotion show, so I try my best
3 always to behave in a professional manner.

4 168 Q. Yes. Sorry, so how is that in response to his
5 assertion that you were not unnerved? I mean, I think 12:54
6 we can probably infer t but do you want to expand on
7 that before I move on?

8 A. Well, I would think that's a reflection of my
9 professionalism, that he wouldn't have known that I was
10 unnerved by the visit, because I hid that. 12:55

11 169 Q. Okay. Certainly then you've also told the Chairman in
12 your statement to the tribunal that you were annoyed,
13 you felt annoyed by the visit because in your opinion
14 it seemed inappropriate. Do you stand over that
15 comment? 12:55

16 A. Yes. Like, I do feel it's inappropriate for a manager
17 or an employer to query conditions on a medical
18 certificate. Like the usual practice would be if there
19 was a difficulty, which, you know, given that I don't
20 understand the workings of An Garda Síochána, if there 12:55
21 was a difficulty, the usual practice would be to refer
22 to the occupational health department because they
23 would be able to give more expert advice and as such,
24 could override, you know, conditions that I would have
25 suggested if they felt that was appropriate. 12:56

26 170 Q. Well, in that, doctor, if we use the method that
27 Mr. Marrinan brought your attention to or used a moment
28 ago, when he distinguished between the two components
29 of Inspector O'Sullivan's enquiry that way, one being

1 as to the content of the medical certificate and the
2 other being as to certain matters pertaining to the way
3 in which it was formulated, things like the date and
4 the signature and such. In relation to the content
5 part of that, you've already told the Chairman that you 12:56
6 perceived that Inspector O'Sullivan was actually
7 querying the validity of that particular condition, is
8 that correct?

9 A. Yes. That's correct.

10 171 Q. And -- sorry. Sorry for interrupting, please continue, 12:56
11 sorry?

12 A. I was just going to say part of my annoyance was at
13 myself then for not having formulated the sick note in
14 the usual way, where I had stated that I would normally
15 say fit to resume work from such a date or from the 12:56
16 above date, which I had neglected to put in. I don't
17 know why. But I had.

18 172 Q. Yes.

19 A. So I was annoyed then that, you know, it wasn't as
20 correct as it should have been. 12:57

21 173 Q. Yes, but as I understand your evidence a moment ago,
22 it's also to do with the fact that you felt the enquiry
23 itself was inappropriate because it went to a medical
24 condition, which was something that a line manager or a
25 superior officer, in this case, shouldn't be querying, 12:57
26 but rather the CMO or the occupational consultant
27 should be querying?

28 A. Yes. Yes, it is inappropriate because the reasoning
29 behind the conditions was to do with confidential

1 medical information relating to the patient.
2 174 Q. Thank you, doctor. The very last thing then, leaving
3 aside then annoyance or perceptions of
4 inappropriateness to do with queries about the nature
5 of that term that you included, you already told 12:57
6 Mr. Marrinan that you also felt that Inspector
7 O'Sullivan was actually asking whether or not -- you
8 perceived that he was asking whether or not the medical
9 certificate was a forgery, was something that Mr. Barry
10 had created himself, is that correct? 12:58
11 A. Yes, yes.
12 175 Q. What was it about the engagement with Inspector
13 O'Sullivan that day that led you to infer that? Why
14 did you form that view?
15 A. Again, this is from a long time ago, I think it was 12:58
16 because of the questioning of it, you know, if somebody
17 asks you did you write that, well then that implies
18 that they think somebody else wrote it, because why
19 else are they asking you did you write it?
20 176 Q. Okay. Thank you very much, Dr. Kiely? 12:58
21 A. Thank you.

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END OF EXAMINATION

MR. MARRINAN: I just have two matters. 12:58
CHAIRMAN: Yes.

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DR. MARGARET KIELY WAS THEN RE-EXAMINED BY
MR. MARRINAN, AS FOLLOWS:

177 Q. MR. MARRINAN: Dr. Kiely, if we have page 4773 back up on the screen, if we look at your entry for 28th March of 2013. It's apparent from the note there that during the course of that consultation that you had with Mr. Barry, that Mr. Barry appeared to you to be emotionally upset, is that right? 12:58

A. Yes, that's correct. 12:59

178 Q. And it appears from the note that he outlined severe financial pressure and that he hadn't been able to pay a debt that he had, isn't that right?

A. Yes, that's correct. 12:59

179 Q. I am getting the impression, maybe I am wrong in relation to this, that he was arguing his case for going back to work, were you resisting that in some way?

A. Yes. 12:59

180 Q. Yes?

A. Yes, I was. I didn't feel it was appropriate for him to go back to work to the same conditions, as he had presented to me very unwell, so unwell in the past that I had referred him to consultant psychiatry, Dr. Dennehy, for urgent expert input, back in, I believe it was 2012. And Mr. Barry had improved on medication and also from not being in the situation. So, I didn't feel it was appropriate for him to go back 13:00

1 into the exact same situation again. So yes, I wasn't
2 in agreement with him going back to the same situation
3 and the same position again.

4 181 Q. We then note that from note that he says there that "he
5 plans to use annual leave so will only work nights for 13:00
6 as long as possible, so will avoid superintendent". So
7 that seems to be his plan at that time, that he's
8 indicating to you how he is going to avoid the
9 superintendent, is that right?

10 A. Yes, that's correct. 13:01

11 182 Q. So is it a position -- I mean, we see that the plan at
12 the end there is, review "RV any deterioration in mood
13 and any thoughts of self harm", is that in the context
14 of Mr. Barry saying that he is returning to work and
15 that you are going to review him at some future time, 13:01
16 is that right?

17 A. Yes, that's correct.

18 183 Q. So there's no issue there in relation to certifying
19 that he was fit to attend work, is that right?

20 A. Well, no, I didn't -- he didn't ask me to provide 13:01
21 him --

22 184 Q. I mean, we're all familiar with a doctor giving a
23 certificate that somebody is not fit to attend work, it
24 is perhaps more unusual that a doctor is required to
25 give a certificate saying that somebody is fit to 13:01
26 attend to work. But that issue does not appear to have
27 arisen during the course of that consultation that you
28 had, is that right?

29 A. Yeah, I can't remember if he asked me for a note, but

1 if he did I would have told him that I wasn't happy to
2 provide one for him.

3 185 Q. So that's a possibility, that that issue may have
4 arisen and --

5 A. Yes. 13:02

6 186 Q. -- you said --

7 CHAIRMAN: Sorry, Mr. Marrinan, what issue may have
8 arisen?

9 MR. MARRINAN: The issue as to whether or not he had
10 requested you for a note indicating that he was fit for 13:02
11 work.

12 CHAIRMAN: I am not understanding that, Mr. Marrinan.
13 That's the first I have heard of that suggestion.

14 MR. MARRINAN: would you just like to expand.

15 187 Q. CHAIRMAN: Doctor, do you understand what we are 13:02
16 talking about? The question is, whether the
17 possibility arose on the 28th March of you giving a
18 certificate.

19 A. Sorry, is that a question to me?

20 188 Q. CHAIRMAN: The question is: Did the possibility arise 13:03
21 on the -- sorry, did you discuss the question of a
22 certificate on the 28th?

23 A. I don't recollect if we did.

24 189 Q. CHAIRMAN: If you had, presumably it would be in your
25 note? 13:03

26 A. I would expect so, but I suppose I couldn't guarantee
27 that, but yes, I would have thought I would put in a
28 patient requests note and I have declined for whatever
29 reason.

1 190 Q. MR. MARRINAN: Yes.

2 A. But I can't say for sure, I don't remember.

3 CHAIRMAN: Okay.

4 191 Q. MR. MARRINAN: And then if we look at the entry for the 13:03
5 4th April, there's an indication there that Mr. Barry
6 is indicating to you that the inspector has said that
7 he can't return to work unless he has a note, isn't
8 that right?

9 A. Yes.

10 192 Q. So that's the manner in which the note -- then if we 13:03
11 look at the entry for the next day, 5th April of 2013.
12 If we just look at that note then for the 4th April,
13 you will see there in the third line:
14

15 "Mr. Barry told inspector that I had said I could not 13:04
16 provide same --"
17

18 Namely, a note.

19

20 "-- as in my opinion he was not fit to return to the 13:04
21 same position."
22

23 Do you see that?

24 A. I do. But that's what Mr. Barry told me. I don't
25 recollect if I had said that when he was with me. 13:04

26 193 Q. Okay. Now, then your note for the next day, 5th April,
27 we see that Inspector O'Sullivan called to the surgery
28 and just so that we are certain in relation to this, we
29 can see the last three lines there:

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"Says chief medical officer will phone me as he feels the letter will not be accepted."

And then you amended the letter with the date of return to work on it. And then the same day, later on that day you received a phone call from Dr. Oghuvbu. Was Dr. Oghuvbu ringing about the letter that he had received? 13:05

A. I don't recollect if he asked me specifically about the letter. Like we did talk about the patient. So I would have said about that these were triggers for him. We must have discussed it, because I have down that he states he's interested in the patient's medical welfare and will not be involved in any management issues. So the management issues would be in relation to where Mr. Barry would return to work. 13:05

194 Q. Was that the first time that you'd spoken with Dr. Oghuvbu?

A. Yes, I believe so. Again, I would need to just double-check my record, my own notes, but, yes, I think that was the first time I spoke with. I had written to him on two occasions before that but it was the first time I spoke with him. 13:06

195 Q. Okay, thank you very much. 13:06

END OF EXAMINATION

CHAIRMAN: Now, thank you. Everybody happy now? Thank

1 you very much, indeed, Dr. Kiely. Thank you for
2 facilitating us with the video-link and so thank you
3 now, you're finished now and thank you for your
4 cooperation.

5 THE WITNESS: Right, thank you. 13:06

6 CHAIRMAN: Thank you.

7

8 THE WITNESS THEN WITHDREW

9

10 CHAIRMAN: very good, thank you very much. Two 13:06
11 o'clock.

12

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

15

14:02

16 MS. McGRATH: Good afternoon, Chairman, the next
17 witness is Superintendent Edmund Golden, please.

18 CHAIRMAN: Thank you very much. Yes.

19 MR. McGARRY: Chairman, just for the record.

20 CHAIRMAN: Come in and sit down there, superintendent. 14:02
21 Yes, Mr. McGarry.

22 MR. McGARRY: Just for the record, I should say that I
23 am instructed by Mr. Freeman with Mr. O'Brien for this
24 witness, for retired Sergeant Dunne, who is the next
25 witness and for Sergeant Quinn, who is on tomorrow's 14:02
26 list. Just for the record, Chairman.

27 CHAIRMAN: very good.

28

29

1 SUPERINTENDENT EDMUND GOLDEN, HAVING BEEN SWORN, WAS
2 DIRECTLY-EXAMINED BY MS. McGRATH, AS FOLLOWS:

3
4 CHAIRMAN: Thanks very much, superintendent. Sit down
5 there, please. Yes. 14:03

6 196 Q. MS. McGRATH: Now, good afternoon, superintendent?

7 A. Afternoon.

8 197 Q. Chairman, the superintendent's statement is at page
9 1458 of the papers. Now, superintendent, I think when
10 you made your statement to the tribunal in 2021 you 14:03
11 were attached to Nenagh garda station, isn't that
12 right?

13 A. That's correct.

14 198 Q. You have subsequently moved on that, is that correct?

15 A. That's correct. I am attached to Cahir Garda Station 14:03
16 now, in County Tipperary.

17 199 Q. We are looking at an earlier period, and you address it
18 in your statement, you say that you -- from the period
19 of July 2010 to August 2014, you say you were working
20 an as inspector in the Cork North division, is that 14:03
21 right?

22 A. That's correct.

23 200 Q. Okay. And it was during that period you say, and in
24 fact I think you say 2011, that you were elected to the
25 local branch of the Association of Garda Sergeants and 14:04
26 Inspectors in north cork?

27 A. That's correct.

28 201 Q. So AGSI, is that right? And you say that you were a
29 member of the committee unit until you transferred out

1 of the division in August 2014?

2 A. That's correct.

3 202 Q. Okay. Now, you go on to say in your statement that
4 during that period you had interactions with Sergeant
5 Paul Barry at Mitchelstown Garda Station in your 14:04
6 capacity as an AGSI representative, is that right?

7 A. That's correct.

8 203 Q. Okay. And you start in your statement, you outline
9 three particular interactions, isn't that right,
10 superintendent? 14:04

11 A. That's correct.

12 204 Q. And you start on the 10th March 2014. But can I just
13 ask you, was that the very first interaction or
14 knowledge you had with Sergeant Barry as an AGSI
15 representative, had you any dealings with him before 14:05
16 that date?

17 A. No, I had no dealings before that date. He was being
18 represented primarily by the national executive member
19 at the time, Michael Gallagher.

20 205 Q. Okay. And I think we have seen Mr. Gallagher, who is 14:05
21 now retired, we have seen his statement. So I think he
22 was the primary AGSI person dealing with Sergeant
23 Barry, is that right?

24 A. That's correct. It is my understanding that Mr. Barry
25 would have requested Mr. Gallagher to represent him, 14:05
26 we'll say, in all matters pertaining to AGSI
27 interactions at that time.

28 206 Q. Okay. And is my understanding correct, that you would
29 have stepped in from time to time where Mr. Gallagher

1 was not available, is that right?

2 A. Correct.

3 207 Q. Okay. So then just looking at your statement, as I say
4 it's at page 1458 of the papers, you outline your first
5 interaction with Mr. Barry as being the 10th March 14:05
6 2014. So we can just go down there, just a little bit,
7 Mr. Murphy. And you say in your statement, you were
8 working at Mallow garda station and you were contacted
9 by Mr. Barry and he wished to meet you at Mitchelstown,
10 is that right? 14:06

11 A. That's correct.

12 208 Q. Okay. And you say, you duly went to Mitchelstown and
13 you met with him and you say there he informed you that
14 he had appeared on a personnel bulletin which recorded
15 a transfer, is that right? 14:06

16 A. That's correct.

17 209 Q. Now, you give the number there, it's a personnel
18 bulletin number 03/14 and that's in the papers at 221,
19 it will come up there. 221. And it's bulletin 03/14
20 and it deals with transfer of Garda personnel. And you 14:06
21 see reference there to Mr. Barry:

22

23 "To transfer to Fermoy at public expense on the 11th
24 March 2014. "

25

14:06

26 Isn't that right, superintendent?

27 A. Yes, that's correct.

28 210 Q. And if you go on down to the end, it's dated 21st
29 February 2014. Was that the personnel bulletin that

1 Mr. Barry wanted to talk to you about?

2 A. Yes, that's correct.

3 211 Q. Now, I should say just by way of clarification, a lot
4 of these papers are redacted, but there would have been
5 other personnel on that bulletin for transfers? 14:07

6 A. That's correct. There would have probably been a
7 number of pages in that document.

8 212 Q. Okay. And you will understand, superintendent, just
9 for privacy reasons, we have redacted those other
10 names, so it just reflects Mr. Barry at page 21. Now, 14:07
11 going back to your statement, which is at 1458, just to
12 continue on there, you were shown this bulletin by
13 Mr. Barry and you record in your statement that
14 "Mr. Barry further explained to me that he had appealed
15 this transfer to Fermoy." 14:07

16

17 Now, just we're aware from our papers that he had in
18 fact appealed it on the 6th March, a couple of days
19 previously, I don't know whether he told you that
20 specifically but...? 14:08

21 A. Well, he did tell me that on the day. That was the
22 first time I became aware that he had appealed the
23 transfer.

24 213 Q. Okay. Now, he said that -- or you record in your
25 statement that he opened the Pulse system and showed 14:08
26 you his current status under the section Garda
27 personnel, which indicated his current station as
28 Fermoy not Mitchelstown even though the date of
29 transfer was not until the following day. So perhaps

1 we might just have a look at one of those Pulse
2 records. In particular, there's one at 223 of the
3 papers and it's dated 3rd March 2014. Now, we can hand
4 in a copy to you, superintendent. That first line,
5 that has a -- that's actually a highlighted line and 14:08
6 unfortunately it doesn't come up very well on the scan.
7 So if we can just give a copy to the Chairman and
8 yourself.

9 CHAIRMAN: Thanks.

10 214 Q. MS. McGRATH: I think it comes up a lot better there on 14:09
11 that photocopy, is that right, superintendent? That's
12 page 223?

13 A. Yes, that's correct, I can see it now, yes.

14 215 Q. Okay. Now, you will note at the top it's dated 3rd 14:09
15 March 2014, and I think you're speaking to Mr. Barry on
16 the 10th March. So, I think it's not printed out on
17 the 10th March but I think Mr. Barry provided it to us
18 as a reflection of how Pulse was recording him at that
19 time?

20 A. Yes, that's correct. 14:09

21 216 Q. Now, can you tell us what Mr. Barry pointed out to you
22 when you met him?

23 A. I remember meeting Mr. Barry at the time, and he opened
24 up the Pulse screen and I suppose, Chairman, this Pulse
25 screen is open to any guard to check at any time. 14:10

26 217 Q. CHAIRMAN: Yes.

27 A. Where any guard is in the country. So when he opened
28 it up, he pointed out to me station had been stationed
29 from Mitchelstown to Fermoy, as he reflected in the

1 document in front of us here, and he also pointed out
2 that his transfer date, according to the bulletin,
3 which was number 03/14, was due to take place the
4 following day, and that his feeling about it was that
5 it shouldn't have happened prior to the date and
6 obviously because he had an appeal in in relation to
7 the transfer, that it shouldn't have happened at all.

14:10

8 218 Q. MS. McGRATH: And can you just tell the Chairman, does
9 that printout reflect effectively what you also saw on
10 the 10th March?

14:10

11 A. I believe so, yes. When Mr. Barry would have opened
12 the computer screen, that's what I would have seen.

13 219 Q. Now, superintendent, you say in your statement that
14 Mr. Barry went on to put the names of a number of other
15 sergeants who had appeared on the bulletin into the
16 Pulse system, can you tell the Chairman about that?

14:11

17 A. Yes. On that bulletin there was a number of other
18 sergeants who were due to be transferred the following
19 day, on the same bulletin that Paul Barry was, and what
20 he did then was he actually put their numbers, I can't
21 remember was it their numbers or their names, into the
22 system and a page similar to what's been generated here
23 in front of me would come up, and at that stage, when
24 you looked at the bulletin and you looked at their
25 current station, it appeared that they had remained
26 still where they were on the system and hadn't been
27 changed. Mr. Barry did that, or I think there was
28 three or four sergeants, extra sergeants on that list
29 to be transferred and he went through each in sequence

14:11

14:11

1 and each of them still remained at their current
2 station, if that's clear enough.

3 220 Q. Okay. And then I think he asked you to meet Chief
4 Superintendent Dillane in relation to the issue, is
5 that right? 14:12

6 A. That's correct.

7 221 Q. What did Mr. Barry want you to do effectively,
8 superintendent?

9 A. I believe he wanted me to find out why his status on
10 the Pulse computer system had been changed prior to his 14:12
11 transfer and also because he had an appeal in.

12 222 Q. And I think you did contact the chief superintendent,
13 is that right?

14 A. That's correct. I believe just at the finish of the
15 meeting I rang Chief Superintendent Dillane by phone to 14:12
16 ask him would he facilitate a meeting, he actually said
17 he could facilitate one at short notice. So, I
18 travelled the short distance from Mitchelstown to
19 Fermoy and met him in his office.

20 223 Q. Okay. Can you tell the Chairman what happened at that 14:12
21 meeting?

22 A. Again, very simply, I just outlined the sequence of
23 events which had happened in Mitchelstown, that
24 Sergeant Barry had pointed out to me the anomaly, as he
25 saw it, on the system in relation to his transfer, the 14:13
26 fact that he had been transferred to Fermoy on the
27 Pulse system. Chief Superintendent Dillane was unsure
28 of what I meant during the initial conversation and
29 what I actually did was then I talked Chief

1 Superintendent Dillane through the process of accessing
2 the Pulse system, as we had done or I had done with
3 Sergeant Barry maybe half an hour previous to that, and
4 we went through the system exactly as -- the sequence
5 exactly as what Sergeant Barry had gone through with 14:13
6 me, I went through that with Chief Superintendent
7 Dillane.

8 224 Q. Okay. what was Chief Superintendent Dillane's response
9 after you'd performed that exercise?

10 A. I believe he honestly couldn't explain it to me and he 14:13
11 appeared just to be -- you know, he couldn't understand
12 it and didn't know why, and he said to me then he was
13 going to get on to HRM to clarify the matter.

14 225 Q. Okay. And were you present when he made that contact
15 with HRM or had you left by then? 14:14

16 A. No, the meeting finished at that stage and I left, I
17 left him to do whatever he felt necessary.

18 226 Q. Okay. Can I ask you, when Mr. Barry gave his
19 statement, just in relation to this particular issue,
20 to the tribunal, it's at page 49, I think you will have 14:14
21 seen these pages when you were doing your statement, if
22 we just go midway down through that page. And you see
23 there starting, "When Inspector Eddie Golden" do you
24 see that?

25 A. Yes. 14:14

26 227 Q. "...who made representations on my behalf at my request
27 made Chief Superintendent Dillane aware of this
28 intimidation in relation to Pulse, I was changed back
29 to Mitchelstown on the Pulse system only to be moved on

1 the Pulse system again."

2

3

4

5

6

So, can I just ask you two things there: He uses the word "intimidation" there in his statement to the tribunal, can you tell the Chairman, did he reference that when speaking with you?

14:15

7

A. I can't recall if that word was used between Sergeant Barry and myself, but I do know that I did not use that word when I was talking to Chief Superintendent Dillane. I just stuck with the facts of the actual mechanics of the Pulse system.

14:15

10

11

12

228 Q. Okay. He also says there that he was changed to Mitchelstown but only to be moved back again to Fermoy, did you know anything about that?

13

14

15

A. I wasn't aware that there had been a previous move on the system.

14:15

16

17

229 Q. Okay. So were you contacted by Mr. Barry again in relation to that matter or was that the only dealing you had in relation to the Pulse issue?

18

19

20

A. I don't believe -- is this just a second change at the same time or...?

14:16

21

22

230 Q. Yes. It is also his direct evidence to the tribunal that after your meeting with the chief superintendent he was moved back to Mitchelstown, only to be moved on the Pulse system again later, did you know anything about that?

23

24

25

26

14:16

27

A. No. I was aware that the system had been changed back to reflect Mitchelstown. I wasn't aware of any other changes.

28

29

1 231 Q. Okay, perfect. Now, superintendent, as I say, you
2 outlined three interactions, that was the first one.
3 The second one is, you say in your statement:
4

5 "I next spoke to Paul Barry on the 14th March 2014." 14:16
6

7 Do you remember that, superintendent?

8 A. I remember contacting Paul because I had met -- I can't
9 remember had I met Chief Superintendent Dillane or he
10 had contacted me, just to clarify that his intention 14:16
11 now was to move Sergeant Barry to Glanmire Garda
12 Station.

13 232 Q. Well, can we just break that down slightly. You say in
14 your statement:
15

16 "I next spoke to Paul Barry on the 14th March 2014,
17 where I informed him that Chief Dillane had indicated
18 to me that Sergeant Barry was now to be transferred to
19 Glanmire Garda station."
20

21 Is that right? 14:17

22 A. Yes.

23 233 Q. And how did that conversation with the chief
24 superintendent come about?

25 A. I can't remember were we after a PAF meeting or was it 14:17
26 just by phone, I can't, I don't have a note about that,
27 but I just know he contacted me to tell me about that
28 and again, I just felt it was information that I was to
29 relay to Sergeant Barry.

1 234 Q. Okay. Can you expand on the conversation with the
2 chief superintendent, just to aid the Chairperson, or
3 was it a very short --

4 A. It was a very short conversation, it was just to the
5 point and obviously associated with the representation 14:18
6 that I made for Sergeant Barry the previous few days.
7 So I presume it was a continuation of that
8 clarification.

9 235 Q. Okay. Now, in his evidence so far to the tribunal
10 Mr. Barry said this was the furred that he had heard of 14:18
11 a transfer to Glanmire, can you assist the Chairman in
12 relation to that?

13 A. I wasn't aware of what other correspondence Sergeant
14 Barry would have got. Again, I was just relaying what
15 I had been told and I thought it was pertinent that 14:18
16 Sergeant Barry was informed, that's what the chief
17 superintendent told me and I told Paul Barry at that
18 stage.

19 236 Q. Okay. Now, if we can go to the final interaction you
20 say you had with Mr. Barry, and again, we just might go 14:18
21 back to your statement for this, at 1458. Just there
22 at the end of that page, and again, if you keep going
23 down, Mr. Murphy, just to the very end. If you see
24 there about six lines from the end:
25
26 "I was working in Mallow on the 21st March 2014."
27 A. Yes.

28 237 Q. Do you see that there? And I think, superintendent,
29 just from our records and from the papers that have

1 been disclosed to us, could the 21st March have been an
2 error, could that read 21st April 2014, do you think?

3 A. It could be.

4 238 Q. Because there is a record, maybe the best way to deal
5 with it, just to make sure that we're not dealing with 14:19
6 two separate meetings, there's a record of a meeting
7 that the chief superintendent has with yourself and
8 Mr. Barry on the 21st April 2014, and I think maybe the
9 best thing to do first is to look at that note at 2087,
10 just to see is that the meeting you're talking about. 14:19
11 So it's 2087. Because I don't want you to agree it's
12 April, just in case --

13 A. Sorry, sorry, Chairman.

14 239 Q. If you go down to the end there, Mr. Murphy, please?
15 CHAIRMAN: Take your time. 14:20

16 240 Q. MS. McGRATH: Just keep going down. Do you see there?
17 Now, just so you understand, superintendent, these are
18 Chief Superintendent Dillane's notes of a meeting with
19 yourself and Mr. Barry at Fermoy at 2.30pm on the 21st
20 April 2014. Do you think that's the meeting that 14:20
21 you're referencing in your statement? Perhaps if we
22 just look at the note and it might refresh your memory?
23 CHAIRMAN: Just give him a chance to read it,
24 Ms. McGrath.

25 A. It's possible because the content of that reflected the 14:20
26 conversation that was had on the date. So I think it's
27 possible.

28 241 Q. MS. McGRATH: Okay. And we note there were the note,
29 and we will just look at it there, this is the chief

1 superintendent saying:
2
3 "I explained to Sergeant Barry that I raised concerns
4 with the A/C HRM and the CMO in relation to his work
5 practices." 14:21
6
7 Do you recall that?
8 A. I believe the meeting I attended on the 14th of
9 whichever month it was, it emanated from a direction
10 that Sergeant Barry had got to attend Fermoy Garda 14:21
11 Station to deal with post --
12 242 Q. Okay.
13 A. -- in particular.
14 243 Q. So it's possible then that maybe you are correct?
15 A. Yes. 14:21
16 244 Q. At page 1458, that it's a different meeting and you're
17 referencing the 21st March. So what we might do, can
18 we come back to April, we will just stay in sequence.
19 If we stay then with your statement at 1458 and we go
20 down to the end and we look at 21st March 2014. You 14:22
21 say:
22
23 "I was working in Mallow on 21st March 2014, where I
24 received a phone call from Paul Barry. He informed me
25 that he was after being asked to attend Fermoy Garda 14:22
26 Station by Inspector O'Sullivan to collect the
27 correspondence from Mitchelstown Garda Station and he
28 had refused to attend."
29

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That was your recollection of the meeting, is that right?

A. That's my recollection, yes.

247 Q. What was your role during that meeting or involvement in that meeting, superintendent? 14:23

A. It was purely as more of a supporter, advocate role as opposed to having an input.

248 Q. Okay. And then it would appear then that whilst your statement concludes there, but as I say, would you accept that you were at a subsequent meeting then on the 21st April. We will just bring that note up again. It's 21st April 2014, at 2087. And if you just go on down there. So if you've had a chance to look at that, superintendent, does that trigger -- 14:24

MR. COSTELLOE: I'm sorry for interrupting, Chairman, this is entirely my failing I'm sure, but I am just a little bit lost. I thought that it had been put to the witness that the statement referred to as the 21st March was in fact the 21st April, which is what we're dealing with. It's not a different meeting, is it the same meeting? 14:24

CHAIRMAN: There are two situations, Mr. Costelloe.

MR. COSTELLOE: Sorry.

CHAIRMAN: No, no, you're confused and I understand. Ms. McGrath is working, first of all, on the proposition that the superintendent in his statement described three encounters. Now, I may be wrong in this. But he described three encounters with 14:25

1 Mr. Barry. And what Ms. McGrath is doing, she's
2 established the first two, as to the third, given that
3 it's the 21st March in the superintendent's note, and
4 we have the chief superintendent's note, which is the
5 21st also, but they're of different months. So there's 14:25
6 really two possibilities: One is that the date is
7 wrong and the other is that there are four meetings
8 instead of three. So, I think that is where
9 Ms. McGrath is -- that's my understanding of where
10 Ms. McGrath is going. Is that right? 14:25

11 249 Q. MS. McGRATH: Yes, and, Chairman, I couldn't have put
12 it any clearer. Superintendent, what do you think of
13 that?

14 CHAIRMAN: Do you understand?

15 A. Yes. 14:26

16 250 Q. CHAIRMAN: I don't think there is any -- nobody is
17 suggesting there's anything sinister in it or anything
18 like that. But what we are exploring -- so do you
19 think -- my note here is, was it 21/03/14 or 21/04/14
20 or both? That's my note. Can you help us on that? 14:26

21 A. I only attended one meeting that chief superintendent
22 was present, inspector and Paul Barry. That's my
23 recollection. I don't believe there was two meetings.
24 So if the note --

25 251 Q. CHAIRMAN: So then somebody may be wrong. 14:26

26 A. On a date.

27 252 Q. CHAIRMAN: The chief superintendent may be wrong on his
28 date, that it's 21st April, or you may have made a
29 mistake and put down 21st March.

1 A. Correct.

2 253 Q. CHAIRMAN: But we're talking about the same meeting,
3 which is the third encounter you had on behalf of
4 Mr. Barry and this one involved Chief Superintendent
5 Dillane?

14:26

6 A. Yes, Chairman.

7 CHAIRMAN: Is that the situation? Thank you very much.

8 MS. McGRATH: Indeed, and thank you, Chairman, for
9 that.

10 254 Q. In the light of that, superintendent, the note on the
11 21st April there, if you could just have a quick look
12 at that note, it is significantly more expansive and
13 deals with issue beyond attending at Fermoy or
14 correspondence collection? Can you just have a quick
15 look at that there?

14:27

16 CHAIRMAN: And go on a little bit too, Mr. Murphy. If
17 you can roll down, because it goes on over the page,
18 "If there's any possibility of getting", okay, the next
19 bit. Yes, perfect.

20 255 Q. MS. McGRATH: In particular, do you recall this,
21 superintendent, he says at the end of that first page:

14:27

22
23 "I offered him the facilities of the LRC for mediation
24 to try and resolve these problems, I explained the
25 process and asked him to think about it. He told me
26 that he would not discuss any matter with me without
27 the presence of Inspector Michael Gallagher, Clare
28 division. I agreed to meet Sergeant Paul Barry and
29 inspector Gallagher on Thursday, the 24th April at 3pm

14:27

1 at Mitchelstown Garda Station. I then asked him if he
2 had any other suggestion as to how we could solve this
3 problem and if liked I was willing to listen to them.
4 The meeting ended."

14:28

5
6 Do you recall any of that?

7 A. I don't recall anything to do with the LRC being
8 mentioned. What I do recall is that Chief
9 Superintendent Dillane spoke for maybe ten minutes at
10 that meeting and he said -- you know, he covered a lot 14:28
11 of ground during that time. I didn't take notes of
12 that meeting, it wasn't my job to take notes. And at
13 the time I do believe that the meeting ended, the one
14 I'm recalling ended. I can't remember the mention of
15 Inspector Gallagher being present at a next meeting. I 14:28
16 just can't recollect that, I'm sorry.

17 256 Q. CHAIRMAN: So the other possibility is that the chief
18 superintendent has made a mistake in recording you
19 being present? That's another possibility. Because it
20 does seem a tiny bit unlikely that if you were present 14:29
21 as the AGSI rep, that Mr. Barry would be saying, I
22 won't do anything without talking to Michael Gallagher.
23 That's something you would remember, I take it?

24 A. I believe so. At that stage -- but it is possible as
25 well that Sergeant Barry at the time would not have 14:29
26 attended a meeting without a representative.

27 257 Q. CHAIRMAN: Yes.

28 A. Whether it was me or somebody else.

29 258 Q. CHAIRMAN: Okay. Sorry, there's a number of

1 possibilities but you don't recollect that
2 particular -- you don't recognise that description of a
3 meeting that you attended?

4 A. No, I don't.

5 CHAIRMAN: Okay.

14:29

6 259 Q. MS. McGRATH: Okay. And superintendent that brings you
7 to the close of your statement, and, as you say, at
8 least going with your statement after the 21st March
9 2014, did you have any further dealings with Sergeant
10 Barry at the time in your capacity as AGSI rep?

14:30

11 A. No, I don't believe so. And I did transfer a couple of
12 months later. I believe that the further
13 representations were done by inspector Gallagher.

14 260 Q. Okay. Could you answer any questions, superintendent?

15

14:30

16 END OF EXAMINATION

17

18 CHAIRMAN: Now, Mr. Costelloe.

19 MR. COSTELLOE: Thank you, Chairman.

20

14:30

21 SUPERINTENDENT EDMUND GOLDEN WAS CROSS-EXAMINED BY

22 MR. COSTELLOE, AS FOLLOWS:

23

24 261 Q. MR. COSTELLOE: Inspector, in fact I wasn't going to
25 ask you any questions at all, but I think in fairness I
26 might have created confusion or if I have I think it's
27 --

14:30

28 CHAIRMAN: No, I don't think so.

29 MR. COSTELLOE: I am just going to very, very quickly

1 put something to you, because I didn't want there to be
2 a suggestion that Ms. McGrath was asking a question
3 confusingly or wrongly, it was my failing to understand
4 something that led me to that interjection.

5 CHAIRMAN: Put your mind at rest, Mr. Costelloe, nobody 14:30
6 is suggesting Ms. McGrath did anything wrong and nobody
7 is suggesting that -- your confusion was entirely
8 understandable. So put your mind completely at rest.

9 MR. COSTELLOE: Thank you, Chairman.

10 CHAIRMAN: Your representation for accuracy and 14:30
11 perspicacity is safe in the tribunal.

12 262 Q. MR. COSTELLOE: I am grateful for that, Chairman.
13 Inspector, I want to put something to you, but before I
14 do, your recollection is that you attended one meeting
15 with Chief Superintendent Dillane and my client, yes? 14:31

16 A. Yes.

17 263 Q. Okay. If we can go to page 2085, Mr. Murphy, please,
18 and I'm grateful to Mr. Perry for bringing this to my
19 attention, I should have remembered reading this
20 myself. But if we go down towards the bottom of the 14:31
21 page, please, you will see an entry for Friday, 21st
22 March. Now again, inspector, you don't know anything
23 about these notes, these are Chief Superintendent
24 Dillane's notes, but look at that entry there for
25 Friday, 21st March 2014 "10am: Went to Mitchelstown to 14:31
26 talk to Paul Barry but he was sick. Wanted to talk to
27 him re his transfer". That would seem to suggest that
28 insofar as you have referenced the 21st March, in fact
29 it would have been the 21st April, correct?

1 A. Yes.

2 264 Q. It must have been because it doesn't look like he was
3 working that day?

4 A. Exactly.

5 265 Q. Yes. 14:31

6 A. And I can only recall one meeting, so whatever date it
7 was on --

8 266 Q. Not a criticism, inspector, it shouldn't even be
9 inferred as a criticism, I just wanted to give you the
10 opportunity of reading that there just to see if it 14:32
11 helped in any way. Thanks very much, inspector,
12 nothing further.

13

14 END OF EXAMINATION

15 14:32

16 CHAIRMAN: Mr. Murphy?

17 MR. MURPHY: Chairman, I have no questions.

18 CHAIRMAN: Does anybody else any questions? Very good.
19 Thank you very much, superintendent.

20 MS. McGRATH: Thank you superintendent. 14:32

21 CHAIRMAN: You are free to go thank you.

22

23 THE WITNESS THEN WITHDREW

24

25 MR. MARRINAN: Chairman, the next witness is retired 14:32
26 Sergeant Aidan Dunne, please.

27 CHAIRMAN: Yes.

28

29

1 MR. AIDAN DUNNE, HAVING BEEN SWORN, WAS
2 DIRECTLY-EXAMINED BY MR. MARRINAN, AS FOLLOWS:

- 3
- 4 267 Q. MR. MARRINAN: Mr. Dunne's statements are at page 1880,
5 a short statement, and an even shorter statement at 14:33
6 1881 of the material. I think that you retired from An
7 Garda Síochána in October of 2020, isn't that right?
- 8 A. That's correct.
- 9 268 Q. And I think you had served at the rank of sergeant and
10 from mid 2007 until the time of your retirement you 14:33
11 were the sergeant in charge in Mitchelstown Garda
12 Station?
- 13 A. That's correct.
- 14 269 Q. We have seen your name on a lot of the documents that
15 the tribunal has received and have been exhibited and 14:33
16 you seem to have been primarily just a conduit of
17 requests that came from superintendent to other
18 members, isn't that right?
- 19 A. That's correct.
- 20 270 Q. That would be your role. So you would be the point of 14:33
21 contact between the superintendent and members in
22 Mitchelstown Garda Station?
- 23 A. That's correct.
- 24 271 Q. Now, I think you point out in your statement that you
25 were aware of the circumstances giving rise to the 14:34
26 complaint that was made by then Sergeant Barry in
27 relation to alleged conduct of Superintendent Comyns,
28 isn't that right?
- 29 A. That's correct.

1 272 Q. And I think that you were actually interviewed and you
2 made a statement in relation to the circumstances of
3 that complaint on the 26th March of 2013 and also on
4 the 28th May of 2014?

5 A. Correct, yes.

14:34

6 273 Q. Were you also familiar with the certificate that
7 Sergeant Barry had produced in relation to he not
8 attending Fermoy Garda Station or having contact with
9 Superintendent Comyns?

10 A. No, I never had sight of that, no.

14:35

11 274 Q. Were you aware of the fact that Sergeant Barry wasn't
12 attending PAF meetings in Fermoy garda station?

13 A. I was aware there was a difficulty, okay, yeah.

14 275 Q. And were you aware of the reason why he wasn't
15 attending?

14:35

16 A. Yes, but the certificate itself, I never saw or knew
17 the background to it.

18 276 Q. Yes. Were you aware of the fact that he wasn't coming
19 into personal contact at that time with Superintendent
20 Comyns?

14:35

21 A. I was, indeed, yeah.

22 277 Q. You were aware of that?

23 A. Yeah.

24 278 Q. All right. So was it a situation where Sergeant Barry
25 was effectively working entirely out of Mitchelstown
26 Garda Station?

14:35

27 A. Yes, correct.

28 279 Q. Now, the first issue concerns annual leave and an
29 application that Sergeant Barry made for annual leave,

1 do you recall that?

2 A. I do, indeed, yes.

3 280 Q. In general terms, if you are applying for annual leave,
4 is there a duty on a member to check and make sure that
5 there is cover during that period of time that the 14:36
6 application is made for?

7 A. You see, there was a new system came in where leave was
8 put up on a calendar and it wasn't all -- now, maybe I
9 am jumping in, but I think I am right here. The
10 problem with the system was, when you'd check it in the 14:36
11 morning there might be no one on leave, but by the time
12 you got over to Fermoy there was. But generally, one
13 sergeant would liaise with another to see who was
14 working or who wasn't.

15 281 Q. Well, you're aware from the documentation that 14:36
16 Superintendent Comyns raised an issue in relation to
17 Sergeant Barry's application for annual leave in the
18 month of July of 2013?

19 A. I am, indeed.

20 282 Q. Which was a two-week period for a family holiday, is 14:36
21 that right? Do you recall that?

22 A. Yes, I do, indeed.

23 283 Q. I think that Sergeant Barry requested through you by
24 Superintendent Comyns to provide evidence that he had
25 adequate cover for the period of time that he had 14:37
26 applied for annual leave, is that right?

27 A. That's correct.

28 284 Q. Now, if we could just have up on the screen page 753.
29 If we scroll down there, you'll see this is a report

1 that is put in by Sergeant Barry to you at the time,
2 indicating the cover that he had, do you see that?

3 A. I do, indeed, yes.

4 285 Q. Now, if you look there you will see the date, which is
5 the period of time that he -- the various dates are the 14:37
6 periods of times he would otherwise have been on duty
7 had he not planned to go on his family holiday. But do
8 you see under "parade" it says "in the absence of
9 sergeant at parade senior garda present will detail
10 unit B"? 14:38

11 A. Yes.

12 286 Q. Do you see that?

13 A. I do, indeed. This is at the very top?

14 287 Q. Yes.

15 A. Yes, yes. 14:38

16 288 Q. Then it says "as above" for the remaining dates?

17 A. Yes.

18 289 Q. My understanding was that Superintendent Comyns
19 introduced a practice whereby a unit would parade for
20 duty at Fermoy Garda Station, either in the morning 14:38
21 shift at 7.30 or later on in the evening shift at 8.30?

22 A. That's correct.

23 290 Q. Is that right?

24 A. Yes.

25 291 Q. And that it would be the sergeant's duty to be briefed 14:38
26 in relation to -- and be in a position then to brief
27 his own unit, when they came on duty?

28 A. That's correct.

29 292 Q. Is that right?

1 A. Yeah.

2 293 Q. And I think the position is that Sergeant Barry wasn't
3 complying with that instruction at the time, is that
4 right?

5 A. That's correct. 14:39

6 294 Q. Right. So this column, as it were, he would never have
7 been in a position where he would have been complying
8 with that instruction to parade his unit for duty?

9 A. In Fermoy, yes.

10 295 Q. Yes. And then you will see in the third column to the 14:39
11 right there "supervision". And if we scroll down, go
12 through to the next page, we see there that it's signed
13 by Sergeant Barry. And then if we scroll down, we see
14 that you've signed off on that and you've sent it in as
15 a report for the attention of the superintendent. Did 14:39
16 you form any view as to whether or not you considered
17 that to be adequate cover in the circumstances?

18 A. Bearing in mind how long ago it was, if you go back
19 down through it, some of the shifts I think were
20 covered by other sergeants, whereas like he wasn't on 14:40
21 leave at half seven every day. So there was -- like
22 there was two sergeants would be starting, me, I was
23 normally eight o'clock, maybe a bit before it, James
24 Hallahan the same, so there were sergeants working from
25 eight o'clock on. Obviously some of the shifts were 14:40
26 twos to tens, I can't see it now, so there would be
27 sergeants working through the day in event.

28 296 Q. In any event, if we just go to page 755 of the
29 material. If we scroll down. This is a letter from

1 Superintendent Comyns to you, he points out:
2
3 "There are two sergeants attached to unit B. One,
4 Sergeant Geary, already has leave granted. In order to
5 sanction Sergeant Barry's leave I require him to get a 14:41
6 sergeant to detail his unit and provide supervision.
7 If this was application was for one or two days
8 Sergeant Barry's suggestion of the senior garda
9 detailing the unit may be feasible. However, this
10 application refers to a two-week period involving 12 14:41
11 tours of duty.
12
13 Annual leave cannot be granted to Sergeant Barry unless
14 he gets a sergeant to cover his duties."
15 14:41
16 You see that there?
17 A. I do indeed, yeah.
18 297 Q. And you then inform Sergeant Barry of the requirement
19 of the superintendent, isn't that right?
20 A. Yes. 14:41
21 298 Q. Now, in terms of the response to that, I think the
22 position is that Sergeant Barry then wrote in again and
23 indicated that he had -- yes, if we look at page 161 of
24 the material. If we scroll over to page 162, which is
25 the handwritten report there we see at the top, that's 14:42
26 a report from Sergeant Quinn, is that right?
27 A. Yes, that's correct.
28 299 Q. And he was dealing with the period of cover and what
29 period of time would be covered. And then we note at

1 page 161 your report and it deals with the period
2 that's covered or not covered, as the case may be. And
3 then we see at the end there, if we scroll down,
4 Superintendent Comyns has noted, he says:

5
6 "I need to know what sergeant is supervising unit B on
7 each date. A list of names is not adequate."
8

9 So if I can, as it were, cut to the chase in relation
10 to this: There seems to have been a lot of attempts
11 made by Sergeant Barry and Sergeant Quinn and yourself
12 to try and facilitate Sergeant Barry in getting his
13 holiday that he had booked, isn't that right?

14 A. Yes, that seems to be, yes.

15 300 Q. Is there anything unusual or did you see anything
16 unusual in Superintendent Comyns's request that he
17 should be informed of the exact cover that would be in
18 existence during Sergeant Barry's proposed leave?

19 A. Well, I suppose, looking at it there, it looks there
20 was a lot, but to be fair, he was the same with
21 everyone.

22 301 Q. Well, that's what I was getting at?

23 A. Yeah, yeah. I mean I worked on my own and I worked
24 days, so unless I could get James Hallahan to cover for
25 me, or one of the two boys, Paul and Gerry, to step in
26 for the day, I couldn't get the day off. Simple as
27 that.

28 302 Q. So this wasn't a stand out occurrence, as it were?

29 A. Well, with all of the paperwork it probably is a little

1 of a stand out, but it wouldn't have been unusual.

2 303 Q. Right. If we then just move on, at the heel of the
3 hunt I think that we don't need to go through all the
4 documents with you, but the heel of the hunt was that
5 Sergeant Barry appealed Superintendent Comyns's refusal 14:45
6 and through you the appeal went to Superintendent
7 Comyns and then went to Chief Superintendent Dillane,
8 who then granted leave --

9 A. That's correct.

10 304 Q. -- under effectively the same condition that 14:45
11 Superintendent Comyns had applied. But in any event,
12 the next issue concerned Detective Garda Fitzgerald and
13 do you recall, there was an incident between Sergeant
14 Barry and Detective Garda Fitzgerald?

15 A. I do indeed, yes. 14:45

16 305 Q. Now the tribunal isn't examining or going into the
17 circumstances surrounding that. However, there was an
18 issue in relation to transferring Sergeant Barry from
19 his unit to another unit, do you recall that?

20 A. I do, indeed, yes. 14:45

21 306 Q. Now, if we just have page 569 up on the screen. This
22 is the statement that was made by Superintendent
23 Comyns. We see three lines down there he refers to
24 2pm on the 23rd September 2014, that you attended a
25 weekly PAF meeting in Fermoy Garda Station and: 14:46
26

27 "After the meeting I spoke with Sergeant Dunne.
28 Sergeant Dunne was aware of what occurred on the
29 previous Friday night between Sergeant Barry and Garda

1 Fitzgerald. We discussed the issue and Sergeant Dunne
2 assured me that he could talk to Sergeant Barry and he
3 was confident Sergeant Barry would agree to move to
4 another unit within the station. As far as I recall it
5 was Sergeant Dunne who proposed this. "

14:46

6
7 Then he notes:

8
9 "At 3.45pm that evening Sergeant Dunne rang me to say
10 that he had spoken to Sergeant Barry and confirmed to
11 me that Sergeant Barry would change units. I was not
12 made aware of any issue, quite the opposite. I am
13 certain if there was an issue it would have been raised
14 there and then. "

14:47

15
16 Now, Superintendent Comyns gave evidence of this also.
17 Do you quarrel with anything in that, that he has set
18 out in his statement?

14:47

19 A. No, the PAF meeting, I certainly remember being there.
20 And unit change, I suppose whether I was confident of
21 getting it resolved, I can't remember, but I know it
22 was resolved and I did ring him to say that the issue
23 was sorted out.

14:47

24 307 Q. Yes. And you did go to Sergeant Barry and suggest that
25 he would change unit?

14:47

26 A. I can't remember how the changes came about. I must
27 have spoken to Paul obviously. I just don't remember.

28 308 Q. Well, he suggested in evidence that you said to him
29 words to the effect of, you know, either he changes

1 unit or else the superintendent would move his entire
2 unit?

3 A. Yeah. I think in my own statement I cover that. I
4 can't say that conversation happened but neither can I
5 deny that it did. 14:48

6 309 Q. Then finally, in relation to the Haddington Road issue
7 and sanctioning work under the Haddington Road
8 agreement, can you just tell us what you consider the
9 practice to have been?

10 A. Well -- 14:48

11 310 Q. First of all --

12 A. Yes.

13 311 Q. -- before Superintendent Comyns transferred to Fermoy
14 Garda Station?

15 A. Well, there was no Haddington Road then. 14:48

16 312 Q. All right.
17 CHAIRMAN: Quite simple. It's complicated enough. If
18 he starts with a regime in operation under --

19 313 Q. MR. MARRINAN: So what was the regime? what was the
20 regime? what was the process you went through? 14:49

21 A. In relation to which now?

22 314 Q. Haddington Road under Superintendent Comyns?

23 A. It came in maybe about two years after he came.
24 Initially I granted Haddington Road but I was told I
25 wasn't to do it any more, that everything was to go 14:49
26 through the superintendent or the inspector.

27 315 Q. When you say you granted it?

28 A. The lads would ring me and say, look, I need to do a
29 full hours here and I'd say, belt away.

1 316 Q. When did that change occur, do you recall?
2 A. I can't. But it wouldn't have been a long time into
3 it, sometime after the start, maybe or first second
4 A85, I remember being told, no, it's me that grants
5 Haddington Road, you don't grant it, basically. 14:49

6 317 Q. Right. Insofar as your signature may appear on an A85.
7 A. Yes.

8 318 Q. Is that merely just simply confirming that the work was
9 done?
10 A. Work was completed, yes. 14:49

11 319 Q. Or was carried out, right. And this instruction in
12 relation to leaving it to the superintendent or the
13 inspector, did that apply across the board in relation
14 to all members in Mitchelstown or was it just in
15 relation to Sergeant Barry? 14:50

16 A. No, as I say, initially I signed them but then I got a
17 direction down to say I wasn't to grant it, so anything
18 that was -- anything after that had to go through the
19 superintendent or the inspector.

20 320 Q. And did that apply to all members? 14:50
21 A. Yes.

22 321 Q. Right.
23 A. Well now, when I say that applied to all members, that
24 I was looking after.

25 322 Q. Yes. 14:50
26 A. Yes.

27 323 Q. In Mitchelstown?
28 A. I wouldn't have been looking after detective branch as
29 such, you know.

1 324 Q. would you answer any questions?

2 A. I will, indeed.

3

4 END OF EXAMINATION

5

14:50

6 CHAIRMAN: Now, Mr. Costelloe.

7 MR. COSTELLOE: If you just give me one moment, please.

8 CHAIRMAN: Certainly.

9

10 SUPERINTENDENT EDMUND GOLDEN WAS CROSS-EXAMINED BY

14:50

11 MR. PERRY, AS FOLLOWS:

12

13 325 Q. MR. PERRY: Good afternoon. My name is David Perry, I
14 am one of the barristers representing retired Sergeant
15 Paul Barry. Can I just ask you, just before I ask you
16 any questions, just what your reference is? I know
17 you're retired, would you prefer me to refer to you as
18 Mr. Dunne, Sergeant Dunne, I've been calling retired
19 Sergeant Barry Sergeant Barry all the way through.

14:52

20 A. It doesn't make any odds to me.

14:52

21 326 Q. I might, just to at least ensure I remain somewhat
22 consistent across the board, I might just refer to you
23 as Sergeant Dunne then, if that's all right?

24 A. Yes.

25 327 Q. I just wanted to ask you a few brief questions about
26 your evidence about your application that Sergeant
27 Barry made for annual leave in May 2013. Now, you have
28 covered that in a lot of detail, I don't need to go
29 into a huge amount of detail about it, but there are

14:52

1 just a few matters I want to touch on?

2 A. Sure.

3 328 Q. I mean, is this a fair characterisation of your general
4 attitude towards Sergeant Barry's leave application,
5 that you were supportive of that application? 14:53

6 A. Oh yeah, absolutely.

7 329 Q. And that you and Sergeant Quinn made efforts to
8 facilitate Sergeant Barry so that he could take up that
9 leave, is that right?

10 A. That's correct. 14:53

11 330 Q. I just want to ask you about some of the efforts that
12 you made. Sergeant Barry, in a letter dated 26th May
13 2013, so this is at page 751 of the materials, he says
14 in that letter that:

15 14:53

16 "As a result of my leave being refused both Sergeant
17 Jeremiah Quinn and Sergeant Aidan Dunne have offered to
18 help cover my absence."

19

20 I just wanted to ask, is that accurate? 14:53

21 A. Yes.

22 331 Q. Is that an accurate characterisation, that you did
23 offer to help cover his absence?

24 A. Yes, indeed, yes.

25 332 Q. Can I just refer you to your statement then to the 14:53
26 tribunal, at page 1880, please. I am just referring
27 here to the third paragraph of your statement. Towards
28 the end of that paragraph, with the sentence starting
29 "I did submit", do you see that?

1 A. Yes.

2 333 Q. And you say there:

3

4 "I did submit a report to Superintendent Comyns at
5 Fermoy Garda Station and I did speak to the
6 superintendent about the issue, explaining that I
7 believed there was enough cover to facilitate the
8 application for leave save for one day, July 13th,
9 2013."

14:54

10

11 I will ask you about the report in a moment, but can I
12 just ask you about the second part of that sentence.
13 Did you have a conversation with Superintendent Comyns
14 outlining that in your view there was sufficient cover
15 to facilitate leave applications, save for one day in
16 July?

14:54

17 A. Yes.

18 334 Q. And that was your view as the sergeant in charge of
19 Mitchelstown Garda Station, is that right?

20 A. That's correct, yes.

14:54

21 335 Q. Now, I should just say to you, just in fairness, just
22 in terms of how Superintendent Comyns characterises the
23 conversation he had with you, he gave an account of it
24 in evidence to the tribunal, there's an account of it
25 contained in a memorandum of questions and answers with
26 the tribunal investigators, which is at page 5413 of
27 the materials, which I don't think we need to refer to,
28 unless you want to see it, but essentially, he doesn't
29 quite characterise the conversation like that, and

14:54

1 Superintendent Comyns says that you said words to him
2 to the effect that, it would be all right, that if
3 anything happened they would be around, meaning the
4 sergeants in Mitchelstown would cover. Is that a fair
5 characterisation of the conversation that you had? 14:55

6 A. Well, a conversation ten or 11 years ago, I just
7 couldn't say. Like, what I said here is what I
8 remember at the time, that we said we'd cover the leave
9 for him, to make sure, but there was one day that there
10 was difficulty and I think I wrote a report covering 14:55
11 that. What the verbal conversation was, I don't know.

12 336 Q. Yes.

13 A. Now, bear in mind, at this stage I probably was
14 starting at half seven in the morning, a quarter to
15 eight, I had kids to drop off, so I would be in early 14:55
16 anyway. Like if the shift started at seven o'clock, I
17 was going to be in at that time anyway, do you know?

18 337 Q. I just wanted to ask you about the report that you
19 mentioned. Can we just look at page 161, please. I
20 think this document was already opened to you. You 14:55
21 referred in your statement to having submitted a report
22 to Superintendent Comyns. I just wanted to check with
23 you, is that the report that you mention in your
24 statement?

25 A. Yes, because it covers that neither James Hallahan or I 14:56
26 were working on July 13th.

27 338 Q. Yes.

28 A. Yes.

29 339 Q. All right. Which seems to connect with what you were

1 saying about the conversation that you with
2 Superintendent Comyns?

3 A. Yes.

4 340 Q. Can I just ask you to look then at one final document
5 just in relation to this issue, it's just up a page
6 actually, page 160. And this is a letter that appears
7 to be addressed to Sergeant Barry, dated 22nd July
8 2013, is that right?

14:56

9 A. Yes.

10 341 Q. And in the content of the letter you say:

14:56

11

12 "For report on your return, please."

13

14 And you say:

15

14:56

16 "Both Sergeant Quinn and I tried to explain this to the
17 district officer, but to no avail."

18

19 Can I just ask you what you mean by that? what did you
20 try to explain to the district officer to no avail?

14:57

21 A. Well, obviously that the leave was covered bar July
22 13th. Now, when we did, it may have been from a PAF
23 meeting, maybe it was when the superintendent called,
24 maybe it was by phone, I couldn't tell you when the
25 conversation took place, but obviously I wouldn't have
26 written that but we did have a conversation with the
27 superintendent to say the leave was covered.

14:57

28 342 Q. Yes. Just bear with me just one moment.

29 A. Yeah.

1 343 Q. Thank you very much.

2 A. Okay.

3

4 END OF EXAMINATION

5

14:57

6 CHAIRMAN: Now, Mr. Murphy?

7

8 SUPERINTENDENT EDMUND GOLDEN WAS CROSS-EXAMINED BY

9 MR. MURPHY, AS FOLLOWS:

10

14:57

11 344 Q. MR. MURPHY: Sergeant Dunne, thank you very much. Just
12 one or two questions, if I might. Can I just ask you
13 to be shown document 161, please. Thank you. And,
14 sergeant, I think the position is, as you have
15 indicated in the course of your letter, that there was
16 just one gremlin, as you see it, which is relating to
17 the 13th July.

14:57

18 A. Yes.

19 345 Q. And you there say:

20

14:58

21 "In his report, Sergeant Barry has indicated that
22 Sergeant Hallahan and I will be working on 13th July
23 2013. This is not correct. Both Sergeant Hallahan and
24 I are on rest days."

25

14:58

26 Just in practical terms could you assist the tribunal,
27 if that situation wasn't fixed, what did that mean in
28 practical terms for the 13th July?

29 A. Well, you see, again, it would have meant there was no

1 sergeant working on his unit.
2 346 Q. Yes.
3 A. But what day of the week it was, if it was a weekday
4 there'd be maybe a two o'clock cover from a seven
5 o'clock start. So depending on what day of the week it 14:58
6 was, there may have been some cover.
7 347 Q. But would you agree with me that it clearly was a
8 situation that had to be addressed?
9 A. Yes.
10 348 Q. Thank you. 14:58

11

12 END OF EXAMINATION

13

14 CHAIRMAN: Now, anybody else? No questions.
15 MR. HARTY: No questions, thank you, Chairman. 14:58
16 CHAIRMAN: No questions. And Mr. Murrinan?
17 MR. MARRINAN: No, nothing arising.
18 CHAIRMAN: Thanks very much. Thank you very much
19 indeed, sergeant, thank you very much indeed. And
20 obviously you're free to go. 14:59

21

22 THE WITNESS THEN WITHDREW

23

24 MS. McGRATH: Chairman, the next witness is Mr. Michael
25 Gallagher, retired garda inspector. 14:59
26 CHAIRMAN: Thanks very much.

27

28

29

1 MR. MICHAEL GALLAGHER, HAVING BEEN SWORN, WAS
2 DIRECTLY-EXAMINED BY MS. MCGRATH, AS FOLLOWS:

3
4 CHAIRMAN: Thanks very much, inspector.

5 349 Q. MS. McGRATH: Now, Mr. Gallagher, your statement is at 15:00
6 page 1379 of the papers, Chair. Now, Mr. Gallagher,
7 you outline in your statement that you were a long
8 serving member, you served for 39 years with An Garda
9 Síochána, is that right?

10 A. That's correct. 15:00

11 350 Q. And you retired on the 7th July 2016, is that right?

12 A. That's correct.

13 351 Q. You outline that you held the rank of inspector and I
14 think it was whilst holding that rank, during 2010 and
15 2016 you say you represented the Munster region as a 15:00
16 representative in the Association of Garda Sergeants
17 and Inspectors, is that right?

18 A. Correct.

19 352 Q. Okay. Now, would it be correct to say, according to
20 your statement, that you first came into contact with 15:00
21 Mr. Barry on the 21st January 2013?

22 A. That's correct.

23 353 Q. Okay. Now, can you outline to the Chairman the nature
24 of how you came into contact with him. I think you say
25 you were approached by Mr. Barry at essentially an 15:01
26 Annual General Meeting, is that right?

27 A. Yes. Previously I never knew Paul Barry or Sergeant
28 Paul Barry at the relevant time, but on that particular
29 day, that particular evening, I attended the Annual

1 General Meeting of the Cork North division, it was
2 their AGSI meeting for the month of January, and Paul
3 Barry had attended that meeting and he approached me.
4 354 Q. Okay. Can you tell the Chairman about that meeting
5 itself and your conversation with Mr. Barry that 15:01
6 afternoon?
7 A. From memory, when the meeting finished I recall Paul
8 Barry approaching me and he asked me if I would
9 represent him in my capacity as an AGSI rep for AGSI in
10 his dealings with his authorities in the Fermoy 15:02
11 district and that he had a particular problem with the
12 superintendent in Fermoy, that he had made a bullying
13 and harassment allegation against him.
14 355 Q. Okay. And at this stage, am I correct that I read in
15 the papers you would have been operating out of the 15:02
16 Clare division at this time?
17 A. Yes, I had been elected as the Clare rep for the
18 Munster region.
19 356 Q. Okay. So as you just told the Chairman, he spoke to
20 you about the bullying and harassment complaint, is 15:02
21 that right?
22 A. He didn't outline, just that he had made a bullying and
23 harassment complaint.
24 357 Q. Okay. And did he identify the superintendent in
25 question to you? 15:02
26 A. He did.
27 358 Q. Okay. Would you have been familiar -- you say you
28 didn't know Paul Barry, would you have been familiar
29 with Superintendent Comyns previously to this?

1 A. Yes, we were from the same part of the country in
2 county Clare, we would be from neighbouring parishes.
3 He'd be younger than me now but I would be aware of him
4 from playing football et cetera.

5 359 Q. And you say in your statement: 15:03
6
7 "Paul Barry informed me that in the circumstances he
8 was not happy to have any represent from the
9 Association of Garda Sergeants and Inspectors from the
10 Cork division representing him." 15:03
11
12 Do you remember that?

13 A. That's what the member stated.

14 360 Q. Did you discuss that any further? Did he outline any
15 further reasons for that? 15:03
16
17 A. Well, I think in a situation what he outlined was that
18 he -- what I took from him, that he took it that the
19 representatives from that particular region would be
20 over friendly or would be friendly, we'll say, with 15:03
21 Superintendent Comyns. He wanted somebody from outside
the Cork region to accompany him.

22 361 Q. Okay. Then just before we continue onwards, you say
23 that you represented the Munster region between 2010
24 and 2016 and in relation to that, we know that
25 Mr. Barry retired in 2016, would you be familiar with 15:03
26 that from the papers?

27 A. I retired in 2016, I think Sergeant Barry served some
28 time after that, did he not? Or did he retire in 2016?

29 362 Q. I believe it was June 2016, but I can be corrected on

1 that?

2 A. I'm not quite sure now. I retired in July. We'll say,
3 maybe for that particular year in 2016 I would have no
4 dealings with Paul Barry. I thought that he served
5 longer than 2016. Maybe not. 15:04

6 363 Q. Okay. But throughout -- from the date of this contact
7 did you deal with him effectively throughout? Did you
8 see yourself as his AGSI representative?

9 A. Correct, other than when I wasn't available to attend
10 meetings and as stated, superintendent, then Inspector 15:04
11 Golden stood in in my absence.

12 364 Q. Okay. You go on in your statement, in the next
13 paragraph you say:
14

15 "Subsequently Paul Barry informed me of the complaint 15:04
16 he had made to HRM and Garda Headquarters concerning
17 his district officer perverting the course of justice
18 in relation to a sexual assault investigation."
19

20 Is that right? 15:04

21 A. Correct.

22 365 Q. So, in relation to your level of knowledge then at the
23 background at this stage and Mr. Barry, is that
24 essentially reflecting your level of knowledge?

25 A. Well, he filled me in on the details of the sexual 15:05
26 assault case and what transpired.

27 366 Q. Okay. You go on to say:
28

29 "He also informed me that while he was on sick leave he

1 received a phone call from Sergeant William Gleeson,
2 the then president of the Association of Garda
3 Sergeants and Inspectors. "

4
5 Is that right?

15:05

6 A. That's correct.

7 367 Q. Can you tell the Chairman what that was about?

8 A. He told me that he had received a phone call from --
9 who was a colleague of mine in Phibsborough, from
10 Sergeant William Gleeson, who represented the Cork city
11 division and who was then the president of Garda
12 Sergeants and Inspectors to the effect that he wanted
13 to elicited from Sergeant Barry what complaint he had
14 made about Superintendent Comyns in Fermoy Garda
15 Station, the details of the complaint.

15:05

16 368 Q. How did you deal with that?

17 A. I had to deal with it. I mean, I asked Sergeant Barry
18 what did you tell Sergeant Gleeson and he told him, I
19 have made a bullying and harassment complaint against
20 the superintendent.

15:06

21 369 Q. And in the next, just at the close of that paragraph
22 you say:

23
24 "Paul Barry further told me that Sergeant Gleeson told
25 him to ask his solicitor in relation to getting a
26 medical pension. "

15:06

27
28 Does that reflect the conversation had you?

29 A. That's what Sergeant Barry said to me.

1 370 Q. Okay. Now, you outline in your statement, you say:
2
3 "I subsequently attended a number of meetings with Paul
4 Barry."
5 A. Yes. 15:06

6 371 Q. And in particular you outline the names there of the
7 various individuals, Chief Superintendent Catherine
8 Kehoe, Chief Superintendent Gerard Dillane, Inspector
9 Tony McLoughlin, Inspector Paul O'Driscoll and
10 D/Sergeant James white? 15:06

11 A. That's correct.

12 372 Q. Is that right?

13 A. That's correct.

14 373 Q. We will come to it in due course but you also attended
15 in relation to a discipline investigation by 15:06
16 Superintendent Pat Lehane, is that right?

17 A. That's correct, yes.

18 374 Q. Now, we will come back to that in a moment in sequence.
19 But can I ask you, you say you attended a number of
20 meetings, would there have been phone calls as well, I 15:06
21 mean over this particular period? would you say that
22 this is a full reflection of all your dealings or was
23 there anything else supplementary to that?

24 A. No, that would be basically it. what would happen, I
25 presume the authorities or whoever, the chief 15:07
26 superintendent would want to speak with Sergeant Barry
27 and he then would have contacted me and there would
28 have been a date fixed, and that date was put to me and
29 I would say yes.

1 375 Q. Okay.

2 A. And I would drive to wherever the area was. Mostly the
3 meetings -- all the meetings, actually, transpired in
4 Mitchelstown Garda Station.

5 376 Q. Okay. How would you perceive your role in relation to 15:07
6 all those meetings?

7 A. I was there to assist a colleague. I had been a
8 trained advocate for the garda sergeants and inspectors
9 in advising.

10 377 Q. Okay. Now, you have -- we'll come back to your 15:07
11 statement now in a moment, but you attached a number of
12 diary exhibits to your statement when you were making
13 it for the tribunal, isn't that right?

14 A. That's correct.

15 378 Q. And these are listed from page 1381 onwards. Can I 15:07
16 just ask you though, for example, we will just look at
17 one of them, the first one you have 1382. And this is
18 2013, we see there at the top of the page. And you
19 have a record, and starting essentially at the
20 beginning, on the 27/2/2013 you've a record there of 15:08
21 "Meeting Fermoy, Paul Barry", is that right?

22 A. That's correct.

23 379 Q. So this is essentially a pocket diary, is this right?

24 A. A pocket diary, I might have a number of meetings, as
25 can you see in the other two dates, I was a special 15:08
26 executive in Dublin. That was for my own benefit, to
27 know where I would be on any relevant day. On that
28 particular date I would have performed duty in Ennis
29 before that, before travelling to Fermoy.

1 380 Q. Okay. And I think, Mr. Gallagher, the rest of the
2 dates that you've attached, you've exhibits I think 1
3 to 8. They're all in the same nature?
4 A. Yes.

5 381 Q. A photocopy of your diary? 15:08
6 A. Yes, for my own benefit, where I was an any particular
7 day.

8 382 Q. Okay. And I think this is where it might be a little
9 bit difficult, asking you to recall what those meetings
10 were, what they were about. I can try and assist 15:09
11 you --
12 A. Yes.

13 383 Q. -- vis-à-vis what was going on at that particular time?
14 A. Yes.

15 384 Q. Within reason. You met him there. So, as you say, you 15:09
16 had first met him on the 21st January 2013 and here in
17 your diary is your first record of meeting him in --
18 now, does it say Fermoy? You say Mitchelstown?
19 A. It should be Mitchelstown.

20 385 Q. Okay. So on the 27th February, we know from the 15:09
21 tribunal's inquiries to date that Chief Superintendent
22 Catherine Kehoe had been appointed a week or more
23 previously in relation to the bullying and harassment
24 complaint. Can you assist the tribunal in relation to
25 this particular meeting? Do you know what it was about 15:09
26 and what it concerned?
27 A. Well, I presume I can. Well, from my knowledge, I
28 presume she was there to take a statement in relation
29 to that. She probably would have been assisted, I know

1 she would at some meetings, assisted by Sergeant James
2 white and the other sergeant there, the name escapes me
3 for a minute.

4 386 Q. CHAIRMAN: Superintendent Lordan.
5 A. No, I never attended a meeting with Superintendent 15:10
6 Lordan. There was another member there.
7 CHAIRMAN: O'Driscoll.
8 A. O'Driscoll, yes.

9 387 Q. MS. McGRATH: Do you remember yourself why there was a
10 meeting that dated or what it consisted of? 15:10
11 A. I presume she was there to take a statement. I was
12 only there as an observer, I really didn't get anything
13 that transpired, she would be taking a statement from
14 Sergeant Barry and I was really there as an observer.

15 388 Q. Can I ask you about an event that we have been 15:10
16 discussing here at the tribunal. We know that that
17 Chief Superintendent Dillane and Inspector O'Sullivan
18 met Mr. Barry at Mitchelstown Garda Station on the 9th
19 April 2013 and it's recorded in the chief
20 superintendent's notes that the meeting terminated "as 15:11
21 Mr. Barry wanted to discuss it with his AGSI
22 representative". And I think he subsequently gave
23 evidence that he did speak to you about it. Do you
24 have any recollection of that?
25 A. You're saying that Sergeant Barry met Chief 15:11
26 Superintendent Dillane unaccompanied without an AGSI
27 representative?

28 389 Q. Yes, on the 9th April 2013. There's a note, we can
29 open it there just to assist you, at 2078. If you see

1 remember, did this meeting concern any of this? Does
2 it jog your memory as to what that meeting might have
3 been about?

4 A. No, I can't assist you on that. I can't recall.

5 394 Q. If you look at the 29th, the following day? 15:13

6 A. Yes.

7 395 Q. You have "Bullying and harassment 11am", is that again
8 concerning Mr. Barry, do you know?

9 A. I can't say.

10 396 Q. What would have been your awareness around this time? 15:13
11 Chief Superintendent Kehoe submitted the bullying and
12 harassment file on the 30th May, do you have any
13 knowledge of any of this, all of these events happening
14 around that time?

15 A. What I was aware of at the relevant time, that Chief 15:13
16 Superintendent Kehoe was in the process of
17 investigating this matter and taking a statement. I
18 remember distinctly attending two meetings with her,
19 accompanied by her colleagues in relation to taking
20 those statements. 15:14

21 397 Q. Well, I think just, as I say, I can only work off the
22 dates in your diary, but, as I say, around this time,
23 the 28th/29th, the issues had arisen of the refusal of
24 Mr. Barry's annual leave and also the issue of
25 disciplinary proceedings for force majeure leave. Does 15:14
26 that jog your memory? Do you remember discussing these
27 issues with Mr. Barry?

28 A. I have a memory of attending a meeting with
29 Superintendent Lehane, who investigated an issue in

1 relation to annual leave for a breach of discipline and
2 where he was found not to be in breach. Superintendent
3 Lehane found him not in breach of any disciplinary
4 regulations.

5 398 Q. Okay. We will move on to that. It is the next diary 15:14
6 entry you have at 1384, and this is the 14th October
7 2013, 5pm Mitchelstown. And I think, Mr. Gallagher,
8 that is the date of the interview that you attended
9 with him with the superintendent?

10 A. Okay. 15:15

11 399 Q. Okay. Now, you say in your statement, you say:

12
13 "I have a vague memory that on that relevant date
14 Superintendent Lehane was quoting from HSE guidelines."

15 A. Yes. 15:15

16 400 Q. Do you remember that?

17 A. I do.

18 401 Q. Can you tell the Tribunal what that was about?

19 A. Well, basically my understanding was that he was
20 quoting from guidelines that had nothing at all to do 15:15
21 with this investigation. I made that remark to him.
22 And I think afterwards he said, listen, one way or the
23 other I am finding Paul Barry -- he has no case to
24 answer.

25 402 Q. And can I ask you to look at -- if Mr. Murphy can open 15:15
26 page 42, which is Mr. Barry's statement. If you just
27 go down there, you will see HSE in brackets, I just
28 want to stop around there. Do you see that?

29 A. Yes.

1 403 Q. So just a couple of lines above that, it says:
2
3 "I again met with Superintendent Lehane in the presence
4 of Inspector Gallagher, my AGSI represent.
5 Superintendent Lehane produced force majeure 15:16
6 documentation and began reading from same. Inspector
7 Gallagher asked him where he had got this legislation
8 and he said he got it from the Health Service Executive
9 (HSE). "
10 15:16
11 Do you remember that?
12 A. Correct.
13 404 Q. "At this stage Inspector Gallagher asked him was it a
14 garda or a nurse he was interviewing."
15 15:16
16 Do you remember that?
17 A. Yeah, possibly I did say that.
18 405 Q. It was then that Superintendent Lehane said that he
19 couldn't find any breach within the Garda regulations.
20 Is that an accurate reflections of what happened? 15:16
21 A. That'd be a fair summary, yes.
22 406 Q. Can I ask you to look at Mr. Lehane's statement, now
23 retired, 1347, and in particular if you go down to
24 1349. So if you go down to the end of the page?
25 A. Yes, I see that. 15:17
26 407 Q. He outlines there effectively the issue with regard to
27 the telephone call. Do you remember that,
28 Mr. Gallagher?
29 A. You're talking about the 14th October 2013, I

1 interviewed Garda Paul Barry, is that the issue, is
2 that the one?

3 408 Q. That's right. If you go on past the phone call issue
4 he says:

15:17

5
6 "During my interview..."

7
8 Do you see that, third line from the end?

9 A. Yeah. Go on. "During my interview with Sergeant
10 Barry..."

15:17

11
12 409 Q. He said "During my interview with Sergeant Barry he
13 appeared to be under some stress, he appeared to be
14 nervous and somewhat withdrawn and overwhelmed by the
15 investigation, to the extent that I had some concern
16 for his welfare."

15:17

17
18 Do you have any comment on that to assist the Chairman?

19 A. Well, I suppose in fairness, what I found in any of my
20 dealings, that would be a fair reflection of any
21 meeting I attended with Superintendent Barry [sic]. He
22 was overwhelmed by the whole situation of the way he
23 had been treated.

15:17

24 410 Q. Okay. Now going back to, moving on from there, it
25 seems just according to your statement, you didn't have
26 an involvement with Mr. Barry for a couple of months.
27 The next record you have is 20/2/2014, and that's at
28 page 1385. Again you record that on your diary. So
29 that's the 20th February. And there's a record of a

15:18

1 meeting, I think you met him by appointment with Chief
2 Superintendent Kehoe and Inspector Paul O'Driscoll.
3 And it's at page 1119, the chief superintendent has
4 notes of that meeting. Do you remember this particular
5 meeting by any chance? If you just go down there to 15:18
6 20th February 2014. In particular, if you look at the
7 second line, this is the chief superintendent
8 explaining that she had parked the criminal
9 investigation/discipline investigation for advice under
10 the regulations, do you remember that? 15:19

11 A. Second paragraph, is it?

12 411 Q. Yes, the start of second paragraph?

13 A. "I read over Paul Barry's statement" is that it? No.

14 412 Q. So we're looking now, this is a note -- sorry,
15 Mr. Gallagher, I might not have been very clear. This 15:19
16 was a note that was taken of that meeting that you
17 attended with Mr. Barry and the note is that of Chief
18 Superintendent Kehoe?

19 A. Yes.

20 413 Q. And she is outlining at the start of the second 15:19
21 paragraph there that she explained to Mr. Barry that
22 she had parked the criminal investigation/discipline
23 investigation, do you remember that?

24 A. Yes.

25 414 Q. Do you remember that particular meeting? Can you tell 15:19
26 the Chairman in your own words about that meeting, what
27 your recollection is?

28 A. I wouldn't be able to give you a true reflection of
29 what happened at the meeting. I would be there, I

1 didn't take any notes of that particular meeting.

2 415 Q. Okay. She describes it at the end there as the meeting
3 concluding cordially, would you agree with that?

4 A. Well, all I can say is that any meeting I attended with
5 Superintendent Kehoe, every one of the meetings ended 15:20
6 cordially and were handled in a very professional
7 manner by Chief Superintendent Kehoe.

8 416 Q. And I think she records at the end of that, she says:
9
10 "I said I would endeavour to expedite the investigation 15:20
11 without compromising on its thoroughness."
12

13 Do you see that? There at the very last line.

14 A. Yes. Correct.

15 417 Q. Now, after this you have a record in your diary of 15:20
16 meetings in relation to Mr. Barry on the 23rd April and
17 the 23rd July 2014. And I think you attended with him
18 when he was meeting Inspector O'Driscoll to give
19 additional statements to the criminal investigation, is
20 that right? 15:21

21 A. Correct, I have a vague memory of that, yes. I think
22 he may have been -- was he accompanied by Detective
23 Sergeant James White?

24 418 Q. Yes.

25 A. Correct. 15:21

26 419 Q. Okay. But in between those dates, in June 2014, there
27 is an issue again that the tribunal is looking at,
28 where Mr. Barry was scheduled for duty at the Irish
29 Open Golf tournament at Fota Island, do you remember

1 that?

2 A. I do, yes.

3 420 Q. This was on dates running from the 18th June?

4 A. Yes.

5 421 Q. We are aware from both Mr. Barry's evidence and his 15:21
6 statement that he said that he sought advice from you
7 in relation to this issue, can you assist the Chairman
8 in relation to that?

9 A. Yes, I can recall that incident vividly, yes.

10 422 Q. Okay. Can you tell the Chairman in your own words then 15:21
11 about that incident?

12 A. Well basically, I'm not quite sure did I meet him
13 face-to-face or was it per phone call, but Sergeant
14 Barry did contact me in a distressed state, telling me
15 that he had been detailed for this golf tournament or 15:22
16 major golf tournament that was going taking place for a
17 number of days and that he was thinking of not
18 attending because he was fearful that he would come in
19 contact with Superintendent Comyns. My advice to him,
20 that he should attend for duty as detailed because if 15:22
21 he didn't attend that he would be leaving himself open
22 to disciplinary regulations.

23 423 Q. Okay.

24 A. A disciplinary inquiry. And I think he took my advice.

25 424 Q. Okay. were there any further discussions between the 15:22
26 two of you in relation to that or is that the extent of
27 it?

28 A. At that relevant time, that was extent of it. I think
29 after the event finishing he did tell me that he was in

1 the same room as -- that Superintendent Comyns carried
2 out some detail on the relevant date, that there was
3 some switching of superintendents or some issue.

4 425 Q. Now, we know that he had voiced his concerns to
5 Superintendent Quilter in relation to being detailed 15:23
6 for the duty. Do you remember did you speak to him
7 before or after he had spoken with Superintendent
8 Quilter? Can you assist in relation to that?

9 A. No.

10 426 Q. Okay. Now, again you outline two further meetings with 15:23
11 Mr. Barry at the close of 2014 in your statement. You
12 give the 21st November and the 2nd December 2014. And
13 again, they're just brief notes in your diary saying
14 that they concern Paul Barry. Again, are you in a
15 position to assist the tribunal as to what they might 15:23
16 have concerned?

17 A. I'm sorry, I can't.

18 427 Q. Okay. Now, one of the other issues that we have come
19 across in our evidence is in relation to an offer of
20 mediation that was made to Mr. Barry by Chief 15:23
21 Superintendent Dillane in April 2014. Now, we know
22 from the papers and it's certainly Mr. Barry's evidence
23 that he was going to talk to you about that, do you
24 remember that?

25 A. Yes, yeah, I think that's where you were alluding to 15:24
26 earlier on when you were questioning me, that he must
27 have attend add meeting in my absence with Chief
28 Superintendent Dillane and Inspector O'Sullivan where
29 this issue may have been put to him. I know he

1 subsequently contacted me and we had another meeting in
2 Mitchelstown Garda Station with Chief Superintendent
3 Dillane and Inspector O'Sullivan in relation to that
4 issue.

5 428 Q. Okay. And it's certainly Mr. Barry's position in 15:24
6 correspondence that we have seen that he spoke to you
7 and that you met subsequently with the chief
8 superintendent on the 24th April and Mr. Barry was
9 agreeing to submit to mediation at the Labour Relations
10 Commission, is that right? 15:24

11 A. Oh it was discussed in depth at that meeting and both
12 myself and Inspector Barry [sic] were in agreement that
13 we would enter mediation but I think Chief
14 Superintendent Dillane informed us at that meeting that
15 he was happy with that situation but he would have to 15:25
16 go back and check with his superintendent to know would
17 he be willing to enter into mediation.

18 429 Q. I think the communications in relation to that came by
19 via you, is that right, where you were told by the
20 superintendent that Superintendent Comyns was not going 15:25
21 to participate in the mediation, is that right? Do you
22 remember any of that?

23 A. I have a vague recollection of that. I was going to
24 say no but I have a vague recollection that that did
25 happen. 15:25

26 430 Q. Okay. Can I ask you very finally in relation to an
27 overall issue in relation to Mr. Barry. If I could
28 Mr. Murphy to open a transcript at Day 178, page 37.
29 It's a line 117. This is page 37 -- sorry line 11,

1 sorry, that's my fault. And just to explain to you,
2 Mr. Gallagher, this is direct -- well no, Mr. Barry was
3 under cross-examination on Day 178 by counsel for An
4 Garda Síochána and he's asked a question there at line
5 11?

15:26

6 A. Where, sorry?

7 431 Q. This is Mr. Barry being a question at line 11. In
8 fact, the easiest way, do you see the numbers 117?

9 A. 117, yeah.

10 432 Q. "Q. Would it not in those circumstances, if it had
11 happened, be logical for you to discuss that factor
12 with your advisers or to get them to indicate that you
13 weren't prepared to accept these offers?"

15:27

14
15 And this is a line of questioning in relation to
16 possible transfers to other stations, okay? Now
17 Mr. Barry says:

15:27

18
19 "A. My advisers knew. I had spoken with my advisers
20 and I had told them that I did not wish to leave
21 Mitchelstown Garda Station and that I was not going to
22 apply for any garda station offered to me."

15:27

23
24 Now, in relation to your role and any discussions with
25 transfers or, I suppose, on that level of what was
26 going on with Mr. Barry during this period, can you
27 assist the Chairman, did you know anything about these
28 discussions in relation to transfer or what Mr. Barry's
29 position was?

15:27

1 A. Yes, I would be aware of those situations in the
2 background, that there was efforts made to transfer him
3 to different locations. I think Mallow, Glanmire, I
4 think even Cork City was discussed one stage. I'm
5 nearly sure from recollection that his name appeared in 15:28
6 a bulletin for Cork City. I have another recollection
7 of Sergeant Barry telling me that post, official post,
8 I'm not sure was it official post or private post, that
9 when he was still attached to Mitchelstown, I think it
10 went to Anglesea Street garda station with his name on 15:28
11 it.

12 433 Q. Okay. And is that the level of your knowledge in
13 relation to transfer or transfer discussions in
14 relation to Mr. Barry?

15 A. Yeah, that'd be fair, yeah. 15:28

16 434 Q. Okay. I wonder could you answer any questions please,
17 Mr. Gallagher?

18 A. Thank you.

19

20 END OF EXAMINATION 15:28

21

22 CHAIRMAN: Yes.

23

24 MR. MICHAEL GALLAGHER WAS CROSS-EXAMINED BY

25 MR. COSTELLOE, AS FOLLOWS: 15:28

26

27 435 Q. MR. COSTELLOE: Good afternoon, Mr. Gallagher, just a
28 couple of very short questions for you. Could we go
29 back to the golf in June 2014. He contacted you, this

1 is Mr. Barry -- sorry, let me begin again, I beg your
2 pardon. I am one of the barristers instructed to
3 represent Paul Barry. So it's in that capacity that I
4 am just going to ask you a couple a very short
5 questions, okay.

15:29

6 A. Thank you.

7 436 Q. Going back to the issue about the golf in Fota, and you
8 telling us that you had a vivid recollection of
9 engaging with him about his concerns about meeting with
10 Superintendent Comyns and you advising him accordingly.
11 You said there in your evidence a moment ago that you
12 did advise him that he should go to work at the golf
13 and what you said was that if he didn't he'd leave
14 himself open to further disciplinary inquiries. You
15 told the Chairman that there about four or five minutes
16 ago, you remember?

15:29

17 A. That's correct, yeah.

18 437 Q. In the context of that particular conversation where he
19 contacted you and you offered him advice, did you
20 mention to him that it could provide a further basis
21 for them, by which I mean his superior officers, to
22 seek to have him transferred out of Mitchelstown, if he
23 didn't go to work at the Open?

15:29

24 A. Well, it'd be much the same thing if he was going to be
25 -- if a disciplinary inquiry was to be an issue, that
26 situation would probably happen.

15:29

27 438 Q. Yes. And then the only other thing then is that in
28 relation to the transfers, the efforts that were being
29 made to transfer him, was there a discussion in your

1 presence or do you remember him or anybody talking
2 about the distinction between him being transferred by
3 way of being directed to move as opposed to him asking
4 to move, the distinction between the two processes of
5 him transferring?

15:30

6 A. My understanding, and I think I am correct, that
7 Sergeant Barry never asked to be moved from
8 Mitchelstown, that he was quite happy there. He didn't
9 want to move.

10 439 Q. Just bear with me one second, please, Mr. Gallagher.
11 Thank you very much, Mr. Gallagher?

15:30

12 A. Thank you.

13
14 END OF EXAMINATION

15:30

15 CHAIRMAN: Mr. Murphy?

16 MR. DONAL MCGUINNESS: I have no questions, Chairman.

17 CHAIRMAN: Anybody else?

18 MR. HARTY: There is one brief matter that arises.

19 CHAIRMAN: Thank you, Mr. Harty. You're for
20 Superintendent Comyns, is that right?

15:31

21 MR. HARTY: That's correct.

22
23
24 MR. MICHAEL GALLAGHER WAS CROSS-EXAMINED BY MR. HARTY,
25 AS FOLLOWS:

15:31

26
27 440 Q. MR. HARTY: It's only an issue that arose there as a
28 result of Mr. Costelloe's questioning of you,
29 Mr. Gallagher. I am correct, am I not, in saying that

1 transfer is not a discipline issue? In other words, it
2 is not a matter that a member can be transferred by
3 reason of a breach of discipline, isn't that correct?
4 That's not a sanction for discipline issues.

5 A. well -- 15:31

6 CHAIRMAN: You couldn't be punished by being
7 transferred, that's what Mr. Harty is saying.

8 A. Yes. Yes and no, if you know what I mean. Sometimes,
9 we'll say, long ago in the guards, I mean people would
10 be transferred over discipline. 15:31

11 CHAIRMAN: You're lowering your voice, Mr. Gallagher.

12 A. well, there's no correct --

13 441 Q. CHAIRMAN: Listen to me for a minute?

14 A. There is no yes and no answer. Sometimes transfer was
15 use, we'll say, to get rid of a situation. 15:32

16 442 Q. CHAIRMAN: what do the rules say, Mr. Gallagher?

17 A. The rules would say --

18 443 Q. CHAIRMAN: what does the Garda Code say? Sorry, listen
19 to me for a minute, stop just for a moment, what does
20 the Garda code say about it? 15:32

21 A. Yes, it wouldn't be a discipline, transfer it's not a
22 discipline.

23 MR. HARTY: Thank you very much.

24

25 END OF EXAMINATION 15:32

26

27 CHAIRMAN: Anybody want to ask anything arising out of
28 that?

29 MR. COSTELLOE: Yes, Chairman.

1 MR. MICHAEL GALLAGHER WAS FURTHER CROSS-EXAMINED BY
2 MR. COSTELLOE, AS FOLLOWS:

3
4 444 Q. MR. COSTELLOE: Insofar, Mr. Gallagher, as it wouldn't
5 be in the disciplinary Code as a method of dealing with 15:32
6 a breach of discipline, would it be fair to say that it
7 might in the past have been used as a mechanism of
8 dealing with a perceived problem, by which An Garda
9 Síochána would move somebody from one area to another
10 in order to get rid of that problem. 15:32

11 A. Do I have to answer that question, Mr. Chairman?

12 445 Q. CHAIRMAN: Sorry?

13 A. Do I have to answer that question?

14 CHAIRMAN: No, I don't think you have to.

15 Mr. Costelloe is in effect making a submission. 15:32

16 A. What I'm saying is, I think that's the way I answered
17 initially, that it would, that would have happened,
18 yeah.

19 MR. COSTELLOE: Thank you.

20 446 Q. CHAIRMAN: Mr. Gallagher, could you say what you are 15:33
21 saying about that? Could you say it simply and
22 clearly, so that I can understand it. This is not a
23 criticism of you.

24 A. No.

25 447 Q. CHAIRMAN: And Mr. Costelloe is right to query, but I 15:33
26 don't know where we are at the moment on this question.
27 Mr. Harty asked you was it not the case that you
28 couldn't transfer somebody as a disciplinary
29 punishment. I understood before anybody asked the

1 question, I understood that it was prohibited, that if
2 somebody was moved as a disciplinary matter they'd be
3 down in the High Court in jig time getting judicial
4 review and there would be no answer to it. That was my
5 understanding of the situation. Is your understanding 15:34
6 of that different?

7 A. No, no, Chairman. No.

8 CHAIRMAN: Now does anybody want to ask anything
9 arising out of that since I have been giving evidence?
10 Thank you very much. Thank you, Mr. Gallagher. Thank 15:34
11 you for coming and making yourself available to us.
12 And thank you for your assistance and you're now free
13 to go.

14 THE WITNESS: Thanks.

15 CHAIRMAN: Thank you very much. 15:34

16
17 END OF EXAMINATION

18
19 THE WITNESS THEN WITHDREW

20
21 CHAIRMAN: Now Mr. McGuinness, Mr. Murrinan,
22 Ms. McGrath.

23 MR. MCGUINNESS: They're the witnesses scheduled for
24 today, Chairman. And we have more witnesses scheduled
25 for tomorrow. 15:34

26 CHAIRMAN: Very good. Are we anticipating finishing
27 the evidence tomorrow?

28 MR. MCGUINNESS: In the normal course of events,
29 Chairman, I think we should finish the witnesses.

1 CHAIRMAN: Thank you very much. And participants might
2 like to address their minds and maybe have a word with
3 counsel for the tribunal about submissions and oral
4 thing. We don't have to decide anything today.
5 Obviously, it's obvious what we are going to be keen on 15:35
6 doing, that we would want to be keen on finishing
7 comfortably before the end of July, allowing people an
8 opportunity to respond in an oral hearing to the
9 submissions made by the other parties. So we want to
10 be as fair as we can, at the same time we want to make 15:35
11 sure that we -- so if you want to have a word, if
12 counsel, Mr. Costelloe, yourself and -- since I am
13 looking at you, I will address --
14 MR. COSTELLOE: Well, in fact, Chairman, if I may, I
15 have said it to some of my colleagues, I feel like I 15:35
16 may not have said it to at least one.
17 CHAIRMAN: Okay.
18 MR. COSTELLOE: But I don't think this will come as
19 a -- it won't be an issue, I hope. Mr. McGuinness, and
20 I am most grateful to him, contacted me last week to 15:35
21 give me the unusual way in which the tribunal would
22 expect to see written submissions, that being a period
23 of about two weeks after the last witness was called.
24 You will recall, Chairman, that this module started a
25 little bit later than had been anticipated and it has 15:36
26 left me in a situation where I professionally am going
27 immediately from this into a very heavy matter, where
28 Mr. Perry, my junior, is also in the same position. I
29 flagged it to Mr. McGuinness and I am only putting it

1 on the record now so that my friends can have an
2 opportunity to address you if they have an issue with
3 it, but I am asking that the matter, rather than us
4 being in a position to put in our submissions within
5 two weeks, that you would give us until the following 15:36
6 week. So essentially what I am asking for is three
7 instead of two weeks from the date of the close of
8 evidence.

9 CHAIRMAN: You may take it, Mr. Costelloe, without
10 consulting anybody else, that that seems a perfectly 15:36
11 reasonable approach.

12 MR. COSTELLOE: Thank you.

13 CHAIRMAN: Now, one thing, that may truncate some
14 further period.

15 MR. COSTELLOE: Yes. 15:36

16 CHAIRMAN: As far as I am concerned, as far as the
17 tribunal is concerned, the big thing is to make sure
18 that we have all the submissions and have afforded
19 people an opportunity of doing it. And I am sure you
20 people want equally to be finished with this, with your 15:37
21 role in this comfortably by the end of July, so that
22 you can get on with your lives and get your holidays or
23 whatever it is you are doing. So, Mr. Costelloe, that
24 does not sound like a problem to me.

25 MR. COSTELLOE: Thank you, Chairman. 15:37

26 CHAIRMAN: If you can talk to counsel, I am sure you
27 have already mentioned it and maybe talk to Mr. Murphy
28 and so on, a schedule can be achieved. Any reasonable
29 schedule won't be refused. But on the specific point

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of three weeks rather than two weeks, have no fear on that.

MR. COSTELLOE: Yes. I can't remember if I said it to Mr. Harty and I am very, very sorry if I didn't. I know I said it to somebody on each of the other teams. 15:37

CHAIRMAN: It's okay. Well you're saying it now. It's not going to be bad news to anybody else.

MR. COSTELLOE: Thank you, Judge.

CHAIRMAN: Mr. Harty is not going to be protesting because he's given three weeks rather than two weeks, 15:37 if I know Mr. Harty. Sorry, if I wasn't entirely wasting my time for 30 years as a barrister, okay. Thank you very much. Very good. Until tomorrow, thank you.

15:38
THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 22ND JULY 2022 AT 11AM

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