

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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AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT
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 WEDNESDAY, 25TH MAY 2022 - DAY 179

179

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

GWEN MALONE STENOGRAPHY
SERVICES

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FORMER PRESIDENT OF THE COURT OF
APPEAL

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WITNESS

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MR. PAUL BARRY

CROSS-EXAMINED BY..... 5

MR. MURPHY

1 THE HEARING RESUMED, AS FOLLOWS, ON WEDNESDAY, 25TH MAY
2 2022:

3
4 CHAIRMAN: Good morning, everybody. Mr. Murphy,
5 whenever you are ready. 11:03

6 MR. MURPHY: Good morning, Chairman, good morning
7 Mr. Barry.

8 THE WITNESS: Morning.

9
10 MR. PAUL BARRY CONTINUED TO BE CROSS-EXAMINED BY 11:03
11 MR. MURPHY AS FOLLOWS:

12
13 MR. MURPHY: Chairman, with your leave I am going to
14 proceed now to deal with section 6, as I indicated
15 yesterday. 11:03

16 CHAIRMAN: Yes.

17 Q. MR. MURPHY: Mr. Barry, I am going to address first of
18 all section 6A, and that deals with your allegation
19 that by taking an inordinate amount of time to complete
20 her investigation, that Chief Superintendent Catherine 11:03
21 Kehoe targeted you. That is the subject I am going to
22 deal with first and then I will move to deal with each
23 of the other section 6 pieces step-by-step, if that's
24 okay.

25 11:03
26 In terms of Chief Superintendent Kehoe, I think she
27 will indicate in her evidence that on 21st February
28 2013 she appointed Superintendent Pat Lordan to
29 continue his already commenced investigation and also

1 she appointed Detective Inspector William Leahy and
2 Detective Garda Mary Gilmartin to assist with the
3 investigations. Did you come in contact with them
4 during the course of that time?

5 A. Yes. 11:04

6 1 Q. I think also she will say that she later appointed
7 Sergeant Susan O'Brien and Detective Sergeant James
8 White to the investigation and you were told about that
9 as well?

10 A. Yes. 11:04

11 2 Q. And in addition, I think at a later stage Detective
12 Garda Brian Sheeran would have been involved?

13 A. That's correct.

14 3 Q. And you may have attended meetings with him in the
15 course of that investigation too. 11:04

16
17 So, if we look at this first period, bullying and
18 harassment, I wonder if we could be shown document
19 number 1046, please. Just looking at that letter
20 briefly, I think you are probably familiar with this 11:05

21 letter, but this is a letter that was written by the
22 chief superintendent. Sorry, if we could scroll down
23 please so I can see the top of the page. Thank you.
24 Just a bit more, please. So, this a letter of 26th
25 February 2013 and this is a letter to Superintendent 11:05

26 Comyns relating to your complaint. And you will see
27 that it is headed "harassment - sexual harassment and
28 bullying", and if I can ask the registrar please to
29 scroll down to the end of the letter. And over to the

1 next page, please. I am sorry, to the next page again,
2 please, 1048. So, just pausing there for a moment,
3 could I draw your attention, Mr. Barry, to the end of
4 the letter, and there you will see in the second last
5 paragraph that Chief Superintendent Kehoe informs you 11:06
6 of the staff that she has recruited and then she
7 indicates:

8
9 "In order to enable me to investigate the matter
10 referred to at points 1-8 above, I am to request from 11:06
11 you all official documentation in your possession.
12

13 And as you will be aware, the timeframe for
14 investigating a formal complaint is 28 days. I am to
15 request your response within one week." 11:06
16

17 So, can I suggest to you that from the outset the
18 question of time and, as you have indicated to your own
19 evidence, was known to you and Chief Superintendent
20 Kehoe as a feature of the bullying and harassment 11:07
21 scheme of things?

22 A. That's correct.

23 4 Q. Thank you. Can I ask the registrar please for document
24 1086, please. I beg your pardon, could I change that
25 please, registrar, to 1050. And again, just to put 11:07
26 this in sequence, I think you will have seen this
27 before. This is Superintendent Comyns' first response
28 as of the 5th March to the letter that we saw a few
29 moments ago. I think you were shown this letter as

1 well. Just for completeness, could we have document
2 1059, please. This is a document of the 11th March and
3 it's a supplemental response from Superintendent Comyns
4 adding in additional information. And again, this was
5 brought to your attention as well? Mr. Barry, you 11:08
6 would have seen this document?

7 A. Yes, I have seen this, yes.

8 5 Q. And in fact if we could have document 1086, please,
9 there was actually a meeting I think that you attended
10 on 14th March 2013, this is a note of that meeting. It 11:08
11 took place at Mitchelstown. I think you will agree
12 that you were present, as was Superintendent Lordan and
13 Chief Superintendent Kehoe?

14 A. That's correct.

15 6 Q. And Chief Superintendent Kehoe will indicate that at 11:08
16 that meeting, as the note suggests, that she discussed
17 with you her appointment, matters under the policy and
18 then also indicated, scroll down just a little bit more
19 please, thank you, also indicated references to the
20 Regulation 14 of the discipline regulations and in 11:09
21 addition that she notified you about Superintendent
22 Lordan's role and that she outlined the progress of the
23 two investigations and the progress being made. Do you
24 recall that meeting?

25 A. I recall it from seeing it there now, yes. 11:09

26 7 Q. Yes. Again she will say that in the course of that
27 meeting she outlined a few matters that were still
28 outstanding, including the date of investigation in
29 relation to the alleged sexual assault on 13/2/2012 and

1 I think that was just a correction in relation to the
2 statement that you had made, is that right?

3 A. That's correct.

4 8 Q. Then there was the issue of Superintendent Comyns'
5 response and I think it was indicated to you that you 11:09
6 would be given a chance to reply to his response to the
7 investigation, isn't that right?

8 A. That's correct.

9 9 Q. Now, I think at that meeting it's also recorded that
10 you indicated that you were not satisfied and you felt 11:10
11 there was already delay in the air and it was explained
12 to you by Superintendent Kehoe that she needed an
13 extension for a period of two weeks and asked you
14 whether you would consent. Do you recall that?

15 A. I do. 11:10

16 10 Q. Yes. And once again, registrar, could I ask you please
17 to scroll down. I think she recorded that you said
18 that she required this additional time -- that she said
19 she required this additional time to further the
20 investigation and she asked you were you content or 11:10
21 satisfied with the content of your statement of
22 complaint and you said that you were satisfied and that
23 the amendment that was referred to earlier was in
24 order, do you recall that?

25 A. Yes. 11:10

26 11 Q. So by this stage on this date you have made your
27 statement, I think you'll agree.

28 A. That's correct.

29 12 Q. Superintendent Comyns has responded and you have been

1 told that, and in addition you've had a meeting with
2 the investigation and they have outlined to you what
3 route they're taking and how the processes of the
4 investigation will develop?

5 A. That's correct. 11:11

6 13 Q. I wonder if we could have document 1076, please. This
7 is a letter of the 8th April. Again if I could ask
8 that it could be scrolled down, so you can see it.
9 This is a letter from you to the chief superintendent
10 and it indicates that you are acknowledging receipt of 11:11
11 information. That's listed as number 1. And 2
12 Superintendent Comyns' submissions of 5th and 11th
13 March. And also a memorandum of interview of
14 Superintendent Comyns that had been taken in Fermoy as
15 part of the investigators on the 22nd March. 11:12

16 A. That's correct.

17 14 Q. It's part of the process of interaction that was
18 recorded in that way. I think at this stage the
19 investigation, that Chief Superintendent Kehoe will
20 say, also wanted to facilitate you by seeking a 11:12
21 response. So I wonder could we go forward to document
22 1078, please. You responded promptly on the 6th May.
23 And just pausing there for a moment, please, I think
24 there's no need to go into the document in detail, but
25 there it's indicated at the outset by you: 11:12

26

27 "With reference to the above, herewith is the response
28 of Sergeant Paul Barry to the answers given by
29 Superintendent Comyns to each allegation of bullying

1 made against him."

2
3 And what follows, if we could just scroll down briefly,
4 I think you will agree, is your response,
5 point-by-point to each of the elements of the 11:12
6 investigation?

7 A. That's correct.

8 15 Q. I wonder, just finally on this section, registrar,
9 could I have document number 1085, please. This is a
10 document dated the 30th May, Mr. Barry, and I wonder if 11:13
11 the registrar could scroll it down a bit more, please.
12 Again, I think it's a document you're familiar with,
13 but this demonstrates that on that date that Chief
14 Superintendent Kehoe is sending the completed
15 investigation file in respect of the investigation of 11:13
16 your complaint under the Garda policy and procedures
17 harassment, sexual harassment and bullying - working
18 together to create a positive working environment. She
19 attaches two volumes. The first is an investigation
20 file with statements and attachments and the second is 11:13
21 an investigation file with appendices and exhibits. I
22 think you were told shortly after that, that this state
23 of affairs existed, that the file had been completed,
24 is that right?

25 A. That's correct. 11:13

26 16 Q. Registrar, can we scroll down to the very end of the
27 letter please? You will see that that is signed by
28 Chief Superintendent Kehoe. So insofar as that
29 particular element is concerned, can I suggest to you

1 that that timeline and that interaction was reasonable
2 and reasonably expeditious given the materials that had
3 to be considered and that there isn't any basis to say
4 that there was an inordinate amount of time taken to
5 deal with that aspect of the investigation, would you 11:14
6 agree?

7 A. No, I don't.

8 17 Q. But you do agree, do you not, that you were
9 communicated with during that time?

10 A. Yes, I do. 11:14

11 18 Q. And during that time did you indicate to Chief
12 Superintendent Kehoe that you believed her
13 investigation, not anything that happened before, but
14 her investigation into bullying and harassment was
15 effectively inordinately delayed? 11:14

16 A. Well, I had to consent to a two-week delay with her.

17 19 Q. Sure. But can I suggest to you that it would appear --
18 CHAIRMAN: Sorry, say that again?

19 A. I consented to a two week lay for Chief Superintendent
20 Kehoe's -- I had consented to a two week delay in her 11:14
21 investigation at this stage.

22 20 Q. CHAIRMAN: Mr. Murphy is asking you, what about this
23 process to you say targeted you by being excessive
24 delay? which part of it or what element of it or how
25 does it go -- I mean it goes from -- she is appointed 11:15
26 in February and she reports in May?

27 A. Well, the time --

28 21 Q. CHAIRMAN: why do you say the delay was excessive? Can
29 you deal with this in two phrases, Mr. Barry: One, how

1 do you say it was excessive, and the second thing I
2 would like to know is, how do you say it was targeting
3 you?

4 A. I say it was excessive in relation to the 28-daytime
5 frame was not met and this was the second time I had 11:15
6 been asked for an extension of time for the
7 investigation. She was appointed in February and it
8 wasn't submitted until May. That was how I felt it was
9 being delayed.

10 22 Q. MR. MURPHY: But would it be fair to say at the time, 11:16
11 as you have fairly accepted you did constructively give
12 an extension consent, is that right?

13 A. I did.

14 23 Q. And it will appear from the notes that your interaction
15 with Chief Superintendent Kehoe at that time was 11:16
16 cordial and businesslike?

17 A. Yes, it was.

18 24 Q. And would you agree with me also that the documentation
19 doesn't reflect any angst on your part that somehow the
20 investigation has gone awry or gone adrift, in fact you 11:16
21 are there facilitating the extensions by giving your
22 consent?

23 A. Not at that stage. My complaint in relation to Chief
24 Superintendent Kehoe was in relation to the overall
25 investigation which had took three years. 11:16

26 25 Q. That again could be important for the Chairman to
27 understand. So I am focused on this early part?

28 A. Yes.

29 26 Q. So just in the light of what you have just said, can

1 the chairman then take it that you're not really
2 preoccupied with this aspect, you're more concerned
3 about what happens or doesn't happen afterwards?
4 A. I am more concerned with what happened afterwards, yes.
5 CHAIRMAN: That is very fair. I understand. 11:16
6 27 Q. MR. MURPHY: Thank you. well, let's move on with that
7 if we can. Can I ask you to say that once you were
8 aware of that, you also had been told that Inspector
9 Leahy had been given a job of conducting enquiries into
10 the criminal discipline aspect of things. That had 11:17
11 been mentioned to you before May?
12 A. That's correct.
13 28 Q. And I think also fairly yesterday you accepted and
14 Chief Superintendent Kehoe will say that the
15 investigation team wasn't a standalone delegated unit 11:17
16 dealing only with the investigation, and you were aware
17 of that fact, this wasn't a unit working seven days a
18 week doing --
19 A. Yes.
20 29 Q. And again she will say in her evidence that this was 11:17
21 just a feature of the duties which preexisted the
22 nomination of all of these officers, and they had a lot
23 of other things to do but they did their very best, she
24 will say, to try and advance the investigation. But I
25 am going to come to deal with each part and invite you 11:17
26 to comment on as we proceed.
27
28 So, just in those circumstances, the chief
29 superintendent will say that she was also aware of the

1 need to comply with fair procedures from your point of
2 view and from the point of view of the persons under
3 investigation. Would you accept that any investigator,
4 and you're an experienced investigator yourself, has to
5 maintain that balance and must be vigilant to ensure 11:18
6 that fair procedures are upheld

7 A. That would be correct.

8 30 Q. She will say that that necessitated, in the time that
9 followed, making sure that your complaint and any
10 rebuttal statements were fully considered by you and by 11:18
11 the persons under investigation, but in addition she
12 will say that in 2013, particularly by October of 2013,
13 that she had a concern in relation to whether she
14 should proceed thereafter, because she'd made an
15 adjudication on issues 1-8 and there had been an appeal 11:18
16 to Assistant Commissioner Twomey? I think you recall
17 that was an issue that arose during that period of
18 time? So we're in the period after May and, say, up to
19 November?

20 A. That's correct. 11:19

21 31 Q. I wonder could we have document 1101, please. This is
22 a letter of 9th October 2013. I am not sure if you
23 have seen this in the papers before, have you? But
24 this is a letter which Chief Superintendent Kehoe wrote
25 to A/C Nolan and she indicated a concern. I wonder if 11:19
26 we could just scroll down please, registrar, again. So
27 just at the end of the page you will see first of all
28 that in correspondence received from Assistant
29 Commissioner Twomey in August of 2013, Chief

1 Superintendent Kehoe had become aware that an appeal
2 had been lodged by you and she was also notified of the
3 views you had expressed in that appeal. I think you
4 were aware of the fact that you filed that appeal and
5 that was a process underway?

11:20

6 A. That's correct.

7 32 Q. I think you were also aware because you were
8 communicated with, that Assistant Commissioner Twomey
9 was engaged in that process?

10 A. That's correct.

11:20

11 33 Q. I wonder if you could scroll down a bit please, to the
12 next page. Now at this stage she will say that she
13 expressed a concern that having reviewed the contents
14 of the document that she addressed under separate cover
15 of the 9th October. She said:

11:20

16
17 "I am firmly of the view that to continue with the
18 criminal investigation as directed by you would be
19 prejudicial to any findings in the case.

20
21 Therefore I would ask that consideration be given to
22 the appropriateness of me continuing in the
23 investigation."

11:20

24
25 So, at this stage I think you're aware of this from
26 looking at all of the papers, Chief Superintendent
27 Kehoe was indicating a concern that having carried out
28 the first investigation, being aware of the appeal
29 documents, that perhaps there might be a perception or

11:20

1 an objection to her continuing in relation to that.
2 were you made aware of that concern at that stage?
3 A. She made me aware of some problem in relation to being
4 appointed under Regulation 14, yes.
5 34 Q. I wonder if we could see document 1105. 1105, please. 11:21
6 Moving onto the next page, please. So, this is a
7 letter of the 31st October. Please scroll down again,
8 registrar. You will see that this is a response from
9 Chief Superintendent Kehoe, where she had been asked by
10 A/C Nolan for specific reasons for her request, for 11:21
11 consideration to be given to the appropriateness of her
12 continuing with the investigation into under the
13 discipline regulations and any criminal matters
14 concerning Superintendent Comyns. And just without
15 having to go into every detail, could we just ask you 11:22
16 to scroll down, we might just read it for a moment, at
17 number 1. You will see from number 1 and then
18 scrolling down, please, registrar, thank you, to the
19 next page, there is effectively a number of bullet
20 points demonstrating the history of the different steps 11:22
21 and then she says at point 5:
22
23 "I was supplied as part of the appeal process with
24 Sergeant Paul Barry's grounds for appeal. It is
25 evident from examining this document that Sergeant 11:22
26 Barry had access to my findings.
27
28 To continue my investigations into the disciplinary
29 matters and any criminal matters arising could in my

1 view compromise the investigation as I am fully aware
2 of Sergeant Barry's views in respect of my
3 investigation into the bullying and harassment aspect
4 of the case and hence my impartiality could be brought
5 into question.

11:22

6
7 Your advices in the circumstances as to my continuance
8 would be appreciated."

9
10 So again at that stage you were aware of the fact that
11 she was effectively sounding out higher authority to
12 see was there a problem with her proceeding at that
13 stage?

11:23

14 A. That's correct.

15 35 Q. And again I have to suggest to you that that was a
16 reasonable step for her to take, because at all stages
17 she will say her concern was to ensure that there was
18 objectively fairness in the process and that matters
19 would proceed as fairly as they could, both to you and
20 to everybody else who was connected with the processes.
21 Can I just ask if you can be shown document 1109,
22 please. Just before we go into the detail of that,
23 we've just gone through, Mr. Barry, the position that
24 Chief Superintendent Kehoe has expressed a concern, she
25 sought advice and now it's the response coming back.
26 Can I ask you at this point, just before we move into
27 the next level, in terms of the Chairman's assessment,
28 do you accept that it was reasonable for Chief
29 Superintendent Kehoe to raise those points at that

11:23

11:23

11:24

1 time?

2 A. Absolutely.

3 36 Q. And then if we move forward to this document, you will
4 see in the middle of the paragraph that the letter
5 communicated back to Chief Superintendent Kehoe by A/C 11:24
6 Nolan said:

7
8 "I therefore fail to see how you are compromised in
9 completing the remainder of your investigation. As I
10 understand it you have enlisted an investigation team 11:24
11 to support you, I therefore believe that you should
12 continue your investigation in those elements and
13 report in as early a course as possible, taking your
14 other significant responsibilities into consideration."

15 11:24
16 So, just pausing for a moment, you will see at the end
17 that is 18th November 2013. Were you then made aware
18 of the fact that this development had occurred; in
19 other words, that Chief Superintendent Kehoe had raised
20 the issue but had been told to carry on? 11:25

21 A. I believe so, yes.

22 37 Q. Yes. Can I ask you to be shown document 1119, please.
23 I beg your pardon, I am very sorry, registrar, could I
24 have document 3151, please. Sorry, registrar, I am not
25 sure that is 3151. Thank you. So this is the second 11:25
26 paged page of a letter dated 12th December 2013, which
27 is addressed to you, we can see the first page in a
28 minute, but the part I wanted to refer to was just this
29 last paragraph, where Chief Superintendent Kehoe is

1 writing to you and said, and will say, this is what she
2 wrote that the disciplinary/criminal investigations
3 continue:
4

5 "...but I wish to advise you I have sought 11:26
6 clarification from assistant commissioner Southeastern
7 Region in respect of finalising the disciplinary
8 criminal investigation as to the provisions of
9 Regulation 14(5) of the Garda Disciplinary Regulations
10 2007 may have a bearing on my point under the 11:26
11 discipline regulations. I will keep you informed of
12 any developments in this regard."
13

14 So, if I could now ask if you could move to page 1119,
15 please. I wonder, registrar, could you please scroll 11:26
16 down to Thursday, 20th February. Thank you. So,
17 Mr. Barry, I think that this note relates to a meeting
18 I think you will agree you took part in, on 20th
19 February 2014, and that was at Mitchelstown Garda
20 Station in the presence of your representative, 11:27
21 Inspector Gallagher, and also present was Inspector
22 Paul O'Driscoll, who had taken over a role in the
23 investigation from Detective Inspector Leahy, who I
24 think had been promoted somewhere else along the way?

25 A. That's correct. 11:27

26 38 Q. This is Chief Superintendent Kehoe's note of what she
27 records from the meeting. So can I just do it
28 piece-by-piece? would you agree that she explained to
29 you that she had parked the criminal investigation and

1 discipline investigation for advice under the
2 regulations?

3 A. But if you scroll back up there, she said that she was
4 pressing on with it even though she hadn't received
5 advice. 11:27

6 39 Q. Well, I will come back to that later on in terms of
7 statements being taken, we will see, because in effect,
8 let's just go through this in detail, but effectively
9 isn't it the case that at the beginning in February of
10 2013 you were aware of the fact that Detective 11:28
11 Inspector Leahy dealt with the criminal aspect of
12 things?

13 A. Yes.

14 40 Q. I think we will see later on, you were also made aware
15 that some statements were taken in I think March and 11:28
16 April of that year?

17 A. Yes, but Chief Superintendent Kehoe stated here that
18 she explained that she had parked the criminal
19 disciplinary investigation for advice under the
20 regulations. 11:28

21 41 Q. Yes.

22 A. But prior to that she said she pressed on with it, even
23 though she hadn't received any advice.

24 42 Q. The position is a bit more nuanced, Mr. Barry, but I
25 will bring to you the documents in due course? 11:28

26 A. Okay.

27 43 Q. I think the position was that there were a number of
28 statements taken at an earlier stage, but in substance
29 what Chief Superintendent Kehoe says is entirely

1 correct, which is that the focus was on the bullying
2 and harassment investigation and thereafter these
3 concerns arise. But let's go through it, if we could,
4 and then I will invite your response to it at the end.

11:28

5
6 Do you see there in the middle of that page it says:

7
8 "I was concerned that in view of the fact that I had
9 conducted and made findings in the investigation into
10 the alleged bullying and harassment, sexual harassment 11:28
11 policy a question might arise by him --"

12
13 That is by you.

14
15 " -- or by another party that she was not impartial." 11:29

16
17 And she then asked did you have any difficulty with her
18 continuing in the investigation under the
19 criminal/discipline aspect, do you recall her asking
20 you that? 11:29

21 A. I do.

22 44 Q. She records, I wonder if the page could be scrolled up,
23 please, she records that you said you had not but you
24 were annoyed that she had parked the investigation for
25 some months without informing him of her decision to do 11:29
26 so.

27 A. That's correct.

28 45 Q. Okay. She also records that you told her that you had
29 always understood that she was running both

1 investigations in tandem?

2 A. That was my belief, she said she was conducting a
3 parallel investigation from the outset.

4 46 Q. And she will say that she replied to you that she did
5 not but that she had investigated the bullying and 11:29
6 harassment complaint initially as it concerned eight
7 grounds and the policy governing that investigation
8 imposed strict time limits for the instigation of
9 proceedings, as we agreed earlier, but it was her
10 intention then to complete the criminal/discipline 11:30
11 aspect and she then made reference to the fact that she
12 had appointed Detective Inspector Leahy to carry out
13 the investigation and obtain statements from witnesses,
14 do you recall her telling you that?

15 A. Yes. 11:30

16 47 Q. She will say in evidence that she explained she wasn't
17 at juncture of dealing with the substantive parties,
18 that is to say Superintendent Comyns and others, but
19 ultimately she indicated to you some details in
20 relation to progress or lack of progress that had been 11:30
21 made up to that point. And then scrolling up again,
22 please, you see she will say that she read over your
23 statement in your presence insofar as it related to
24 allegation number 89 and she asked you if there was
25 anybody else that you wished her to interview in 11:30
26 relation to this aspect of the case or any other areas
27 within the remit of the investigation which you wished
28 her to explore. And I think you replied that you
29 needed to get the details of a fax document sent to

1 Superintendent Comyns and that was noted by the
2 investigators. Do you recall saying that?

3 A. Yes.

4 48 Q. Now, her record of the meeting and her recollection is,
5 as suggested in the note, where she says: 11:31
6
7 "We concluded the meeting cordially and I said he could
8 contact me --"
9

10 That's you could contact her, if you had any issues. 11:31
11 And she will say she told you that she would endeavour
12 to expedite the investigation without compromising on
13 its thoroughness. Do you recall her saying that, that
14 was her response?

15 A. She may have, I don't recall it. 11:31

16 49 Q. Can we scroll down to the next page, please. I think
17 that ends that particular note. So just pausing there
18 for a moment. Can I suggest to you that at that stage,
19 in February 2014, Chief Superintendent Kehoe has
20 explained to you her concerns, has invited your 11:31
21 responses, has noted those responses and I think you
22 will agree with me at that stage you weren't asking her
23 to stand down or to stop?

24 A. No, but she didn't tell me that she hadn't cooperated
25 with Chief Superintendent Twomey's investigation into 11:32
26 my appeal of the bullying and harassment case.

27 50 Q. Again, Mr. Barry, we will come back to A/C Twomey, but
28 in terms of the approach, I don't understand that
29 particular answer, perhaps you might clarify it?

1 A. When A/C Twomey conducted his review of my bullying and
2 harassment appeal, he sought views from Chief
3 Superintendent Kehoe and she did not comply with that,
4 she didn't engage with A/C Twomey when he was
5 conducting his appeal of the bullying and harassment 11:32
6 complaint.

7 51 Q. But the position is A/C Twomey was perfectly able to
8 complete his appeal review and did so and concluded the
9 exercise?

10 A. He did without the request of Chief Superintendent 11:32
11 Kehoe's views on a couple of matters, which she did not
12 relay to me.

13 52 Q. But again, insofar as that's concerned, I have to
14 suggest to you that there's nothing incorrect or
15 improper about that and A/C Twomey is not making any 11:33
16 point about that at the time, in fact he --

17 A. But had Chief Superintendent Kehoe told me that she did
18 not cooperate with him, then I may have had a different
19 view of her going forward.

20 53 Q. You see, I have to say to you, that's really irrelevant 11:33
21 to the issue we are talking about here, which is the
22 question of delay?

23 A. I wasn't aware of all the facts at the time, she was.

24 54 Q. Then can I suggest to you that that fact that you've
25 just related now doesn't affect this issue that we are 11:33
26 dealing with, which is the question of whether in
27 February of 2014 in relation to the criminal and
28 discipline investigations, is what we are dealing with
29 now, and you will recall A/C Twomey is dealing with the

1 bullying and harassment issue, that it was in those
2 circumstances important for her to discuss with you the
3 criminal and discipline matters?
4 A. which she stated she had parked and previously she said
5 she had pressed on regardless of not being -- 11:33
6 55 Q. Well again, isn't it open to a different view vis-à-vis
7 the question of communication, that perhaps again as
8 part of her scrupulous desire not to cross wires, was
9 it not proper for her not to in any way to seek to
10 influence the outcome of the appeal against her own 11:34
11 decision? Non-communication could be looked at in that
12 way. Again, perspective, as we discussed yesterday,
13 can be seen from a different angle.
14 A. Well, that should have been relayed to me, I believe at
15 the time. 11:34
16 56 Q. So is it fair to say that your complaint here is a
17 communications complaint rather than a delay point?
18 A. It'd be a combination of both.
19 57 Q. Okay. And again, just on her behalf, can I put it to
20 you that in fact she behaved reasonably at that time 11:34
21 and that is what she will say at this stage. But
22 ultimately, at this point in time, can I suggest to you
23 that it must have been clear to you that she now
24 intended to proceed, as she had been directed, to deal
25 with the criminal and discipline matters and I think 11:34
26 you fairly accept you didn't say stop, I object?
27 A. No.
28 58 Q. At that time?
29 A. No, I didn't.

1 59 Q. Okay.

2 A. Because she had got clarification from higher
3 authority.

4 60 Q. Just in terms of the investigation, I wonder could we
5 just move forward a little bit in time just to look at 11:35
6 the scale of this. But could we have, from volume 10,
7 page 2823, please. And again, I'm not going to delay
8 the Tribunal by going into every detail but just if we
9 could look at this document, Mr. Barry, just as an
10 overview. So, this is a covering report ultimately 11:35
11 sent to the DPP. Sorry, scroll down again, please. I
12 think, Mr. Barry, you will see there that that is the
13 cover page of the investigation report which is sent to
14 the DPP. Please scroll down again, registrar.

15 CHAIRMAN: Sorry, did you say 3823? 11:36

16 MR. MURPHY: No, 2823.

17 CHAIRMAN: Sorry. That is just my complete mistake.
18 Thank you very much, I was looking at the number on
19 this one.

20 MR. MURPHY: 2823, yes. 11:36

21 CHAIRMAN: 2823, thank you very much.

22 61 Q. MR. MURPHY: I wonder, registrar, if I can ask you to
23 scroll down again please. And just pausing there for a
24 moment, if I can ask the registrar just to gently
25 scroll it down as I speak. But just in summary terms, 11:36
26 would you agree with me, Mr. Barry, as we look through
27 this as it passes by; we have introduction; details
28 about the allegations you've made; reference to phone
29 billing records provided to the investigation;

1 timelines in relation to the initial reporting of
2 alleged sexual abuse; meetings of named gardaí; at
3 number 6, the initial alleged contact between
4 Superintendent Comyns and Sergeant Barry; at 8, taking
5 a statement; 9, calls to you by Superintendent Comyns. 11:37
6 And then from points 9 down to 17, different sections
7 headings indicating matters that were under review
8 subject-by-subject, including at number 14, the phone
9 call records made from Mitchelstown to Superintendent
10 Comyns. Perhaps will you scroll down again, please, 11:37
11 registrar, and onto the next page. On this page, can I
12 just again indicate to you that there's references
13 there to the conferences held; the communications with
14 various members; further communications that took
15 place, number 22; number 25, I think there's reference 11:38
16 to the examination of your mobile phone, which I think
17 you referred to in your evidence to Mr. McGuinness;
18 reference then to analysis of the investigation at 26;
19 reference at number 28 to interviews; reference to
20 contacts between Superintendent Comyns and others after 11:38
21 the interview; submission of the investigation file; at
22 33, reference to your allegation that you had made in
23 relation to the withholding of information; at number
24 35, references to district performance, accountability
25 frame meetings. Then, moving further down, there's 11:38
26 reference to voluntary cautioned interviews that had
27 been taken by the investigation; there's also reference
28 at number 41 to the document and handwriting section;
29 the fingerprint section, that's dealt with 42 through

1 to 46. And then moving down to the end, there's
2 reference also to your comments in relation to Sergeant
3 Gleeson, president of the AGSI; references to the
4 district officer's obligation to take charge of
5 criminal investigations; conclusion; recommendation 11:39
6 and index.

7
8 So, pausing there for a moment, can I just put it to
9 you on behalf of Chief Superintendent Kehoe that on any
10 view of that index it indicates a very comprehensive 11:39
11 range of issues that were examined? I appreciate you
12 may have a view about the quality of the investigation,
13 but the report going to the DPP touched on a very wide
14 range of issues, would you agree?

15 A. I would agree. 11:39

16 62 Q. In terms of those issues, would you also agree based on
17 your forensic experience as an experienced detective
18 that to investigate issues along those lines takes
19 time?

20 A. It does take time but, as I said, if I took three years 11:39
21 to investigate a crime or an alleged crime, I would be
22 in trouble.

23 63 Q. Just in terms of the view, I appreciate you have an
24 opinion on this, but again looking at this particular
25 process, I think you are aware of the fact from what 11:40
26 you have seen from the papers that insofar as, for
27 example, there's a reference to the cautioned interview
28 with Superintendent Comyns, I think that was taken on
29 3rd September 2014 in Templemore garda station?

1 A. That's correct.

2 64 Q. And in fact, I think he was interviewed twice, isn't
3 that right?

4 A. I believe so, yes.

5 65 Q. Again, Chief Superintendent Kehoe will indicate that as 11:40
6 a result of those interviews further lines of inquiry
7 require to be followed up and that led to subsequent
8 interviews in May of 2015. Again, that second
9 interview, that's referred to I think at page 1134,
10 please. This is correspondence issuing from the 11:40
11 investigation. Again, sorry, if I could ask you to
12 scroll down, dated the 20th March. It refers to your
13 complaint. Please scroll down again. And then you
14 will see in the last paragraph it reflects the fact
15 that the investigation of Chief Superintendent Kehoe, 11:41
16 having looked at the official phone billing records and
17 reviewed them, now believe that that person had become
18 a person of interest to the investigation due to
19 telephonic communications and times. So this was
20 reflective, would you agree with me, an investigation 11:41
21 that is following leads, developing its knowledge and
22 understanding, moving from one step to another and
23 seeking to interview the addressee of that letter?

24 A. It would appear so, yes.

25 66 Q. Yes. If we could have page 1137, please. Sorry, I beg 11:41
26 your pardon, I may have given you the wrong number.
27 Registrar, could I ask you for 1134, please. Sorry,
28 Chair, it's my fault, I seem to have two references for
29 the same document. But last attempt, if I could, could

1 I just try 1137, please?

2 CHAIRMAN: So you were right the first time.

3 MR. MURPHY: I hope I was, Chairman, yes.

4 CHAIRMAN: All right.

5 67 Q. MR. MURPHY: This again is a further letter. Could I 11:42
6 ask you to scroll down further. Then this is a request
7 for cooperation of the person who had been written to
8 in the previous letter, offering an opportunity to
9 attend in a voluntary capacity at Thurles garda station
10 at 11am on the 19th March. And you will see at the 11:43
11 end, from your considerable experience you will note,
12 that this was notified as a cautioned interview and
13 that it would be recorded under the Criminal Justice
14 Act Electronic Recording of Interviews Regulations
15 1997. So again can I suggest to you that that 11:43
16 indicates that there is a serious line of inquiry being
17 fold, that there is an organised attempt to secure
18 cooperation for a cautioned interview, that cautioned
19 interview is going to be recorded in accordance with
20 standard practice. And again, would you accept that 11:43
21 that is part of an organised criminal investigation,
22 following leads in a constructive fashion?

23 A. It's organised but I believe that should have been,
24 that document should have been sent out, that request
25 should have been sent out a year previously at least. 11:44
26 This is two years after she was appointed.

27 68 Q. Yes. And again, Chief Superintendent Kehoe will
28 obviously disagree with you on that, as you have a view
29 and she has a view, but she is explaining why it has

1 taken her time to do this. I have to suggest to you
2 that all of these things take time, which I think you
3 accept, and they are happening now in this such
4 timeframe in 2015, step-by-step, methodically, but all
5 in accordance, I have to suggest to you, with good 11:44
6 practice?

7 A. Good practice would be an efficient and timely
8 investigation. I don't believe this was timely. It
9 may have been efficient but it was not timely.

10 69 Q. Could I ask you then to be shown document 1175, please. 11:44
11 So this is a letter I think that was written do you.
12 I'm terribly, sorry, could I ask you to scroll down to
13 the top of the page, please. So, on 24th November 2015
14 this letter was written to you and I think you probably
15 recall this letter, do you? 11:45

16 A. I'd have to read through it.

17 70 Q. Perhaps we could just scroll down again, please. So,
18 just two points there, Mr. Barry, the first is, there's
19 a reference to an earlier letter of the 11th September
20 in relation to your complaint, can you recall seeing 11:45
21 that letter in September?

22 A. This letter, yes.

23 71 Q. And then this letter in brief, would you agree with me
24 that it is a letter which advises you that the DPP had
25 directed no prosecution in the case? 11:45

26 MR. COSTELLOE: Excuse me, Chairman, it's probably a
27 very small matter but I think there might have been a
28 conflation of the letters there.

29 MR. MURPHY: I am certainly happy to clarify it, if I

1 just focus on this letter, if Mr. Costelloe is happy
2 with that.

3 CHAIRMAN: Say more, Mr. Costelloe.

4 MR. COSTELLOE: I beg your pardon, Chairman, I was just
5 indicating that I think Mr. Barry may have been 11:46
6 referring to the letter on screen, whereas Mr. Murphy
7 was asking about the letter dated 11th February 2015.

8 MR. MURPHY: I will seek to clarify that, thank you.
9 Just to deal with Mr. Costelloe's concern, can I ask
10 you -- 11:46

11 CHAIRMAN: well, deal with this one first of all,
12 because you said it does refer to 11th September 2015.
13 And we will worry about that one in due course, if we
14 need to worry about that. Do you understand,
15 Mr. Barry, here is the letter, and the date of this 11:46
16 letter is the 24th November, is that right?

17 MR. MURPHY: Yes.

18 CHAIRMAN: This is the 24th November. Now, what do you
19 want to ask about this one, Mr. Murphy?

20 72 Q. MR. MURPHY: Mr. Barry, if you could be shown the 11:46
21 letter for a moment. Would you agree that the letter
22 communicated to you by Chief Superintendent Kehoe, that
23 she was in receipt of the decision of the DPP and that
24 the Director of Public Prosecutions had directed no
25 prosecution in the case? 11:47

26 A. Yes, I recall this letter.

27 73 Q. Yes. And in addition, at the end of that letter, do
28 you note that you were advised, you would agree, that
29 if you wished you could obtain a summary of reasons for

1 a decision not to prosecute but you would have to do so
2 within 28 days of the date you were told of the
3 decision and send it to the DPP at the relevant
4 address?

5 CHAIRMAN: well, that's what the letter says, so 11:47
6 there's no --

7 MR. MURPHY: Yes.

8 CHAIRMAN: The letter says that.

9 MR. MURPHY: Yes.

10 74 Q. So ultimately I have to suggest to you that by this 11:47
11 stage the investigation of the criminal investigation
12 has been complete and it's been assessed by an
13 independent person, the DPP, who has taken a decision
14 and the decision is no prosecution. So you do accept,
15 do you not, that that is a decision of the DPP, not a 11:47
16 decision of An Garda Síochána?

17 A. I don't believe the decision of the DPP was based on
18 all the facts that Chief Superintendent Kehoe had
19 accumulated during her investigation.

20 75 Q. And again, I have to suggest to you that that's 11:48
21 incorrect, but insofar as the DPP's decision is
22 concerned, would you agree with me the DPP's decision
23 is an independent decision, made by an independent law
24 officer, based on that law officer's assessment of the
25 evidence available? 11:48

26 A. And was based on the information given to the DPP by
27 Chief Superintendent Kehoe.

28 76 Q. CHAIRMAN: Mr. Barry, I just have to ask you, is that
29 something I have to worry about?

1 A. Well, I don't believe --

2 77 Q. CHAIRMAN: The case that says the DPP did not get
3 proper information from Chief Superintendent Kehoe, I
4 am not saying that's right or that's wrong, I have no
5 view on that, but I don't think it's something I have 11:48
6 to investigate, is that correct? Has that anything to
7 do with your complaint of being targeted?

8 A. Inasmuch as a proper investigation wasn't conducted,
9 that's my belief.

10 78 Q. CHAIRMAN: Okay. You say a proper investigation wasn't 11:49
11 conducted, okay. That's a complaint you make against
12 Chief Superintendent Kehoe. But that has nothing to
13 do -- sorry, I am just concerned that I don't have to
14 get into -- am I right about -- I mean, tell me if I am
15 wrong about this, if anybody thinks I am wrong about 11:49
16 this, but it seems to me this is not something I am
17 concerned about?

18 MR. MURPHY: Yes, Chairman. The position is that what
19 we are dealing with at the moment is --

20 CHAIRMAN: Is that, Mr. Costelloe? 11:49

21 MR. MURPHY: The allegation I am dealing with at the
22 moment --

23 CHAIRMAN: Hold on, Mr. Costelloe, am I right? I don't
24 want to do anybody down or be unfair but I have a list
25 of issues about which we had a discussion that this is 11:49
26 not among them.

27 MR. COSTELLOE: I agree, Chairman.

28 CHAIRMAN: Thanks very much. Thanks very much.

29 79 Q. MR. MURPHY: Just focusing on this issue, Mr. Barry,

1 can I put it to you on behalf of Chief Superintendent
2 Kehoe that in preparing that investigation and sending
3 it to the DPP and getting the DPP's decision, that she
4 and her team were not guilty of inordinate delay; and
5 secondly, they did not and had no intention of 11:50
6 targeting you or discrediting you by the way in which
7 they conducted that investigation and the time it took.

8 A. I don't agree.

9 80 Q. CHAIRMAN: Why do you say that? Tell us more,
10 Mr. Barry. In what way did she target you in this 11:50
11 investigation?

12 A. It is my view that she did not supply all the relevant
13 information to the DPP.

14 81 Q. CHAIRMAN: You keep coming back to that and I keep
15 telling you that's nothing to do with me. So, let's 11:50
16 leave that one aside. In any other respect, in what
17 way did Chief Superintendent Kehoe target you?

18 A. When Chief Superintendent Kehoe initially reported to
19 me she was having a problem in relation to Regulation
20 14, I believed it was because she should not be 11:50
21 appointed when she dealt with the bullying and
22 harassment prior to that.

23 82 Q. CHAIRMAN: Okay.

24 A. And then when I received the Regulation 14 for force
25 majeure, I believed I was being treated the same as 11:51
26 somebody who allegedly perverted the course of justice.

27 83 Q. CHAIRMAN: Do you understand, Mr. Barry, I am not here
28 to cross-examine you or make things difficult for you.
29 Just let's get back for a second. I want to write down

1 why you say Chief Superintendent Kehoe targeted you in
2 this investigation. Now, first of all, do you
3 understand what I am looking for?

4 A. Yes.

5 84 Q. CHAIRMAN: Okay. Now, so what I want, Mr. Barry says 11:51
6 that Chief Superintendent Kehoe targeted him in the way
7 she conducted this investigation because she, one, two,
8 three. That is what I want to do because I want to
9 report on this in due course. Now, can you help me
10 with that, by telling me first of all what you say she 11:52
11 did that targeted you?

12 A. I believe the delay, taking three years to investigate
13 the serious allegation was targeting.

14 85 Q. CHAIRMAN: In what way? Sorry, the three years, and 11:52
15 are you including in the three years the bullying and
16 harassment claim?

17 A. Yes, Mr. Chairman, I am.

18 86 Q. CHAIRMAN: When she got to do the criminal
19 investigation, that didn't take three years?

20 A. No. 11:52

21 87 Q. CHAIRMAN: You know that and I know that.

22 A. Exactly.

23 88 Q. CHAIRMAN: Because we've just been through the dates?

24 A. That's correct.

25 89 Q. CHAIRMAN: So why do you tell me it took three years? 11:52
26 A. The overall investigation I was referring to,
27 Mr. Chairman.

28 90 Q. CHAIRMAN: Okay.

29 A. I accept the criminal allegation took two years,

1 approximately.

2 91 Q. CHAIRMAN: And do you think that was -- sorry, here's
3 my question: Okay, you say that was too long, okay.
4 For the purpose of my question, let's assume that was
5 too long, it could have been done sooner. Let's assume 11:53
6 it should have been done in a year instead of two
7 years. Okay, let's just make that assumption off the
8 top of my head, are you with me?

9 A. Yes.

10 92 Q. CHAIRMAN: what was it about taking the extra time that 11:53
11 says to you she was targeting you? You know, she was
12 deliberately saying, I am going to do down, I am going
13 to victimise Sergeant Barry, you were Sergeant Barry at
14 the time, so I know you're Mr. Barry now, but how do
15 you say she was saying, I am going to do down this guy 11:53
16 by taking longer than I should. Is that what you are
17 saying?

18 A. Yes, Mr. Chairman, because I was under pressure at the
19 time because of this investigation re transfers, et
20 cetera, and the sooner it would have concluded then I 11:54
21 believe --

22 93 Q. CHAIRMAN: Of course, of course, I mean you finished
23 quickly?

24 A. Yes.

25 CHAIRMAN: Don't think I am unsympathetic or not 11:54
26 understanding that, but I do want to write down,
27 Mr. Barry says that the investigation, that the chief
28 superintendent delayed her investigation for the
29 purpose of targeting him and I want to know why you say

1 that, what's the evidence for that?

2 A. The evidence is the time --

3 94 Q. CHAIRMAN: I am not trying to give awe hard time here,
4 but we might as well -- I am trying to follow your
5 evidence? 11:54

6 A. I understand, Mr. Chairman. It was the time that it
7 took to conduct the investigation is what I believed
8 was the targeting.

9 95 Q. CHAIRMAN: why?

10 A. Because I believed it could be -- 11:54

11 96 Q. CHAIRMAN: Are we agreed on what targeting means? You
12 say that she is going to do you down, she is going to
13 victimise you, by deciding, I will take time, I will
14 fix this fellow now by taking longer?

15 A. The longer the investigation took, the more stress I 11:55
16 was under.

17 97 Q. CHAIRMAN: Okay. So it's basically a simple
18 proposition in all the circumstances, including the
19 stress you were under. You say, taking the time that
20 it took, whatever exactly time that was, that was too 11:55
21 much and you say that you believe that was targeting?

22 A. Yes.

23 98 Q. CHAIRMAN: But I am not understanding you to say that
24 Chief Superintendent Kehoe had any desire to do you
25 down or to harm you, is that correct? 11:55

26 A. There was aspects of the investigation which I believed
27 were to do me harm.

28 99 Q. CHAIRMAN: Are we understanding each other in what I
29 have to do?

1 A. Sorry, Mr. Chairman, yes.

2 100 Q. CHAIRMAN: Don't apologise at all?

3 A. I understand.

4 101 Q. CHAIRMAN: I don't mean it --

5 A. No, I understand. 11:56

6 102 Q. CHAIRMAN: But as long as you understand what I am

7 trying to get at here?

8 A. I understand.

9 103 Q. CHAIRMAN: I am understanding, just to be clear about

10 this, I am not understanding -- sorry, let's keep this 11:56

11 simple. My understanding is that you're not accusing

12 Chief Superintendent Kehoe of making a deliberate

13 decision to do you down by delaying her investigation,

14 but you do say that the delay in the investigation was

15 miserable for you, added to your stress and in all 11:56

16 those circumstances you say that amounted to targeting?

17 A. That's correct.

18 104 Q. CHAIRMAN: Something like that?

19 A. That's right, yes.

20 CHAIRMAN: I'm sorry too ask a complicated question. 11:56

21 Okay. Anybody else can explore that and that's a

22 tentative view that I am enquiring, so anybody else is

23 free to explore that and I will be happy to write down

24 something different. Okay, thank you. I am sorry for

25 all that lengthy intervention, despite my promises not 11:57

26 to interview, so there.

27 105 Q. MR. MURPHY: Mr. Barry, just at this point, we have

28 come to the end of the criminal investigation, the DPP

29 has made a decision, can I just put a couple of points

1 to you about this? We've mentioned earlier on that
2 there were other members of the investigation team who
3 you've referred to in the course of your evidence. So,
4 for example, Detective Sergeant Brian Sheeran, who is
5 at page 4849. Have you seen this statement? Again, I 11:57
6 don't propose to open this, but you're familiar with
7 the work that he did as a detective sergeant.

8 A. Yes.

9 106 Q. As these pages indicate, he carried out his work, he
10 shows from page 4851 the documents he prepared, the 11:58
11 spreadsheets he prepared, he had a role in the
12 identification of the phone calls. Can I just put it
13 to you on his behalf and on behalf of Superintendent
14 Lordan and on behalf of Chief Superintendent Kehoe and
15 on behalf Superintendent Paul O'Driscoll, that none of 11:58
16 these people had any intention of targeting you or
17 discrediting you by the way in which they carried out
18 the investigation or the time that it took. What they
19 will say is that, yes, there were delays but there were
20 reasons for those delays and they put forward those 11:58
21 reasons to the Tribunal and to you, but they did not in
22 any sense seek to target you or to discredit you. I
23 put that to you on their behalf?

24 A. I don't accept that Inspector Paul O'Driscoll at the
25 time, I don't accept his view in relation to the case 11:58
26 conference.

27 107 Q. Yes. You appreciate that, as you know from your own
28 experience and considerable experience in an
29 investigation team, all the members of the team work

1 together. Can I just put it to you on behalf of the
2 members who I represent, the ones I've just named, that
3 they will say they didn't ever intend to target you or
4 to discredit you, nor did they see Chief Superintendent
5 Kehoe intend to target you or discredit you either in 11:59
6 the way in which the investigation was carried out and
7 in particular on this issue, the length of time it
8 took?

9 A. I didn't accuse any of the members.

10 108 Q. If I could ask you to move on please, if we could see 11:59
11 document 1180?

12 109 Q. CHAIRMAN: Sorry, can I just clarify, you said "I
13 didn't accuse any of them of that" is that correct?

14 A. No, I didn't accuse any of those members mentioned,
15 apart from -- 11:59

16 110 Q. CHAIRMAN: You didn't accuse any of those members,
17 apart from?

18 A. Superintendent O'Driscoll.

19 CHAIRMAN: Thank you.

20 111 Q. MR. MURPHY: I think there is a discrete point in the 11:59
21 issue and I will come to that later on, where you
22 focused on him. But I am asking you at the moment
23 about the overall investigation, overall time, I am
24 saying there's reasons why that took place, but my
25 clients will say it was never intended to target you or 12:00
26 to discredit you at the time.

27 A. Those members, yes.

28 112 Q. So, just if we could take the next phase of this and
29 this is the last part of this heading, that is to say

1 at page, 1180 please. So, this is the 21st October and
2 Chief Superintendent Kehoe indicates the progress of
3 her investigation to date. Could I ask you to scroll
4 down to the end of the page. Again, further, to the
5 next page. Then in terms of the disciplinary 12:00
6 investigation, it's referred to in that last page,
7 appendix C. She said:

8
9 "I am requesting an additional appointment to allow me
10 explore all avenues of complaint to the ninth ground of 12:01
11 Sergeant Barry's complaint, please."

12
13 If you move forward to 1187. In fact, go back to 1186,
14 please. So this is 19th November of 2015. In terms of
15 communications, again this is further evidence of 12:01
16 correspondence. And you will see there that the letter
17 is written to Superintendent Comyns and Chief
18 Superintendent Kehoe is indicating that she has been
19 appointed as deciding officer in relation to Regulation
20 14, sets out the alleged breaches of discipline and 12:02
21 effectively is inviting a response to those complaints.
22 Have you seen this document before?

23 A. I've seen it in discovery, yes.

24 113 Q. I think in December of 2015 she also wrote to you and
25 asked if you wanted to nominate any further witnesses 12:02
26 in relation to the disciplinary investigation, do you
27 remember that?

28 A. I believe I do, yes.

29 114 Q. If we just pause there for a moment, Mr. Barry. We're

1 now in December of 2015, and at that point in time did
2 you object or protest the fact that Chief
3 Superintendent Kehoe was now going to proceed to deal
4 with the disciplinary investigation? Did you say that
5 somebody else should do it instead of her? 12:02

6 A. Had I known that she had been re-appointed -- I was not
7 aware that she had been re-appointed under Regulation
8 14(5), had I known at the time, I believe I would have
9 objected.

10 115 Q. But you did not? 12:03

11 A. Pardon?

12 116 Q. But we can agree you did not?

13 A. I wasn't informed, no.

14 117 Q. You were aware that the disciplinary investigation had
15 been ongoing since December, isn't that right? 12:03

16 A. I believed that was the disciplinary investigation that
17 had been initiated in 2013. I did not know she sought
18 re-appointment.

19 118 Q. You see, I have to suggest that in relation to this
20 part of the process, that Chief Superintendent Kehoe 12:03
21 will indicate that she also attempted to clarify the
22 position but there was also another development. Could
23 I ask for document 1202, please. Sorry, the previous
24 page, I beg your pardon, 1201. This is a letter from
25 March 2016. I am not sure if that date is correct 12:04
26 actually, but can we scroll down. Just pausing for a
27 moment. By this time Chief Superintendent Kehoe had
28 become aware, says she became aware in January of the
29 fact that in terms of your position that you had

1 actually instituted civil proceedings against the
2 Commissioner and part of your case was a complaint
3 about how she had acted in the bullying and harassment
4 investigation?
5 A. That's correct. 12:04
6 119 Q. I think at that stage she had raised concerns with the
7 assistant commissioner as to whether there was now any
8 possible conflict of interest with her dealing with the
9 disciplinary investigation in circumstances where she
10 had made a previous decision in relation to the 12:05
11 bullying and harassment process. And she will say that
12 she sought internal direction as to whether it was
13 appropriate for her to proceed. But just pausing at
14 this moment, can I ask you to confirm, as I think you
15 have, that during this time you weren't asking that 12:05
16 Chief Superintendent Kehoe would stop the disciplinary
17 investigation, would stand down?
18 A. No, because I wasn't aware at the time that she would
19 have been in breach of Regulation 14(5) of the
20 discipline regulations. 12:05
21 120 Q. But at the time you were pursuing a civil action,
22 effectively complaining about her and specifically, as
23 I understand the position from the papers, indicating
24 that you believed that she was partial?
25 A. Impartial? 12:06
26 121 Q. Partial in the bullying and harassment?
27 A. Sorry, yes.
28 122 Q. CHAIRMAN: That she was not impartial?
29 MR. MURPHY: That she was not impartial.

1 CHAIRMAN: Sorry what is Regulation 14(5), I am sorry,
2 because I don't happen to have it in my head at the
3 moment.

4 MR. MCGUINNESS: Chairman, it is the regulation which
5 precludes the appointment of an officer under the 2007 12:06
6 regulations if they have had factual involvement in any
7 of the matters preceding the appointment.

8 CHAIRMAN: I follow. Anybody disagree with that?
9 Thanks very much.

10 123 Q. MR. MURPHY: So, just at this point, can I ask the 12:06
11 registrar to deal with another document, please, at
12 page 3150, just in response to something Mr. Barry
13 said. Mr. O'Higgins has noted this. Just to be clear,
14 Mr. Barry, and to be fair to you, I think you've
15 indicated a few moments ago that you weren't aware of 12:07
16 the role that Chief Superintendent Kehoe was playing in
17 the disciplinary process. Can I just take you back to
18 December 2013? This is a letter written to you by
19 Chief Superintendent Kehoe. You will see that in the
20 course of the first part of the letter that you had 12:07
21 sought clarification on whether it was a disciplinary
22 or a criminal matter that she had been appointed to
23 investigate. Do you see that in the second paragraph.

24 A. That's correct.

25 124 Q. And I think you'll agree with me that she had told you 12:07
26 in that letter that she had been appointed under
27 Regulation 14, isn't that correct?

28 A. That's correct.

29 125 Q. She goes on then to describe her role in the bullying

1 and harassment issue. And then, over the page, page
2 3151, I think you will agree with me that she indicates
3 "The disciplinary/criminal investigation is continuing
4 but I wish to advise you that I have sought
5 clarification from assistant commissioner Southeastern 12:08
6 Region in respect of finalising the discipline/criminal
7 investigation as the provisions of Regulation 14(5) of
8 the Garda Discipline Regulations 2007 may have a
9 bearing on my appointment under the discipline
10 regulations." 12:08

11
12 So, as far as back as 2013 she had openly discussed
13 with you the fact that her appointment covered
14 disciplinary and criminal investigation and referred
15 specifically to Regulation 14. 12:08

16 A. That was at that time, yes, but then in 2015 she
17 re-applied to be appointed under regulation 14(5),
18 which I don't believe was proper.

19 126 Q. But armed with the knowledge that she had given in
20 December 2013, would you agree with me that at no stage 12:08
21 in 2013, '14, '15 did you intervene and say, stop the
22 lights, Chief Superintendent Kehoe should not be
23 involved in this process?

24 A. When she was initially appointed she was appointed on
25 the same date for the two investigations, that's why I 12:09
26 believed she sought clarification. She decided to
27 investigate the bullying and harassment first and then
28 she tried to preclude herself from continuing, but
29 Garda management told her she could proceed. But I was

1 not aware that she re-applied then in 2015 to be
2 re-appointed under Regulation 14(5), the one she
3 objected to here, or to have herself excluded because
4 of.

5 127 Q. You see, I have to suggest to you that in fact what's 12:09
6 missing throughout all of this period is any attempt by
7 you to stop that disciplinary investigation. It's a
8 time where I think, without going into any information
9 that she may have given to you, you have clearly
10 indicated that you were in receipt of legal advice and 12:09
11 you had issued legal proceedings, isn't that correct?

12 A. I was in receipt of legal advice but I was not aware of
13 the re-appointment in 2015.

14 128 Q. And again, you were aware at all stages that the 12:09
15 disciplinary investigation had not lapsed, isn't that
16 right?

17 A. Pardon?

18 129 Q. You were aware the disciplinary investigation had not
19 lapsed? There's nothing from you to say at that time
20 in the papers that you believed that the disciplinary 12:10
21 investigation had vanished or disappeared, isn't that
22 correct?

23 A. It's my understanding there were two disciplinary
24 investigations.

25 130 Q. Well, Mr. Barry, can I just put it to you that in this 12:10
26 situation that investigation did continue and Chief
27 Superintendent Keogh will say that on 27th April 2016,
28 accompanied by Inspector O'Driscoll, that she
29 interviewed Superintendent Comyns in relation to the

1 disciplinary investigation and on the 12th May she
2 submitted her final report. I wonder could we have
3 page 1204, please. Please, can you scroll down. 12th
4 May 2016. And there, she is confirming, she will say
5 in evidence, that she completed all elements of the 12:11
6 investigation and she was notifying her superiors of
7 that fact. Please can you scroll down? And to the
8 last paragraph please. Thank you. So, you'd be
9 familiar with this letter also, Mr. Barry, that the
10 investigation was complete and copies of the files have 12:11
11 been put forward as referred to in the report.

12
13 Could I ask that the registrar just scroll back up to
14 the top of the letter for a, moment please. Sorry,
15 1205, please. And perhaps scroll down again, please. 12:11
16 So in summary, can I suggest to you that this indicates
17 that Chief Superintendent Kehoe is effectively signing
18 off on the different tasks she had been asked to
19 identify from the very outset, and is referring to her
20 files in that way. 12:12

21 A. Pardon?

22 131 Q. Would you agree that that indicates the end point --

23 A. Yes. "This concludes my investigation".

24 132 Q. So just again on her behalf in relation to the delay
25 issues that you complain of concerning the discipline 12:12
26 aspect. She will say in evidence that insofar as there
27 were any delays in that process, that it was necessary
28 to seek clarification of the issue as to whether she
29 should proceed and that what she did in seeking that

1 clarification was both reasonable and necessary,
2 especially in the light of the fact that you were, as
3 she only then discovered, suing her in the civil courts
4 in relation to the earlier aspect of the bullying and
5 harassment investigation? 12:13

6 A. She was asked to cease the disciplinary investigation
7 when she became aware of my High Court proceedings.
8 She sought clarification and she was instructed by
9 Internal Affairs not to continue with it and they then
10 decided there was no problem continuing with it. And I 12:13
11 don't believe somebody who is aware that she was
12 subject to High Court proceedings by me was fit to
13 decide on any bullying aspect.

14 133 Q. And again, I have to put it to you on her behalf that
15 she will say that the time -- 12:13

16 CHAIRMAN: Sorry, I am sorry, was this the bullying
17 part?

18 A. Pardon?

19 134 Q. CHAIRMAN: was this the bullying part?

20 A. No, this was the disciplinary criminal investigation. 12:13

21 135 Q. CHAIRMAN: Yes, but why do you say bullying? You said
22 she wasn't fit to decide on any bullying aspect. My
23 understanding is, we had three investigations: Number
24 one, items 1-8 on your bullying and harassment policy
25 paper, isn't that right? 12:14

26 A. That's correct.

27 136 Q. CHAIRMAN: Numbers 1-8. Number two was item 9 on your
28 bullying and harassment complaint, that was in fact a
29 criminal complaint?

1 A. That's correct.

2 137 Q. CHAIRMAN: That was number two. And number three was
3 discipline in respect of Superintendent Comyns, is that
4 correct?

5 A. That's correct. 12:14

6 138 Q. CHAIRMAN: So number three, you say she shouldn't have
7 continued with?

8 A. That's correct.

9 CHAIRMAN: Okay.

10 139 Q. MR. MURPHY: So just finally on this point then, can I 12:14
11 just put it to you that --

12 CHAIRMAN: Am I concerned with that? Am I concerned
13 with that issue?

14 MR. MURPHY: Sorry, Chairman?

15 CHAIRMAN: Am I concerned with that issue, that she 12:15
16 shouldn't have continued with the disciplinary aspect?

17 MR. MURPHY: No.

18 140 Q. CHAIRMAN: Is that a case of bullying that you allege?
19 A. I believe so, Mr. Chairman.

20 141 Q. CHAIRMAN: And when did you decide that, because it's 12:15
21 not in my schedule of issues?

22 A. I only realised it, Mr. Chairman, when I went through
23 discovery, that she sought re-appointment under
24 Regulation 14(5).

25 142 Q. CHAIRMAN: But we had a very recent session in which we 12:15
26 discussed questions of the issues, isn't that right,
27 and that's not one of them. Anyway, there it is, for
28 what it's worth, and it may be that I am wrong in my
29 understanding of the issue. But there it is. But you

1 say, that's it, you say she shouldn't have continued?
2 A. Shouldn't have sought re-appointment under
3 regulation 14.
4 143 Q. CHAIRMAN: You say she sought re-appointment?
5 A. That's correct. 12:16
6 144 Q. CHAIRMAN: Is it not correct to say that she raised
7 queries about whether it was appropriate for her to
8 continue?
9 A. She did for the initial one in 2013.
10 145 Q. CHAIRMAN: Yes. 12:16
11 A. But for the subsequent one, she sought re-appointment
12 under Regulation 14(5) herself.
13 146 Q. CHAIRMAN: Okay. Is that actually technically correct?
14 A. To do so?
15 147 Q. CHAIRMAN: Is it technically correct that she sought 12:16
16 re-appointment?
17 A. She says it herself, that she sought re-appointment
18 under Regulation 14(5).
19 148 Q. CHAIRMAN: Okay, and that was for the criminal
20 investigation, is that correct? 12:16
21 A. No, it was for the last module in respect of the
22 discipline notice being served on me.
23 149 Q. CHAIRMAN: Thank you very much. well, thank you for
24 that, because I thought that she had raised an issue as
25 to whether it was appropriate for her to continue, is 12:17
26 it okay for me to continue. Now, you could say that is
27 seeking re-appointment, I suppose, on one reading, but
28 let me assume, just suppose she said, I'm not sure I
29 should be doing this, is it okay, or something of that

1 kind, would you still say that was targeting?
2 A. I would, Mr. Chairman, because she should not have been
3 re-appointed under Regulation 14(5). Definitely not
4 for the last module.
5 150 Q. CHAIRMAN: Very good. And appointing her to 12:17
6 investigate Superintendent Comyns, that's targeting
7 you, yes?
8 A. There's a question over her impartiality I believe,
9 because she was then aware of my High Court --
10 151 Q. CHAIRMAN: Okay. That she was being sued by you and 12:17
11 that should have meant she backed off entirely?
12 A. I believe so.
13 CHAIRMAN: Okay. Thank you. Now continue, Mr. Murphy.
14 MR. MURPHY: Yes, thank you. With your leave,
15 Chairman, I propose to move on from section 6A I put to 12:18
16 the witness --
17 152 Q. CHAIRMAN: I think you have put that allegation.
18 MR. MURPHY: There may be one document, I will come
19 back to that later. Mr. Barry, can I move to 6B
20 please, and 6B is that by dealing with your bullying 12:18
21 complaints before the allegation about the sexual the
22 assault allegation, you allege that Chief
23 Superintendent Kehoe targeted you. The first point I
24 want to put to you is that there was, and Chief
25 Superintendent Kehoe will say so, there was a 12:18
26 reasonable and coherent reason to sequence the
27 investigations in the way that she did, particularly
28 because, as you observe repeatedly, there was a
29 timeframe that had to be followed closely, isn't that

1 correct?

2 A. Sorry, I don't think anyone should conduct a bullying
3 and harassment investigation before a criminal
4 investigation. I believed --

5 153 Q. That's your view? 12:19

6 A. That was my view.

7 154 Q. That's your view. If I could ask to have document
8 number 1119, please. Could you please scroll down to
9 the 20th February. We have seen this document
10 previously, I think you agreed that it reflected the 12:19
11 meeting you had on that date. The first point, can I
12 make to you, that it is clear that the investigations
13 had to be dealt with in some degree, that there was a
14 particular factor, the 28-daytime frame, in relation to
15 the bullying and harassment investigation, which was 12:19
16 material to you and was material to her, it was
17 important for both of you, both of you understand that
18 this was a feature of the landscape for the bullying
19 and harassment that was special to it and not to the
20 other investigations, is that right? 12:19

21 A. But I would question that like. Special to bullying
22 and harassment, but not to sexual abuse case, I don't
23 think that's correct.

24 155 Q. Again I have to suggest to you that in terms of a
25 decision, she will say a decision had to be taken as to 12:20
26 which investigation, which element would be dealt with
27 first and it was necessarily the case that other
28 aspects would be delayed to a certain extent if the
29 bullying and harassment investigation went first, but

1 you knew that and you understood that and she sought
2 your consent to extend time in relation to that
3 investigation, isn't that right?
4 A. Yes, she sought an extension of time and I granted it.
5 156 Q. Okay. Could we have document 1062, please. So this is 12:20
6 a letter of 12th March of 2013. Just moving down,
7 please, to the third paragraph, registrar. Do you see
8 there, Mr. Barry, you might recall this letter, that
9 Chief Superintendent Kehoe is indicating the
10 appointment under Regulation 14 and also, if you move 12:21
11 down further, to the next page:
12
13 "As you will appreciate this is a complex
14 investigation."
15 12:21
16 She notes the fact that there are different codes. She
17 asks for your forbearance. Then she acknowledges that
18 the disciplinary regulations are not governed by the
19 same timeframes but she also expresses the hope that
20 she will be able to expeditiously investigate that. 12:21
21 Just looking at that letter, would you agree with me
22 that it was clear to you and her and to everybody
23 involved that there were different components of the
24 tasks she had to achieve; disciplinary, criminal and
25 bullying and harassment? 12:21
26 A. There were different timeframes, yes.
27 157 Q. And it was clear that she was pursuing one ahead of the
28 others and looking for your consent, which you
29 constructively gave her, with a view to extending time

1 to complete that?

2 A. My view at the time would be, if Chief Superintendent
3 Kehoe sought my consent to carry out the criminal
4 investigation first, I would have gladly consented.

5 158 Q. I wonder could we have page 2673, please. Now, I 12:22
6 presume just on that last answer that you've given,
7 that if the bullying and harassment case had been dealt
8 with out of time, that would have been a source of
9 grievance and complaint that you would have raised
10 also? 12:22

11 A. It was dealt out of time and I didn't make a complaint
12 about it.

13 159 Q. I suggest to you that it wasn't, but if we look at this
14 document here, this is a letter of 9th August 2013.
15 Can I ask you to scroll up to the top of the letter 12:23
16 please. Okay. So this is 9th August 2013. If you
17 could just scroll down, please. So this refers to
18 Inspector Leahy, who is confirming that during the time
19 when the bullying and harassment investigation was
20 doing conducted he had been asked to go and identify a 12:23
21 number of potential interviewees. And do you see there
22 in the centre, he indicates that statements were taken
23 on the 26th March, the 15th April, the 25th April, the
24 27th March. Please scroll down. And then there's
25 reference to some action taken in July and a reference 12:24
26 then to potential interview in August. If you scroll
27 down, please.

28
29 So, ultimately I have to suggest to you that this

1 communication indicates that whereas clearly the main
2 criminal investigation wasn't proceeding at full
3 throttle, because it couldn't, that steps had been
4 taken at an early stage by Inspector Leahy under the
5 direction of Chief Superintendent Kehoe to do some work 12:24
6 in that regard?

7 A. That's correct.

8 160 Q. Yes. And just finally then on this point, can I
9 suggest to you that merely by taking the bullying claim
10 before the allegation of the sexual assault could not 12:24
11 and did not amount to targeting or discrediting of you
12 by Chief Superintendent Kehoe, I have to put it to you
13 on her behalf?

14 A. Well, it is still my belief that the main priority of
15 that investigation should have been the criminal 12:25
16 allegation that I made.

17 161 Q. But apart from that question of an opinion, would you
18 agree with me that you have no evidence to demonstrate
19 that the decision to sequence it in that way was a
20 deliberate attempt to target or hurt you instigated by 12:25
21 Chief Superintendent Kehoe?

22 A. Well, I felt it was making little of the complaint, the
23 serious complaint, the serious criminal allegation I
24 had made, that bullying was considered a priority over
25 it. 12:25

26 162 Q. But I think we're agreed that you did put those
27 allegations all on the same document, the nine were
28 altogether, weren't they?

29 A. Pardon?

1 163 Q. You did put the nine different points together?
2 A. That was what I was instructed to do by AGSI and my
3 solicitor.
4 164 Q. Again a question --
5 165 Q. CHAIRMAN: why did you make this one the last one? 12:25
6 A. Pardon?
7 166 Q. CHAIRMAN: why did you make this one the last one?
8 A. I did them in sequence of when they occurred.
9 167 Q. CHAIRMAN: But this is the most important one, why
10 didn't you put it first? 12:26
11 A. That's the legal advice I had time.
12 168 Q. CHAIRMAN: You got legal advice.
13 A. Yes.
14 169 Q. CHAIRMAN: Legal advice told you that?
15 A. And AGSI advice. 12:26
16 170 Q. CHAIRMAN: Just remind me, did you protest about taking
17 the bullying first?
18 A. No, because I was told that they would be separated.
19 171 Q. CHAIRMAN: But when you discovered they weren't being
20 separated, did you say, sorry, I don't want the 12:26
21 bullying, I want the criminal to go first? I mean, I
22 am not saying there was any obligation on you to do
23 that, no question there was no -- I am not suggesting
24 that, but did you say, this is not the right way to --
25 I mean you had legal advice, you had AGSI advice, so 12:26
26 you weren't a sort of an innocent person wandering
27 around in a strange land, isn't that right?
28 A. That's correct, but I had never made a complaint of
29 this nature before.

1 172 Q. CHAIRMAN: That, I understand. But would your
2 solicitor not write and say, this is the wrong way
3 round, you're putting the cart before the horse? I can
4 see the argument that says, why not do the criminal one
5 first. But I mean, why did nobody on your behalf say, 12:27
6 hold on, do it the other way round?
7 A. That would have been the right way to do it but that
8 was the advice I got at the time.

9 173 Q. CHAIRMAN: But whether or which, the whole thing was
10 academic by the end of May, because the disciplinary 12:27
11 was finished by the end of May. So, did it make a big
12 deal?
13 A. Well, Chief Superintendent Kehoe said that there were
14 two separate investigations.

15 174 Q. CHAIRMAN: She did? 12:27
16 A. The criminal and the bullying. So I believed they were
17 going to be treated as such.

18 175 Q. CHAIRMAN: Look, one way or the other, the whole issue
19 was gone by the 30th May because she had now reported
20 on the bullying and harassment 1-8 and she was now onto 12:27
21 the criminal. So what difference did it make?
22 A. I believed had they went full -- the full investigation
23 team should have been committed to the criminal matter
24 first.

25 176 Q. CHAIRMAN: Okay, I understand that. So it wasn't, it 12:28
26 didn't happen for four months, something less than four
27 months. So what? Then it started. So what difference
28 did it make?
29 A. Well I made the official complaint to Superintendent

1 Lordan in November and it wasn't until May that a
2 decision on the bullying was finished.

3 177 Q. CHAIRMAN: Okay. So what difference did it make? You
4 say, look, the criminal should have proceeded the
5 bullying? 12:28

6 A. Yes.

7 178 Q. CHAIRMAN: I understand that point?

8 A. Yes.

9 179 Q. CHAIRMAN: And looking at the seriousness, that makes
10 sense. But then I say, hold on, the bullying was 12:28
11 finished by the 30th May, so what difference did it
12 make? Because the criminal then started up at the
13 beginning of June?

14 A. That's correct.

15 180 Q. CHAIRMAN: So what difference does that make? 12:29

16 A. During the course of her investigation, Chief
17 Superintendent Kehoe informed me that they weren't able
18 obtain some phone records because of the time lapse.

19 181 Q. CHAIRMAN: Right.

20 A. And had the investigation for phone records commenced 12:29
21 earlier, then they would have been able to secure that
22 data.

23 182 Q. CHAIRMAN: Okay. So in the meantime, between February
24 and the 30th May, phone records, the two-year period,
25 if I am remembering correctly, the two-year period for 12:29
26 phone records operated and closed off some aspects of
27 the investigation, is that right?

28 A. It would have subsequently, but not exactly during that
29 period, because the incident occurred in 2012.

1 183 Q. CHAIRMAN: Yes.

2 A. The early part of 2012, so it would have a been -- they
3 should have been secured before February 2014.

4 184 Q. CHAIRMAN: Okay.

5 A. Given the two-year timeline. 12:30

6 185 Q. CHAIRMAN: So she was able to get going in June 2013?

7 A. Yes.

8 186 Q. CHAIRMAN: So there was no reason why she wasn't able
9 to get the phone records?

10 A. No. When she was progressing her investigation she 12:30
11 came across persons she should have obtained phone
12 records from and because it was after February '14, she
13 wasn't able to secure that data.

14 187 Q. CHAIRMAN: We seem to be at cross purposes you and I,
15 Mr. Barry. I am saying to you, okay, so the discipline 12:30
16 shouldn't have gone first but we know it did but the
17 discipline was finished at the end of May. So I say,
18 okay, so what? And you say, well phone records were
19 missing. But there was nothing to stop them getting
20 the phone records from June 2013? 12:31

21 A. That's correct, but that's what I was informed by Chief
22 Superintendent Kehoe, that some phone records she
23 couldn't obtain because of the time delay.

24 188 Q. CHAIRMAN: Okay. So there's one reason, if she had
25 started earlier those phone records would still have 12:31
26 been available?

27 A. Yes.

28 189 Q. CHAIRMAN: Okay. Anything else?

29 A. That's it, Mr. Chairman.

1 CHAIRMAN: Okay. Thank you.

2 190 Q. MR. MURPHY: Thank you, Chairman. Mr. Barry, I am
3 going to come back to the phone point in due course,
4 but just on something you mentioned a few moments ago,
5 did I understand you to say to the Chairman that you 12:32
6 had reported the nine complaints in the order in which
7 they occurred.

8 CHAIRMAN: That's what he said.

9 191 Q. MR. MURPHY: I will just rephrase the question.
10 Mr. Barry, for the record, I think I understood you to 12:32
11 say a few moments ago that you had reported the nine
12 complaints in the chronological order in which they had
13 occurred?

14 A. I was told to put the bullying complaints 1-8 first in
15 chronological order as they occurred, time wise. 12:32

16 192 Q. But I think --

17 A. But complaint number 9 initiated in February 2012 and
18 it was August 2012 that I went sick. I made my
19 complaint in October, but I was disciplined in August.

20 193 Q. CHAIRMAN: Mr. Barry, it's a simple question. It's a 12:33
21 simple question. A moment minute you told me that you
22 put the -- because I asked you why didn't you put
23 number 9 first, that's what I asked you, because it's a
24 more -- we're all agreed it's a very serious
25 allegation. And you said, I was advised to put them 12:33
26 into chronological order. That's the answer you gave
27 me a minute ago?

28 A. That's correct, yes.

29 194 Q. CHAIRMAN: Now is that right? I mean, you could have

1 made a mistake. It's okay to say, well, I'm not sure
2 about that, or whatever, there's no problem about that?
3 A. When I was getting my advice, Mr. Chairman, I was told
4 that there was a bullying aspect of complaint number 9
5 and that I was to make my complaint under the bullying 12:33
6 and harassment policy.

7 195 Q. CHAIRMAN: In chronological order?
8 A. As they occurred, yes.

9 196 Q. CHAIRMAN: Yes.
10 A. So going back to when the first instance of bullying -- 12:33
11 197 Q. CHAIRMAN: That's what you told me a few minutes ago?
12 A. Yes.

13 198 Q. CHAIRMAN: Now, Mr. Murphy is quizzing you about that,
14 and I thought you were changing your account because
15 you were distinguishing between number 9 and numbers 12:34
16 1-8?
17 A. No, sorry, Mr. Chairman, no.

18 199 Q. CHAIRMAN: Okay. There's nothing wrong with that and
19 there's nothing wrong with saying, I made a mistake, or
20 something like that. 12:34
21 A. No.
22 CHAIRMAN: There's no problem about that. Now, please
23 ask your question again, Mr. Murphy?

24 200 Q. MR. MURPHY: Yes, Chairman. As I understood the
25 position, you indicated a few minutes ago that you put 12:34
26 the matters in chronological order, and I think you
27 have now given a slightly different answer to the
28 Chairman, but that is matter for the Chair to assess.
29 But just to help you and make sure we're not at cross

1 purposes, could you be shown page 90, please? This is
2 your statement that was made on 21st November 2012,
3 that we have seen before. So just as a starting point,
4 would you agree with me that page 90 relates to the
5 ninth complaint and that relates to a date on 2/2/2012, 12:34
6 so can we agree on that?

7 A. Pardon?

8 201 Q. I am sorry, could you scroll down please, registrar.
9 So do you see the words there "the ninth and most
10 serious incident", please scroll down. Just stop 12:35
11 there, thank you. Can I draw your attention,
12 Mr. Barry, to the fact there is a reference to
13 "Thursday 2/2/2012", so can we agree that that's the
14 date that is relevant to the ninth complaint?

15 A. That is when the ninth allegation was reported, yes. 12:35

16 202 Q. And just to go back, not to unnecessarily delay the
17 Tribunal on that, if you can go back please to page 89,
18 to the seventh incident. So, the seventh incident.
19 Would you agree with me, just looking at it there for a
20 minute, relates to 1st May 2012. 12:35

21 A. That's correct.

22 203 Q. Yes. And the sixth, which is the top of the page,
23 please, is 10th May 2012, would you agree with that?

24 A. That's correct, they were both May.

25 204 Q. And then if we turn back to page 88, the fifth 12:35
26 complaint relates to 4th May 2012?

27 A. Yes, those three complaints were made.

28 205 Q. Then if you could please turn back to page 87, we
29 reconnect to February 2012?

1 A. Yes.

2 206 Q. That's the fourth incident?

3 A. Pardon?

4 207 Q. The fourth incident is 13/2/2012?

5 A. That's correct. 12:36

6 208 Q. So, would you agree with me that the ninth incident is
7 not in chronological order in this statement?

8 A. Well, the ninth is because the serving of the
9 disciplinary notice was in August of 2012.

10 209 Q. The issues that it relates to primarily, what was 12:36
11 preoccupying you, as the statement indicates, is what
12 you allege occurred on 2/2/2012, isn't that right?

13 A. My legal team said the bullying aspect of complaint
14 number 9 was the serving of the discipline notice on me
15 in August of -- 12:36

16 210 Q. Mr. Barry, you were a very experienced officer at the
17 time, your legal --

18 MR. COSTELLOE: Chairman, I am loathe to interrupt but
19 surely this is unfair, this is a matter for you to
20 decide. Mr. Murphy has established the dates and has 12:37
21 put the question and there has been an answer.

22 CHAIRMAN: For what it's worth, for what it's worth, I
23 was puzzled as to what -- I said what I said, why
24 didn't you put number 9 in. Now I don't know whether
25 that has come up previously but Mr. Barry says -- I 12:37
26 mean I don't know that Mr. Costelloe needs to be so
27 worried -- I am sorry, that sounds wrong,
28 Mr. Costelloe, I don't mean to indicate that you are
29 worried or should be worried. What I am indicating is

1 that Mr. Costelloe I think need not be concerned
2 because as far as I am concerned Mr. Barry has
3 furnished an explanation as to why the thing happened
4 because insofar as it was a bullying and harassment
5 complaint, he says there was a bullying and harassment 12:38
6 element in number 9 and he put it in that way. And
7 rightly or wrongly, I mean one could criticise him for
8 putting it as number 9 or not putting it, but he's
9 given an explanation for that and that certainly seems
10 to make -- how shall I put this as neutrally as 12:38
11 possible, it offers an explanation as to why number 9
12 is in the position it is.

13 MR. COSTELLOE: Well thank you for that, Chairman, I
14 won't pursue my objection then.

15 CHAIRMAN: I don't think you need to, Mr. Costelloe, 12:38
16 because I am trying to indicate to you that -- I mean,
17 I am not sure that this is of real importance, but I
18 raised it as a query and Mr. Barry says, look, here's
19 the way it happened.

20 MR. COSTELLOE: Thank you, Chairman. 12:38

21 MR. MURPHY: Thank you, Chairman.

22 211 Q. Mr. Barry, can we move on to number 6C please. Number
23 6C is the allegation that you made, that by not
24 informing the complainant of the sexual assault of her
25 investigation despite having been instructed by the DPP 12:39
26 to do so, that Chief Superintendent Kehoe targeted you.
27 So, just focusing on that issue if we can at this point
28 in time. Could I ask you to be shown document 1218,
29 please. Sorry, could I ask you to scroll down to 1219.

1 Thank you. This is a document of the 9th July. This
2 is addressed to you. Starting at page 1218, do you see
3 there, Mr. Barry, you're familiar with this letter,
4 which I think was written to you at that time. The
5 first point I think, didn't Chief Superintendent Kehoe 12:40
6 specifically say in the second paragraph that it was
7 "Your complaint of 21st November 2012 continues to be
8 investigated"? Isn't that correct?

9 A. That's correct.

10 212 Q. And if we just scroll down. Sorry, registrar can you 12:40
11 scroll back up, "As you are fully aware", do you see
12 that sentence? "As you are fully aware, this
13 investigation centres on your allegation" - I think you
14 would agree it was your allegation and your complaint,
15 isn't that correct? 12:40

16 A. That's correct.

17 213 Q. And then in terms of the next paragraph, beginning with
18 the words "My investigation", do you see it relates to
19 "your assertion surrounding the investigation", is that
20 correct? 12:40

21 A. That's correct.

22 214 Q. In terms of that situation, can I suggest to you that
23 there appears to be a misunderstanding on your part
24 about the role that you played at that time. Chief
25 Superintendent Kehoe will say that she said then and 12:41
26 she said later on and let you know and understand that
27 she regarded you as being the complainant in relation
28 to your complaint. As we will see when we come to the
29 DPP, effectively the capacity to seek reasons also

1 emerged, because you were the person who had made the
2 complaint. Do you understand?

3 A. Yes, but the DPP says I was not the injured party, I
4 was not entitled to --

5 215 Q. Again, I am going to suggest to you that is a 12:41
6 misreading of the situation. Could I ask you to turn
7 to page 1175, please. This is the letter of 24th
8 November of 2015. Again, we've seen this document
9 previously, so I don't propose to open it, but you will
10 see there is a reference to the Director of Public 12:42
11 Prosecutions's decision, the fact that a file is there,
12 and you are being notified that you could seek reasons,
13 isn't that correct? Please, could you scroll down
14 again. We saw this document some moments ago, you do
15 recall it, Mr. Barry, don't you? 12:42

16 A. I do recall it, yes.

17 216 Q. In terms of that situation, I have to suggest to you
18 that it is clear that throughout the course of the
19 investigation Chief Superintendent Kehoe reasonably
20 treated you as the person who had made the complaint? 12:42

21 A. That would appear why she sent me that form to seek the
22 reasons why the DPP didn't proceed.

23 217 Q. And I have suggest to you that she wasn't instructed by
24 the DPP to carry out the actions that you have
25 mentioned, but here is a situation demonstrating that 12:42
26 she is treating you as the complainant and she was
27 investigating your complaint, Mr. Barry's complaint.
28 And it was for that reason that she was going back to
29 you, to speak to you about your complaint?

1 A. I had made the complaint but I didn't consider myself
2 to be the victim of the crime that I was alleging.

3 218 Q. Again, if we could pause there for a moment, Mr. Barry,
4 you used that word again, you did not consider
5 yourself, but would you agree with me that for a person 12:43
6 looking in at the situation, you had made a complaint?
7 A. That is correct, I had made a complaint.

8 219 Q. And would you agree with me based on your experience as
9 a guard, the complaint is made by a person who is then
10 treated by An Garda Síochána as the complainant? 12:43
11 A. That would be correct.

12 220 Q. And ultimately, insofar as the complainant is
13 concerned, that person would have a particular ability
14 to communicate with the DPP's office that other people
15 might not have? 12:43
16 A. I did communicate with the DPP.

17 221 Q. Exactly. And I think you're aware that as a matter of
18 general law and practice, people aren't meant to
19 communicate with the DPP's office unless they are in a
20 particular category and you were in that category 12:44
21 because you were the complainant?
22 A. But not according to the DPP.

23 222 Q. Ultimately in the circumstances of this case, can I
24 suggest to you that whatever view you may have had of
25 this situation, that ultimately there's nothing in this 12:44
26 allegation that demonstrates that Chief Superintendent
27 Kehoe targeted you or discredited you in the way in
28 which she acted in relation to point number 6C?
29 A. I had requested Chief Superintendent Kehoe to inform

1 the victim of the family, as I believed them to be, of
2 this complaint and the DPP appeared to agree with me
3 when I looked for the views, that I was not the victim
4 of this complaint but it was in fact the child or her
5 family. 12:44

6 223 Q. The DPP did not instruct Chief Superintendent Kehoe to
7 speak to the complainant of the sexual assault, isn't
8 that correct? It's your interpretation of events that
9 she was --

10 A. Sorry, that is what I was told. I didn't have sight of 12:45
11 the DPP's directions to Chief Superintendent Kehoe. It
12 was subsequently I was informed by a person with
13 another organisation who were investigating the
14 complaint.

15 224 Q. I am sorry, I have to object to anything has not been 12:45
16 sourced?

17 CHAIRMAN: I think you are talking about somebody in
18 GSOC.

19 A. That's correct. I was told by the person in GSOC that
20 she was instructed to inform the victim. 12:45

21 225 Q. CHAIRMAN: So that's the basis of your complaint?
22 A. Yes. That was when I first found out.

23 226 Q. CHAIRMAN: Sorry, when you first -- is there any other
24 basis for saying that Chief Superintendent Kehoe was to
25 notify the original complainant? 12:45

26 A. The DPP would not give me the reasons for the lack of
27 prosecution. They said I was not the victim.

28 227 Q. CHAIRMAN: Correct. But rightly or wrongly, that's
29 what they said?

1 A. That's correct.

2 228 Q. CHAIRMAN: But where do you find the instruction.
3 Other than what you say you were told by somebody in
4 GSOC, is there any other basis that you have for saying
5 that Chief Superintendent Kehoe was told to notify the 12:46
6 original complainant?

7 A. No, just from the DPP and GSOC.

8 229 Q. CHAIRMAN: When did you discover that?

9 A. The DPP would have been --

10 230 Q. CHAIRMAN: No, no, no, sorry, when did you come on this 12:46
11 information, that you say you were told by the person?
12 When did the person tell you? When did the person tell
13 you that the DPP had instructed Chief Superintendent
14 Kehoe to tell the original complainant?

15 A. When GSOC completed their investigation, I met with the 12:46
16 investigator at his office in Cork and he read from the
17 file.

18 231 Q. CHAIRMAN: Okay. Very good.

19 A. That's what he told me.

20 232 Q. CHAIRMAN: No, that is the basis of your information. 12:47
21 So the question is: Was Chief Superintendent Kehoe
22 told that by the DPP, yes or no? That's an issue. If
23 she wasn't told it, this complaint fails. If she was
24 told it, this complaint factually is established, isn't
25 that right? 12:47

26 A. I believe so, yes.

27 MR. MURPHY: In fact there's a different issue also,
28 Chairman, if I can put it to the witness.

29 233 Q. If one just parks the question of your view of who the

1 victim is, can I suggest to you that standing back from
2 this, that even if you were correct in relation to your
3 interpretation, that could not possibly represent
4 targeting or discrediting of you?

5 A. My complaint was on behalf of the victim, that's why I 12:47
6 made my complaint initially. So the victim would get
7 justice.

8 234 Q. CHAIRMAN: Sorry, your complaint wasn't on behalf of
9 the victim surely, your complaint was of improper
10 behaviour on the part of a senior officer. You said he 12:48
11 committed a criminal offence?

12 A. Yes, and the victim --

13 235 Q. CHAIRMAN: But you had no responsibility -- I am sorry.
14 You say you did it on behalf of, but even if you did,
15 you complained, here's a serious issue, senior officer, 12:48
16 misbehaving seriously?

17 A. That's correct.

18 236 Q. CHAIRMAN: Seriously solid complaint?

19 A. Yes.

20 CHAIRMAN: Okay. 12:48

21 237 Q. MR. MURPHY: Just finally on that point, can I put it
22 to you that in fact there is no evidence to support the
23 suggestion that this amounted to deliberate targeting
24 or discrediting of you by Chief Superintendent Kehoe,
25 none. 12:48

26 A. I don't agree.

27 238 Q. CHAIRMAN: Just suppose for the sake of argument that
28 the DPP had told Chief Superintendent Kehoe, just
29 suppose the DPP had told Chief Superintendent Kehoe,

1 how does that constitute targeting you if she didn't do
2 it?

3 A. Because I had requested throughout the investigation
4 that she inform the victim or her family.

5 239 Q. CHAIRMAN: Suppose she disagreed with you, okay, how
6 would that be targeting you? 12:49

7 A. It would have been targeting if the DPP had concurred
8 with my view.

9 CHAIRMAN: Fair enough, thank you.

10 MR. MURPHY: Chairman, with your leave, if I deal with
11 another short issue before lunch, which is the 12:49
12 allegation 6D.

13 CHAIRMAN: Yes.

14 240 Q. MR. MURPHY: That allegation, Mr. Barry, is that by
15 sending private and confidential letters addressed to 12:49
16 you at Anglesea Street station, including fingerprints
17 for the purposes of elimination and identifying a
18 suspect, that she targeted you.

19
20 So, first of all, can I ask you to be shown document 12:49
21 209 please. So this is your letter of complaint that
22 was referred to I think in the first or second day of
23 evidence, of 13th July 2015. Can I ask you to scroll
24 down please, registrar. Again, further again. So
25 ultimately this is your letter of protest and you're 12:50
26 indicating that you would appreciate if replies can be
27 sent to the address provided by you on all
28 correspondence and if the address changes that you be
29 notified of that change.

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I wonder if you could be shown page 210, please.
Please scroll down. Just pausing there for a moment.
Again, this is correspondence from you which indicates
a specific allegation. Can I just draw your attention
to the last line, just above it, there's reference to:

12:51

"I don't accept your excuse, I believe forwarding my
post to Anglesea Street garda station (where it was
opened by strangers) was done with malice
aforethought."

12:51

So, can I just ask you, on that particular point, what
evidence do you say exists that this was done with
malice aforethought by Chief Superintendent Kehoe?

12:51

A. Because I don't believe she had any just reason to
forward my correspondence to Anglesea Street.

241 Q. And did you make that allegation in response to her
indicating to you that this was an inadvertent error by
somebody in her office?

12:51

A. I didn't accept that.

242 Q. Just pausing for a moment, Mr. Barry. Apart from the
fact that you didn't accept her explanation, do you
have any other evidence to demonstrate that she acted
with malice aforethought, and I mean now specifically
Chief Superintendent Kehoe personally, yes or no?

12:52

A. She knew the pressure I was under with transfer
attempts at the time, she was aware that I had been on
Pulse as being attached to Fermoy Garda Station, even

1 when she met me in Mitchelstown. I had to explain that
2 to her during our meetings. And for her to turn around
3 then and forward my post to Anglesea Street, where they
4 were attempting to transfer me at the time, was
5 effectively to me saying that I was already in Anglesea 12:52
6 Street when I was not.

7 243 Q. You see, Mr. Barry, can I suggest to you that this is
8 yet another example where you are taking different
9 events and putting them together but arriving, if I can
10 say with respect, at an incorrect conclusion, because 12:52
11 in this situation what Chief Superintendent Kehoe will
12 say is that she wasn't aware that an administrative
13 error had arisen in the correspondence, she didn't
14 notice the change of address, that this is part of
15 correspondence that she would deal with on a routine 12:53
16 basis and that she explained herself to you.

17
18 Could we have document 1258, please. So this is a
19 letter of 16th July 2015. I think it's addressed to
20 you. She gives here an explanation and she will say 12:53
21 this in her evidence, that she raised a number of
22 issues, she says you are correct, that she was aware
23 you were attached to Mitchelstown. Scrolling up
24 please. At number 3 she will accept that the recent
25 correspondence was forwarded to Anglesea Street. And 12:53
26 then further up again, please. So ultimately -- sorry,
27 can you scroll down please, number 3?

28 CHAIRMAN: You mean scroll up.

29 244 Q. MR. MURPHY: Sorry. So ultimately she indicated that

1 this was an [Inaudible] she had come through
2 correspondence, and she will say there was intension on
3 the part of her staff or her to either cause distress
4 or to victimise you in any way. And can I suggest to
5 you that even apart from what she may say on this 12:54
6 issue, you have no evidence that either she or her
7 staff acted with malice aforethought to send that
8 document to Anglesea Street, isn't that correct?

9 A. It would be my belief that there were two documents
10 forwarded to Anglesea Street, because I hadn't received 12:54
11 the previous document that she mentioned.

12 245 Q. But again, Mr. Barry, you are aware of the importance
13 of evidence, if you use the words malice aforethought,
14 you know that's a very specific term, that somebody
15 plotted this, thought this out? 12:55

16 A. If it had been done twice, then it would have.

17 246 Q. CHAIRMAN: Say that again, sorry?

18 A. If it had been done twice, then it would have. One
19 piece of post going missing, I can understand, but for
20 two pieces to go missing and one returned opened, 12:55
21 having been marked private and confidential.

22 247 Q. MR. MURPHY: You see, Mr. Barry, can I suggest to you
23 that from the point of view of evidence in this case,
24 you have no evidence to demonstrate that Chief
25 Superintendent Kehoe acted towards you maliciously, 12:55
26 isn't that correct?

27 A. I believed that was malicious. If she sent my post to
28 Anglesea Street, knowing I was still attached to
29 Mitchelstown, then it would have been malicious.

1 248 Q. Again, she will indicate in her evidence that that is
2 not something she did deliberately or was aware of at
3 that time and it was done in a routine correspondence
4 trail. But that ultimately in this case I have to
5 suggest to you that there is no independent evidence at 12:55
6 all to demonstrate that this was targeting or
7 discrediting of you by her?
8 A. Well I don't agree.

9 249 Q. CHAIRMAN: You said the fact that it happened in two
10 cases indicates that it wasn't an accident? 12:56
11 A. That's my view of it.

12 250 Q. CHAIRMAN: That's your view?
13 A. That's my view.

14 251 Q. CHAIRMAN: You were putting two and two together and
15 you say, sorry, that's too much of a coincidence? 12:56
16 A. Yes, Mr. Chairman.
17 CHAIRMAN: Okay.

18 252 Q. MR. MURPHY: Therefore, if the evidence indicates that
19 it was an error by her secretary, does that change your
20 view in relation to the accusation you have made in 12:56
21 this regard?
22 A. If the secretary said that she sent it to the wrong
23 address on two occasions, Chief Superintendent Kehoe
24 refers to a bulletin that -- and I don't think a
25 secretary in An Garda Síochána would be looking at 12:56
26 bulletins to send post to a person. I certainly never
27 did it in my service.

28 253 Q. Can I just suggest to you on her behalf that the
29 approach she adopted towards this allegation is based

1 on your own conjecture and supposition, but you don't
2 actually have any evidence to prove that she did this
3 and that she did this maliciously and that she did this
4 in an effort to target or discredit you?

5 A. From her response saying that she referred to a 12:57
6 bulletin, and I did say to her, I don't know of anyone
7 who refers to personnel bulletin before forwarding
8 correspondence.

9 254 Q. Can I suggest to you, Mr. Barry, there is now the
10 beginning of an element of a pattern developing in some 12:57
11 of your responses to the events the Tribunal is looking
12 at, where you are using very strong language without
13 having any basis in evidence to support what you are
14 saying?

15 A. I disagree with you. 12:57

16 255 Q. And you're complaining here, for example, about a
17 letter being sent, we say inadvertently, certainly not
18 with any malice, to a garda station and that, as I
19 understood your complaint, you indicated that you
20 believe this was a massive breach of privacy for you? 12:57

21 A. Well, confidential post is a serious matter. I believe
22 opening someone's post, which was marked private and
23 confidential -- and you refer to one letter, I say
24 there was two letters sent.

25 256 Q. And in terms of the overall approach, I have to suggest 12:58
26 to you that using language of this kind is important
27 because if you use it when you don't have the evidence,
28 you're making a very significant attack on the good
29 name of another person, in this case Chief

1 Superintendent Kehoe?

2 A. I had the evidence: I had my post returned to me
3 opened.

4 257 Q. CHAIRMAN: Just clarify for me, Mr. Barry, the two
5 letters. We have the one there, it says for your 12:58
6 fingerprints, to exclude them and so on. What's the
7 other one?

8 A. I never received the first one.

9 258 Q. CHAIRMAN: Ah I'm sorry, I see the point. You say
10 there was a letter sent previously to Anglesea Street? 12:58

11 A. I don't know where it was sent.

12 259 Q. CHAIRMAN: Sorry, I thought it was sent to Anglesea
13 Street, as far as you understand?

14 A. That's my belief because I didn't get it. But it was
15 the letter immediately prior to this one that was 12:59
16 opened in Anglesea Street?

17 CHAIRMAN: Okay. I have that.

18 260 Q. MR. MURPHY: Again I have to suggest to you, Mr. Barry,
19 regrettably, that this is another example of you using
20 very strong language against other people without 12:59
21 having the evidence. And just by way of this process
22 could I ask you to be shown page 65, please. Just very
23 briefly, this is a letter that you wrote to the
24 Commissioner in January of 2019, it's in the papers.
25 You're complaining about previous complaints you have 12:59
26 made in the Minister for Justice and to others. But
27 can I just draw your attention to the middle of the
28 page, where you say:
29

1 "I expected a proper investigation by Chief
2 Superintendent Catherine Kehoe but I only got another
3 perversion of justice."
4

5 Do you see that?

13:00

6 A. That's correct.

7 261 Q. Have you ever prosecuted a perversion of justice case?

8 A. Not personally, no.

9 262 Q. Will you agree with me that they are rare?

10 A. Yes.

13:00

11 263 Q. Would you agree with me that they are difficult cases
12 to prove?

13 A. Probably are.

14 264 Q. Yes. And would you agree with me that in order to
15 prove them you need to show that somebody acted
16 deliberately in an effort to destroy a judicial or
17 criminal process?

13:00

18 A. Yes, that is my belief.

19 265 Q. In terms of this case, you're writing here to the
20 Commissioner suggesting this about Chief Superintendent
21 Kehoe, we say wrongly, but can I just ask you to turn
22 forward within the letter itself, to page 67. You make
23 reference to Chief Superintendent Kehoe at the top of
24 the page please, paragraph number 6, page 67.

13:00

25 CHAIRMAN: Just scroll down you will get to it, Ian,
26 thanks very much.

13:01

27 REGISTRAR: It's stalled, Chairman.

28 CHAIRMAN: Here we are, 67, thanks very much.

29 MR. MURPHY: Yes. There you make reference to Chief

1 Superintendent Kehoe again and you say:
2
3 "She was appointed to investigate and dragged out her
4 corrupt investigation for three years."
5 13:01
6 Again, can I suggest to you there's absolutely no
7 evidence that Chief Superintendent Kehoe acted in a
8 corrupt fashion.
9 A. I believe she did.
10 266 Q. And so is that sufficient to make an allegation against 13:01
11 somebody, that you believe she did, without any
12 corroboration, any evidence, any supporting testimony
13 to demonstrate that that is correct?
14 A. I had a report from the -- I will just give the
15 reference, I won't have to say it, it was page 5268 of 13:02
16 the documentation, what I am referring to.
17 267 Q. CHAIRMAN: You want to refer to 5268?
18 A. Please, Mr. Chairman.
19 CHAIRMAN: Thanks very much.
20 268 Q. MR. MURPHY: Can I ask you before we get to the 13:02
21 document, what are you looking at there in the witness
22 box?
23 A. That is a note, like your notes there, refer me to page
24 5268.
25 269 Q. Excuse me for a moment, have you had that document in 13:02
26 the witness box throughout the course of your evidence?
27 A. No, I brought that in with me this morning.
28 270 Q. You are aware that you're not meant to have any
29 documents in the witness box unless everybody is aware

1 of the fact that you have that document?

2 A. I wasn't aware of that.

3 271 Q. CHAIRMAN: well, it is a kind of aide memoire. When
4 did you write it up?

5 A. This morning, before I came in. 13:02

6 272 Q. CHAIRMAN: This morning, yes.

7 A. It's a reference to what's on the Tribunal.

8 CHAIRMAN: I understand. That's normal enough
9 Mr. Murphy, isn't it?

10 MR. MURPHY: I don't believe so, Chairman. 13:03

11 CHAIRMAN: I mean, I would happy to make any ruling you
12 invite me to, but I confess, certainly something like
13 this, where it goes on for a long time and he's facing,
14 you know, a lot of questions, I must say I wouldn't
15 be -- well sorry, I am not shocked or horrified. 13:03

16 Mr. Murphy, if you want further exploration of that
17 issue, if Mr. Barry says, look, I made some notes, he
18 says this morning, I would have thought maybe one might
19 make them last night or whatever, I am not sure. Maybe
20 I should be shocked, I'm not, Mr. Murphy. Maybe I am 13:03
21 inadequately indignant.

22 MR. MURPHY: No, I would just have a concern, Chairman.
23 It's not been my understanding that witnesses have
24 been --

25 CHAIRMAN: If you want to pursue it, Mr. Murphy, please 13:03
26 do.

27 MR. MURPHY: Yes.

28 CHAIRMAN: If you want to pursue it. Here we are, at
29 5268.

1 MR. McGUI NNESS: That is not 5268, Chairman.

2 CHAIRMAN: I'm sorry what's that?

3 MR. McGUI NNESS: 5268 is a portion of a letter from the
4 minister to the chairman of GSOC in relation to their
5 original report which was quashed. It's written on 13:04
6 behalf of the minister by the private secretary. There
7 may be some debate about it.

8 CHAIRMAN: Sp what do you say about that,
9 Mr. McGuinness? We shouldn't really be looking at
10 5268. 13:04

11 MR. McGUI NNESS: well, the witness seems to be relying
12 on it for the purpose of establishing a fact, which may
13 be a very contentious fact in dispute.

14 CHAIRMAN: well, if it's all right, bearing that health
15 warning that Mr. McGuinness has very properly 13:04
16 identified, can we just look at least what he's
17 referring to?

18 273 Q. which bit are you referring to, Mr. Barry?

19 A. If you can scroll down, please. Sorry, just there.

20 274 Q. CHAIRMAN: Just for everybody's information, our 13:05
21 registrar is Mr. Murphy, another Mr. Murphy, so that
22 everybody knows. Okay. Now, you scroll down, okay,
23 what paragraph, what is the paragraph start that we're
24 looking at?

25 A. The second paragraph from the top. 13:05

26 275 Q. CHAIRMAN: How does it start?

27 A. "Counsel " .

28 276 Q. CHAIRMAN: "Counsel , however..." this is advisory
29 counsel for the minister. Yes?

1 A. And the next paragraph, Mr. Chairman.

2 277 Q. CHAIRMAN: Okay, I have read that letter. Thank you
3 very much. That's the basis for your challenge to
4 Chief Superintendent Kehoe's report?

5 A. That's correct. 13:06

6 278 Q. CHAIRMAN: Now, you do appreciate that there's no
7 way --

8 A. I understand that.

9 279 Q. CHAIRMAN: -- that I could write a report in which I
10 said Mr. Barry is correct, I am satisfied Mr. Barry is 13:06
11 correct, let's look at page 5268, where counsel, I have
12 no idea who it is, not that that would make any
13 difference, so somebody else has written based on
14 information, that I don't know how much or how little
15 information they had, and somebody has written to the 13:06
16 minister suggesting that it may be possible or that it
17 might be possible to go back to GSOC, notwithstanding
18 the quashing of the original decision and the minister
19 goes back to GSOC and they say, no, thanks very much,
20 we won't do that. So you know and I know, everybody in 13:07
21 this room knows, that I can't write and say, however,
22 here's how we're going to solve this, isn't that right?

23 A. Yes, Mr. Chairman. But I was just telling Mr. Murphy
24 why I expressed that view to the Commissioner.

25 280 Q. CHAIRMAN: I understand. Sorry, I am not missing that. 13:07
26 And you are saying, look, this is not some wholly
27 contrived, wild notion that I have got into my head,
28 there is a basis for this, it may be admissible, it may
29 be not admissible, as we would say?

1 A. Yes.

2 281 Q. CHAIRMAN: And you would understand that, but it is
3 not -- you haven't dredged up this suggestion out of
4 malice aforethought so to speak, that's what you are
5 saying? 13:07

6 A. That's correct.

7 CHAIRMAN: Okay.

8 MR. MURPHY: I also draw to the Chairman's attention to
9 the fact that there is no reference to corruption in
10 the passage referred to by the witness. None. 13:07

11 CHAIRMAN: Mr. Murphy, don't worry. I mean, I am just
12 trying to interpret, I suppose in a slightly favourable
13 way to Mr. Barry, I am trying to interpret his
14 researches, and I mean the fact that he has turned up
15 page 5268 is something of a tribute to his capacity to 13:08
16 research in this matter. Anyway, that's the way it
17 seems to me. Anybody may suggest otherwise, but as a
18 tentative suggestion it seems to me that Mr. Barry is
19 saying, I'm not acting out of completely unfounded,
20 wholly unbased hostility and malice towards Chief 13:08
21 Superintendent Kehoe, I believe there is some basis for
22 my contentions, that's basically what I am taking him
23 to say, but anybody may suggest that that is an
24 incorrect inference.

25 MR. MURPHY: I think I put it to the witness that there 13:08
26 is no evidence.

27 CHAIRMAN: You did.

28 MR. MURPHY: And that is my submission.

29 CHAIRMAN: And you may take it, Mr. Murphy, that I am

1 perfectly well aware of the status of page 5268. I
2 have just been explaining that I'd be in as much
3 trouble as GSOC were if I wrote that into my report.
4 MR. MURPHY: May it please you, Chairman.

5 282 Q. CHAIRMAN: Thank you very much. Do you understand the 13:09
6 situation.

7 A. I do Mr. Chairman.

8 CHAIRMAN: Thank you have very much, we will leave it
9 there until after lunch.

10 MR. MURPHY: In terms of timing, would you say ten past 13:09
11 two, Chair?

12 CHAIRMAN: Certainly, no problem.

13

14 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS
15 FOLLOWS: 13:09

16

17 283 Q. MR. MURPHY: Chairman, thank you, and good afternoon,
18 Mr. Barry. In terms of the next phase, Chairman, I
19 propose with your leave to move to deal with allegation
20 6E. 14:11

21

22 That is the allegation that:

23

24 "By cancelling an appointment between Inspector Paul
25 O'Driscoll and Sergeant Paul Barry so as to exclude a 14:12
26 denial that Sergeant Barry wished to make of something
27 Superintendent Comyns had said about arresting the
28 sexual assault suspect, C/S Kehoe was guilty of
29 targeting Mr. Barry."

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So, Mr. Barry, the position is that I think this complaint relates to Chief Superintendent Kehoe and to Inspector Paul O'Driscoll, who you averted to several times over the course of the last days?

14:12

A. That's correct.

284 Q. I wonder if we could go to page 1225, please. So I think this is a letter that you wrote on 16th October of 2014?

A. That's correct.

14:13

285 Q. And just in the first paragraph you reference the call that you'd obtained from Inspector Paul O'Driscoll and then in the second paragraph you refer to another phone call on 6th October of 2014 from Inspector O'Driscoll, and that he told you that all statements had been taken in relation to the case conference?

14:13

A. That's correct.

286 Q. And that is the case conference which had been mentioned by Superintendent Comyns in his question and answers interview. He indicated to you that he wanted to take a statement from you in relation to the case conference which had been held on 6th February 2012, is that correct?

14:13

A. That's correct.

287 Q. In the course of this letter, I think ultimately you say that you enquired about the background to that and also that you asked what allegation had Superintendent Comyns made in relation to the conference and do you see there in the middle of the page there is a sentence

14:13

1 beginning "Inspector O'Driscoll stated" do you see
2 that?

3 A. That's correct.

4 288 Q. I think there you recite what you say you believe that
5 Inspector O'Driscoll had said to you. And then moving 14:14
6 down further, you say that you asked Inspector
7 O'Driscoll had he put this allegation to the four
8 members who had recently he made statements and you
9 also informed Inspector O'Driscoll that the comment,
10 that is referred to in the middle of the page, had not 14:14
11 been made by Superintendent Comyns in the case
12 conference. And he replied that it was Detective
13 Sergeant White who had taken the statements and not
14 him.

15
16 So, turning down to the end of the paper, you will see 14:14
17 a reference to Wednesday, 15th October 2014 at 1442
18 hours, you refer to a call from Inspector O'Driscoll,
19 who informed you that he would not be meeting you at
20 the appointed time because he would be merely going 14:15
21 back over issues which are already covered?

22 A. That's correct.

23 289 Q. That's what you indicated there. And then I think you
24 recited in your letter, that Superintendent Comyns'
25 allegation in relation to the words softly softly 14:15
26 approach had not been covered by either yourself or the
27 other gardaí who attended the conference and you
28 indicated "I am not happy with this course of action, I
29 am formally requesting that this matter be investigated

1 properly and new statements be taken from these gardai
2 and myself, I am forwarding this report to my solicitor
3 and I hope to you hear from you at your earliest
4 convenience. "

14:15

5
6 So, just in terms of that particular communication,
7 that was addressed to Chief Superintendent Kehoe,
8 saying you weren't happy with something that had been
9 said by Inspector O'Driscoll and you wanted fresh
10 statements or new statements to be taken, including one 14:16
11 from yourself

12 A. That's correct, yeah.

13 290 Q. And I wonder if we could see page 1261, please. I
14 think you're familiar with this, this is Superintendent
15 O'Driscoll's statement made to the Tribunal. 14:16

16 Registrar, could I ask you please to turn forward to
17 page 1264. Now, Mr. Barry, I think you'll be aware of
18 the fact that there is a disagreement between yourself
19 and Inspector O'Driscoll, I am going to recite this to
20 you and invite your comment. So if one looks at the 14:17
21 top of the page, you will see first of all that he
22 says, and he will say in his evidence, that he did not
23 agree with the content of your statement to the
24 Tribunal at 47 and 48, which refers to this issue, and
25 he disagrees that your account of the conversation is 14:17
26 entirely accurate. But the first point he makes is, he
27 says that you became very irate with him, saying that
28 there was little point in interviewing members two
29 years after the event, is that correct?

1 A. That's not correct.

2 291 Q. And he will say that that is what happened and that you
3 didn't -- as a result of that he didn't engage with
4 you, and he will also say that he did not discuss an
5 interview held with Superintendent Comyns with you, and 14:17
6 that he did not say anything to you during the call
7 that Superintendent Comyns was supposed to have said
8 during the interview?

9 A. Well, I made a record in my diary on the 19th
10 September, where I said that Inspector Paul O'Driscoll 14:18
11 rang me to say that he did a Q & A interview with
12 Superintendent Comyns and that he'd be in touch with
13 the chief and me.

14 292 Q. I am putting it to you that he will say that he did not
15 quote anything that Superintendent Comyns had said to 14:18
16 you, and that he never used the words to go softly
17 softly?

18 A. I say, yes, he did.

19 293 Q. And he will agree that you did arrange to meet at
20 Mitchelstown on 17th October 2014 at 4pm, is that 14:18
21 correct?

22 A. That's correct.

23 294 Q. Just looking at that conversation, can I just pause for
24 a moment and invite you just to consider, is it
25 possible that you're ultimately misconstruing his 14:19
26 response to you in that conversation?

27 A. My report is as was stated by the conversation I had
28 with Inspector O'Driscoll and I made contemporaneous
29 entries into my diary re same.

1 295 Q. When you say you made a contemporaneous note, where is
2 that contemporaneous note?
3 A. In my diary.
4 296 Q. Your diary. And insofar as you are referring to
5 anything in the witness box at the moment, are you 14:19
6 referring to the electronic diary that you had in
7 previous days?
8 A. They're not electronic diaries, they were Garda diaries
9 that I submitted to the Tribunal, copies of the
10 conversations that I had at the time. 14:19
11 297 Q. Very good.
12 298 Q. CHAIRMAN: When was that? When did you write that
13 letter?
14 A. Sorry, the diary entry?
15 299 Q. CHAIRMAN: When did you write the diary entry? 14:19
16 A. Sorry. The day that he rang me.
17 300 Q. CHAIRMAN: Okay. The day that Inspector O'Driscoll
18 rang you -
19 A. Yes.
20 301 Q. CHAIRMAN: - you made the entry? 14:20
21 A. Yes.
22 302 Q. CHAIRMAN: And what did the entry say?
23 A. The diary entry for 19th September, "1.47pm, Inspector
24 Paul O'Driscoll rang me to say he did a Q & A interview
25 with Superintendent Comyns and that he would be in 14:20
26 touch with the chief and me. Monday, 6th October 2014,
27 Inspector Paul O'Driscoll said that Detective Sergeant
28 White and another took a statement from Garda Denise
29 Fitzgerald today at 7.23pm. Inspector Paul O'Driscoll

1 rang to say that all statements had been taken re case
2 conference. He stated that Superintendent Comyns said
3 that he would go softly softly in relation to arresting
4 the suspects. I asked him was this put to the gardaí
5 present at the conference when taking of the 14:20
6 statements. He said he didn't take them."

7

8 CHAIRMAN: Thank you very much.

9 303 Q. MR. MURPHY: And can you tell the Chairman --

10 304 Q. CHAIRMAN: Sorry that was an entry, you made an entry 14:21
11 on the 19th September.

12 A. Yes, Mr. Chairman.

13 305 Q. CHAIRMAN: And just go back, tell me again what was
14 said on the 19th September?

15 A. My entry on the 19th September was: 14:21

16

17 "1.47pm, Inspector Paul O'Driscoll rang me to say that
18 he did a Q & A interview with Superintendent Comyns and
19 that he will be in touch with the chief and me."

20

21 CHAIRMAN: And is that it?

22 A. That was all I recorded.

23 306 Q. CHAIRMAN: Okay. And you have another entry?

24 A. For Monday, 6th October 2014.

25 307 Q. CHAIRMAN: Thank you. Yes? 14:21

26 A. It starts with:

27

28 "Detective Sergeant White and another took a statement
29 from garda --"

1

2 308 Q. CHAIRMAN: Hold on, sorry, somebody said to you,
3 somebody called you or said something to you?

4 A. This is a phone call from Inspector O'Driscoll --

5 309 Q. CHAIRMAN: Hold on, sorry. Could I ask you please, 14:21
6 Mr. Barry, just to read me the actual words that are in
7 your diary. I know we have them, but would you mind
8 just reading the actual words rather than telling me
9 what happened, do you understand me?

10 MR. COSTELLOE: Page 4847, Chairman. 14:22

11 CHAIRMAN: Thank you very much. Right. Maybe we can
12 have that. Could we have that? 4847. Thanks very
13 much.

14 MR. COSTELLOE: At the bottom of the page.

15 CHAIRMAN: So 19th September 2014, thank you. And then 14:22
16 we have Monday, 6th October, took a statement from
17 Garda Fitzgerald. 7.23, thanks very much, go down
18 there again, all the statements have been taken.
19 Continue down, please, Ian. Now, thank you. Thanks
20 very much. That's your -- 14:23

21 A. That's my recollection.

22 310 Q. MR. MURPHY: Mr. Barry, when it says, "he said he
23 didn't take them" to what does that refer?

24 A. Pardon?

25 311 Q. when it says "he said he didn't take them" to what does 14:23
26 that refer?

27 A. The original statements concerning the case conference.

28 312 Q. So you're saying that he told you that he wasn't
29 involved in taking the statements?

1 A. That's what he said, yes.

2 313 Q. Insofar as that's concerned, he will say that you were
3 annoyed in the course of that conversation. In fact,
4 he will say that you became very irate and said that
5 there was little point in interviewing members two 14:23
6 years after the event?

7 A. I don't recall that.

8 314 Q. Do you recall that?

9 A. I don't recall that, no.

10 315 Q. Is it possible that's what happened? 14:24

11 A. I doubt it.

12 316 Q. He will say that he didn't discuss the interview held
13 with Superintendent Comyns and with yourself and didn't
14 say anything about what Superintendent Comyns is
15 alleged to have said? 14:24

16 A. Well, I had no knowledge or anything as to what the
17 interview process with Superintendent Comyns had -- I
18 didn't know when the interview was on or anything.

19 317 Q. Had you spoken to any of the people who had been
20 interviewed? 14:24

21 A. In relation to the case conference?

22 318 Q. Yes.

23 A. Yes.

24 319 Q. In terms of the actual communication, is it possible
25 that you're mixing up something that was said by one of 14:24
26 those people to you with what you're recording as
27 having been said by Superintendent O'Driscoll?

28 A. No, definitely not.

29 320 Q. Again, I have to suggest to you that his evidence will

1 be that he did not use those words but he did agree to
2 meet with you on 17th October 2014 at four o'clock?
3 A. Yes, and he cancelled that on the 15th.
4 321 Q. He will also say that it was agreed by the
5 investigation team, that's Chief Superintendent Kehoe's 14:25
6 investigation team, that they would finish interviewing
7 all the parties first and then consider if it was
8 necessary to speak to you again. Did he indicate that
9 to you?
10 A. No, he did not. 14:25
11 322 Q. So in terms of that particular meeting, Chief
12 Superintendent Kehoe will say she wasn't aware of the
13 discussion of the meeting -- sorry, the meeting that
14 was arranged until after it was cancelled, that is to
15 say, the meeting of 17th October 2014. 14:25
16 A. I can't dispute that.
17 323 Q. You will agree she wasn't privy to the conversation
18 that you had with Superintendent O'Driscoll?
19 A. No, she wouldn't have been, unless he relayed it to
20 her. 14:26
21 324 Q. Now, in terms of your complaint, when you raised this
22 complaint, can I ask if you can be shown document 1244,
23 please. This is a letter of 12th November of 2014. So
24 by this stage Chief Superintendent Kehoe has spoken to
25 Inspector O'Driscoll, has read your complaint, spoken 14:26
26 to him about it and she writes back to you and says:
27
28 "Inspector O'Driscoll has indicated that your
29 conversation with him by telephone call on the 6th

1 October does not properly reflect the conversation that
2 occurred.

3
4 I note your willingness to provide an additional
5 statement surrounding the conference held at 14:27
6 Mitchelstown Garda Station on 6th February 2012.

7
8 I am available on dates from the 19th to the 21st
9 November from 2pm each day to facilitate you in this
10 regard." 14:27

11
12 So, pausing there for a moment. At that time you were
13 notified by her that Inspector O'Driscoll disagreed
14 with your version of the conversation, isn't that
15 correct? 14:27

16 A. From that letter, yes.

17 325 Q. Will you agree with me that Chief Superintendent
18 Kehoe's response to you is to offer you -- to
19 acknowledge your willingness to make an additional
20 statement and to offer to facilitate that? 14:27

21 A. It wasn't an offer to -- it's an offer by her to make
22 an additional statement, but I hadn't made an original
23 statement. They took the statement off four members
24 who were at the conference, but not from me. He
25 declined to take my statement. I had to write Chief 14:27
26 Superintendent Kehoe for my statement to be taken.

27 326 Q. Mr. Barry, isn't it clear that this is an offer to
28 provide you an opportunity to make a statement
29 surrounding the conference?

1 A. The offer was already made by Inspector O'Driscoll on
2 the previous occasion and he cancelled the meeting on
3 the 17th, he cancelled that, saying that we'd only be
4 going back over things already covered.

5 327 Q. Just dealing here with the specific point of this 14:28
6 letter, will you agree with me, just look at the words
7 again if you would, please, Mr. Barry, do you agree
8 with me that this is a letter which is giving you an
9 opportunity to make a statement about 6th February
10 2012? 14:28

11 A. It says "I note your willingness to provide an
12 additional statement". I hadn't made an original
13 statement, that opportunity was denied to me.

14 328 Q. So are you suggesting to the Chairman that by inserting 14:28
15 the word additional, that there is some form of
16 targeting taking place of you by Chief Superintendent
17 Kehoe?

18 A. Yes, because I hadn't made an original statement.

19 329 Q. And again I have suggest to you that's a bizarre 14:28
20 assessment on your part, because in effect what is
21 happening here is that she is offering you a chance to
22 do the very thing that you wanted to do?

23 A. She is offering me a chance to do what was arranged for
24 the 17th with Inspector O'Driscoll and cancelled by him
25 on the 15th. 14:29

26 330 Q. Just for the assistance of the Chairman, you're saying
27 that the inclusion of the word "additional" is a
28 significant and serious matter that amounts to
29 targeting and discrediting you?

1 A. I do believe it is significant, because there wasn't an
2 original statement made.

3 331 Q. And again I have to suggest to you on her behalf that
4 that is simply not the case. But could I ask you to --

5 332 Q. CHAIRMAN: Sorry, I'm clearly misremembering and I am 14:29
6 slightly embarrassed. I am clearing wrong about this,
7 so we might as well get it clear in my mind just for my
8 benefit. Then Inspector O'Driscoll phoned you?

9 A. That's correct.

10 333 Q. CHAIRMAN: And in this conversation you say that he 14:29
11 reported that Superintendent Comyns had said softly,
12 softly?

13 A. That's correct.

14 334 Q. CHAIRMAN: There was more to it?

15 A. Yes. 14:30

16 335 Q. CHAIRMAN: But the critical part. And you said, are
17 you going to take additional statements? Is that
18 correct?

19 A. That's correct.

20 336 Q. CHAIRMAN: Have I got it right so far? 14:30

21 A. Yes, in relation to the four guards.

22 337 Q. CHAIRMAN: In relation to the softly, softly?
23 A. And the four guards who had already made the
24 statements.

25 338 Q. CHAIRMAN: Okay. But at this stage you hadn't made a 14:30
26 statement?

27 A. No.

28 339 Q. CHAIRMAN: Did you not discuss that with him at the
29 time, are you not going to get a statement from me?

1 A. Oh we arranged, we arranged for him to take my
2 statement on the 17th.

3 340 Q. CHAIRMAN: Ah, I see the point?

4 A. But he rang on the 15th.

5 341 Q. CHAIRMAN: Sorry, that wasn't a second visit, this is 14:30
6 what my confusion is. Thank you for clearing that up.
7 He had taken statements from the other people, not from
8 you, and your query related to the other people and
9 then that was cancelled. So then you had not made a
10 statement on the 17th when the meeting was scheduled 14:31
11 but didn't go ahead?

12 A. Yes, I had made an arrangement with Inspector
13 O'Driscoll on that second conversation to have a
14 statement taken from me on the 17th.

15 342 Q. CHAIRMAN: In which you would, among other things, deal 14:31
16 with softly, softly?

17 A. Yes.

18 343 Q. CHAIRMAN: That's okay, thank you. I was confused
19 about the other people -- anyway, it doesn't matter
20 what I was confused about. Thank you very much. Okay. 14:31

21 344 Q. MR. MURPHY: Could I ask you please to be shown --

22 345 Q. CHAIRMAN: Sorry, Mr. Murphy is then saying to you,
23 okay, here there is a reference to additional statement
24 when it's clear that you say that you hadn't made an
25 original statement. So were you annoyed that you were 14:31
26 being asked for an additional statement when you hadn't
27 already made one?

28 A. Yes, because I had written to Chief Superintendent
29 Kehoe requesting that a statement be taken from me,

1 when the original one was cancelled by Inspector
2 O'Driscoll.

3 CHAIRMAN: I am with you. Sorry, Mr. Murphy. I am
4 sorry, I am glad to have that even if the
5 misunderstanding was -- which it was, it was entirely
6 mine. 14:32

7 346 Q. MR. MURPHY: I wonder if the witness could be shown
8 2960, please. Mr. Barry, would you agree that this is
9 a statement that you made on 2/12/2014 at Mitchelstown
10 Garda Station. 14:32

11 A. Yes.

12 347 Q. Is this the statement taken by Detective Sergeant
13 White?

14 A. That's correct.

15 348 Q. I think the usual recital at the beginning "I hereby
16 declare the statement is true to the best of my
17 knowledge and belief and I make it knowing that if it
18 is tendered in liable I will be prosecution if I state
19 in it anything which I know to be false or do not
20 believe to be true"? 14:32

21 A. That's correct.

22 349 Q. Then I think, what's the first line in the statement
23 after that?

24 A. "This is in addition to my previous statements made in
25 relation to this investigation." 14:33

26 350 Q. Yes. So in effect then, I think yourself expressly
27 indicated that this was a further statement that you
28 were making?

29 A. Incorrect.

1 351 Q. And if you just scroll down through the statement
2 please, and all the way down to 2961. To the very end,
3 please. I think the last sentence, having recited the
4 points that you wished to make, it says:

14:33

5

6

"The statement has been read over to me, I have made
7 corrections which I have initialed and the statement is
8 correct."

9

10 A. That's correct.

11 352 Q. Would you agree with me that that demonstrates in black
12 and white that on that date a statement was taken from
13 you by the team, by Chief Superintendent Kehoe, as you
14 had requested, dealing with the matters which you
wished to address?

15

A. No, you are confused there. My reference is to the
16 original statement of complaint made to Chief
17 Superintendent Kehoe and her investigation team and
18 other statements prior to the taking of the case
19 conference statement.

14:34

20 353 Q. Mr. Barry, I am asking you to accept that in substance
21 and in fact this document indicates that you were given
22 the chance to make a statement as you had requested,
23 yes or no?

14:34

24

A. Yes, an original statement, it was.

25 354 Q. And in the course of the statement, and I don't want to
26 be pedantic about this, but you do confirm at the
27 outset in your own words that this is in addition to
28 previous statements made, isn't that correct?

14:34

29

A. In addition to the previous statements I have already

1 outlined to you, the original statement and the other
2 statements which were not in relation to the case
3 conference.

4 355 Q. Mr. Barry, can I suggest to you that it is clear in
5 substance and in fact that you had a chance to make
6 that statement fully, to read it, to sign it and to
7 submit it to the investigation and you did?

14:35

8 A. After I requested that it be taken from me, following
9 the cancellation of the original appointment.

10 356 Q. And can I suggest to you that obviously we disagree in
11 relation to that issue, but ultimately, by this date on
12 2/12/2014 you've made the statement that you say you
13 wanted to make?

14:35

14 A. In relation to the case conference, yes.

15 357 Q. Can I just suggest to you that on no view could these
16 issues represent targeting or discrediting of you?

14:35

17 A. Then could you please ask or can you please tell me why
18 the investigation team went back to the four gardaí and
19 took subsequent statements from them, putting that
20 allegation to them, if it was not put to me by
21 Inspector O'Driscoll.

14:35

22 358 Q. Because ultimately what I am putting to you is a
23 different issue. I am putting to you that in the
24 circumstance of this case, you have made a complaint
25 against Chief Superintendent Kehoe specifically, the
26 one we're dealing with at the moment, that the
27 cancellation of an appointment between Inspector
28 O'Driscoll was effectively something for which Chief
29 Superintendent Kehoe is responsible, and that in the

14:36

1 words of the charge, she was guilty of targeting you.
2 Now, I have to suggest to you that there is simply no
3 foundation for that whatsoever.

4 A. Well, if you read the correspondence between Chief
5 Superintendent Kehoe and Inspector O'Driscoll following 14:36
6 this allegation, you will see that there was clearly
7 interaction between the two parties. So she was
8 familiar with it.

9 359 Q. After the event?
10 A. After he cancelled my statement. 14:36

11 360 Q. So just to be clear about this: You do accept then
12 that Chief Superintendent Kehoe wasn't aware of the
13 cancellation of the meeting?
14 A. But she was before this statement was taken.

15 361 Q. Before this statement was taken but not before the 14:37
16 cancellation of the meeting about which you complain?
17 A. I can't say that she was aware of it unless Inspector
18 O'Driscoll had put it to her. I cannot say that she
19 wasn't aware of it. But I assume she was. He's her
20 investigator. 14:37

21 362 Q. Well, Mr. Barry, this is important actually, because
22 you can't just assume she was and the Tribunal can't
23 just assume she was. I have to suggest to you, there
24 has to be some evidence that she knew it was, and you
25 have just accepted that she didn't. 14:37

26 A. She's in charge of the investigation and she's in
27 constant contact with her investigators, this is a
28 matter that she should have been aware of.

29 363 Q. Mr. Barry, that is different question. I have to

1 suggest to you that there is no evidence that Chief
2 Superintendent Kehoe was guilty of targeting you in
3 relation to the matters complained of in 6E?

4 A. I disagree.

5 364 Q. That you yourself had no evidence that she knew about 14:37
6 the proposed meeting, the cancelled meeting or anything
7 else?

8 A. I disagree.

9 365 Q. Can you indicate to the Chairman the basis on which you
10 disagree? 14:38

11 A. Because of my complaint about Inspector O'Driscoll, she
12 said I am inviting you to make an additional statement.

13 366 Q. CHAIRMAN: Yes, and...?

14 A. And I hadn't made an original statement.

15 367 Q. CHAIRMAN: Okay and...? So she was wrong about 14:38
16 additional?

17 A. That's correct.

18 368 Q. CHAIRMAN: So where is the targeting the in that,
19 Mr. Barry? She said additional. Oh dear! I mean, do
20 you see what I mean? 14:38

21 A. I see what you mean, Mr. Chairman, but I believe --

22 369 Q. CHAIRMAN: You write in and say, I want to make a
23 statement, and she writes out and she refers to
24 additional statement, that's obviously a mistake. I
25 mean, it looks obviously like a mistake. Is there any 14:38
26 reason why it's not obviously a mistake?

27 A. Because I had alerted --

28 370 Q. CHAIRMAN: Do you understand? I mean do you
29 understand? I am looking at this fresh, I wasn't

1 there.

2 A. That's --

3 371 Q. CHAIRMAN: Can you see, if I say, so she said I want
4 additional statement and you say, I haven't made one at
5 all, so this will be my original statement. And if 14:39
6 somebody said, oh, I'm sorry, yeah, of course, we'll
7 cross out additional. So where is there something
8 sinister? You know, that is what I am looking at.
9 Where is there something sinister in that?

10 A. When Inspector O'Driscoll cancelled the taking, the 14:39
11 appointment to take my statement I had to write to
12 Chief Superintendent Kehoe to request that the
13 statement be taken from me in relation to the case
14 conference.

15 372 Q. CHAIRMAN: Okay. 14:39

16 A. So I assume she would have discussed this matter with
17 her inspector, the cancellation of the original
18 appointment.

19 373 Q. CHAIRMAN: Suppose she did, let's assume all of that
20 happened, that she did, and she writes to you and 14:39
21 instead of saying please, we'll make arrangements for
22 the statement, she says, we'll make arrangements for an
23 additional statement. Now help me on this, Mr. Barry?
24 Do you understand? Can you see the way my mind is
25 working? I want to be absolutely clear with you, I am 14:40
26 missing the malice, the victimisation, the targeting,
27 by using the word additional. If she was going to
28 target you, I will target Sergeant Barry now. How are
29 you going to do that, chief superintendent? I'll tell

1 you, I'll fix him, I'll put in additional here. I
2 mean, wouldn't everybody -- wouldn't they laugh at her
3 if she said that? I mean, what do I know, I am just
4 listening to this?

5 374 Q. MR. MURPHY: Mr. Barry, can I just roundup this point 14:40
6 by putting it to you that effectively what has happened
7 here is that Chief Superintendent Kehoe has gone out of
8 her way to facilitate you, to give you an opportunity
9 to provide an additional statement or a statement,
10 whichever word you wish to use and in return for that 14:41
11 you're now accusing her in a public inquiry of doing it
12 and of cancelling an appointment she knew something
13 about with a view to targeting and discrediting you.
14 Can you see how that particular allegation has no
15 evidence to support it or subtend it, at this stage, 14:41
16 even looking now back with the benefit of hindsight,
17 can I give you the opportunity to acknowledge that this
18 particular allegation has no foundation at all.

19 A. Well, at the case conference there was mention made of
20 taking statements from the members who attended the 14:41
21 case conference in 2012. The case conference with
22 Chief Superintendent Kehoe and her investigation
23 members, there's a note there to say that all the
24 members who attended the case conference in 2012, in
25 the investigation I complained about, should be 14:41
26 interviewed and statements taken from them. I should
27 not have had to write in to request to have my
28 statement taken.

29 CHAIRMAN: Okay.

1 375 Q. MR. MURPHY: So, just to be clear then, you regarded
2 that as an indignity or an act of targeting or
3 discrediting of you?
4 A. Yes.

5 376 Q. And again I have to suggest to you, that is quite 14:42
6 fantastic in the light of the evidence and there's
7 nothing in fact to support the perception that you
8 have, that your perception seems to have taken
9 precedence over the reality that is surrounding you on
10 this one? 14:42
11 A. I believe it was a deliberate attempt to not take my
12 statement when I was aware of the issue of "softly,
13 softly". And if I am not correct in that conversation
14 with Inspector O'Driscoll, there would not have been
15 fresh statements taken from the four members who had 14:42
16 previously made statements, putting that allegation to
17 them.

18 377 Q. CHAIRMAN: They wouldn't have done it, in other words,
19 if you hadn't raised the issue?
20 A. That's what I believe. 14:42

21 378 Q. CHAIRMAN: That's your point, isn't it?
22 A. Mr. Chairman, yes.

23 379 Q. MR. MURPHY: I suggest to you, Mr. Barry, that
24 ultimately this allegation has no foundation
25 whatsoever. 14:43
26
27 Can I move on, Chairman, to allegation 6F.
28 CHAIRMAN: Okay.

29 380 Q. MR. MURPHY: That allegation is that "By unreasonably

1 and irrationally arriving at a preconceived conclusion
2 to dismiss the grave allegations made by Sergeant
3 Barry, that Chief Superintendent Kehoe targeted
4 Sergeant Barry. "

14:43

5
6 So first of all, can I just go back to a document we
7 saw earlier on very briefly and that is page 2825,
8 please. I'm not going to open the document again, just
9 so it is on the screen. If you turn down, registrar,
10 please, to the next page. So you may recall I asked
11 you this morning, just even from the headlines and the
12 index, which I think we can agree covers 53 headings,
13 reports over 65 pages, that in those circumstances
14 reflects a detailed, painstaking investigation. And I
15 have to suggest to you that it is clear from the scale
16 of the enterprise that Chief Superintendent Kehoe and
17 her colleagues went to a lot of effort to investigate
18 and that their work and their report was subject to
19 independent assessment by the DPP. I understood this
20 morning that you accepted that the ultimate decision in
21 relation to that report was the DPP's decision.

14:43

14:44

14:44

22 A. If they were aware of all the information, yes.

23 381 Q. I have to suggest to you that they were insofar as the
24 investigation team had material information, but I also
25 want to suggest to you that it's clear in this case,
26 would you agree, that the primary persons under
27 investigation were interviewed, under caution?

14:44

28 A. That's correct.

29 382 Q. And that there was, as we covered this morning,

1 extensive enquiries in relation to forensic matters
2 concerning fingerprints, telephones, repeat interviews.
3 Can I suggest to you that all of this indicates that
4 this was an investigation that was not, as you have
5 suggested, arriving at a preconceived conclusion, but 14:45
6 in fact there's clear evidence, and Chief
7 Superintendent Kehoe will give evidence of the steps
8 that were taken, of a determined effort to follow lines
9 of enquiry and this has been logged and you have seen
10 the paperwork in relation to that. So, can I suggest 14:45
11 to you that in that context it is in fact incorrect to
12 suggest that this was an unreasonable or irrational
13 investigation, because in fact the investigators
14 collected all the evidence that they could?

15 A. I disagree. 14:45

16 383 Q. Again, it'll be a matter for the Chairman to assess in
17 terms of the issues, but the specific allegation that's
18 made here is unreasonable, irrational, preconceived
19 conclusion. First of all, can I ask you, just standing
20 back from it, would you agree that that is a very 14:46
21 serious allegation to make against a senior police
22 officer in relation to a criminal investigation which
23 she has conducted?

24 A. Chief Superintendent Kehoe made a report to A/C Nolan,
25 I believe, where she indicated to him that her 14:46
26 appointment could ultimately affect, compromise her
27 investigation.

28 384 Q. And what could --

29 A. I don't know the exact words, but she did reference

1 that her appointment could affect her ultimate outcome
2 of the investigation.

3 385 Q. Is that somebody like you might turn around and say
4 this is somehow improper, but you never did. And we
5 have gone through this this morning, you never actually 14:47
6 sought to stop her from completing a criminal
7 investigation, isn't that correct?

8 A. That's not correct. Because I was not informed --

9 386 Q. So please tell the Chairman, when did you seek to stop
10 her from carrying out the criminal investigation? 14:47

11 A. I could not have because I was not in receipt of all
12 the information.

13 387 Q. So the answer is you did not and I have to suggest to
14 you, as I had this morning, that you were clearly kept
15 au fait with how that investigation was going, because 14:47
16 we have gone through some of the memoranda this
17 morning?

18 A. You have seen my letters to the minister, where I
19 expressed my concerns in relation to the investigation
20 being conducted by Chief Superintendent Kehoe. 14:47

21 388 Q. Again your concerns are one thing, Mr. Barry, but what
22 was happening at the time in 2014 is quite another.
23 And can I suggest to you that the truth is, you didn't
24 seek to stop or injunct or halt the investigation by
25 Chief Superintendent Kehoe, and you didn't raise an 14:47
26 objection to her as being, in the words of this charge,
27 irrational, unreasonable or preconceived?

28 A. I was not aware that she was informed of my High Court
29 civil action, of which she was a part of, before she

1 concluded her investigation or that she had sought
2 re-appointment under Regulation 14(5). I was not aware
3 of that information.

4 389 Q. Mr. Barry, the truth is that you didn't take any action
5 during that time, you were fully informed of the 14:48
6 progress of the criminal investigation and there is no
7 hint at that stage that you were objecting to her as a
8 person who, in the words of this charge, was
9 unreasonable, irrational or bearing a preconceived
10 conclusion? 14:48

11 A. I disagree.

12 390 Q. And again, can I just put it to you that Chief
13 Superintendent Kehoe -- I am not going to go through
14 her statement, Chairman, because it is a lengthy
15 statement, but can I just put a headline? 14:48

16 CHAIRMAN: Carry on in your own way, Mr. Murphy. I
17 hope I am not giving some indication by my expression.

18 391 Q. MR. MURPHY: No, just in terms of the length of time,
19 it's a 14-page statement, I don't propose to read it
20 into the record. But insofar as the statement is 14:49
21 concerned, for the record can I indicate that Chief
22 Superintendent Kehoe's statement begins at page 930 and
23 runs to page 944. But in short, can I put you what she
24 will say, that she carried out a thorough
25 investigation, a diligent investigation and she did so 14:49
26 with a competent team and she gave consideration to
27 every aspect of the complaints that you had made?

28 A. I don't agree.

29 392 Q. And ultimately, can I put it to you also, that any

1 decision in relation to that investigation has to be
2 seen by this Tribunal in relation to the fact that the
3 work which she and her team did was superintended by
4 and reviewed by the DPP?

5 A. The DPP went on the recommendations, they would have 14:50
6 been guided by the recommendations of Chief
7 Superintendent Kehoe and I believe she had sufficient
8 evidence to give different recommendations.

9 393 Q. I have to suggest to you also that the members of the
10 team who I represent and whose names I mentioned 14:50
11 earlier, they will say in evidence, if necessary, that
12 they did not see Chief Superintendent Kehoe acting in a
13 fashion in the investigation which was unreasonable,
14 irrational or preconceived?

15 A. The only member of that investigation team I complained 14:50
16 about was Inspector O'Driscoll. I have no complaint in
17 regards to the other members.

18 394 Q. And I appreciate that. But again, from a perspective
19 point of view, if one stands back and just listens to
20 yourself saying those words, would you not agree with 14:50
21 me that if that is the case it tends to suggest that
22 there's no foundation for all these experienced people
23 involved in the investigation to have seen any sign of
24 targeting or discrediting, because there wasn't any?

25 A. I disagree. 14:51

26 395 Q. Just on that point, can I also put another point to you
27 as well, which is material to the Chairman's
28 assessment, that Chief Superintendent Kehoe will also
29 say that prior to her receiving the papers from this

1 Tribunal, she had no knowledge at any stage that you
2 had made what you claim to be a protected disclosure.
3 And I have to suggest to you that in that situation
4 there's no evidence that Chief Superintendent Kehoe
5 targeted or discredited you because you had made a 14:51
6 protected disclosure, as would appear to be the
7 allegation that's being put before the Tribunal at the
8 moment?

9 A. Chief Superintendent Kehoe stated that she was
10 investigating a serious criminal allegation made by me, 14:52
11 and that was my protected disclosure.

12 396 Q. Again, that's a matter for the Tribunal to assess, but
13 can we take it as read that you didn't say to her in
14 2013/2014, I made a protected disclosure?

15 A. When I made the original complaint it wasn't under the 14:52
16 Protected Disclosure Act.

17 397 Q. No, and that applied I think also to the criminal
18 complaint, because it was made at a time prior to that
19 act?

20 A. The criminal complaint was, yes. 14:52

21 398 Q. Can I suggest to you that it will appear from all of
22 the evidence that in this case it would appear that the
23 reason that you made this complaint against Chief
24 Superintendent Kehoe fundamentally seems to be because
25 you disagree with the outcome of her investigation? 14:52

26 A. And the conduct.

27 399 Q. And I have to suggest to you that in fact looking at
28 the processes that she applied, they were all
29 professional, thorough and fair?

1 A. Well, Mr. Murphy, you could say professional builders
2 in to build a house, but if you use pyrite the cracks
3 will eventually show up, and they have done in this
4 case.

5 400 Q. You see, I have to say to you also, Mr. Barry, it is 14:53
6 important just to bear this in mind also, when I asked
7 you earlier on as to whether you had sought to
8 challenge Chief Superintendent Kehoe's conduct in the
9 criminal investigation, you will agree with me that it
10 would have been open to you, if you felt that at the 14:53
11 time, to try and go by way of judicial review or to
12 write a solicitor's letter saying, I think you should
13 stop, I think that you are not impartial, but you never
14 did that?

15 A. I did, I asked the minister to intervene, I asked the 14:53
16 minister to get GSOC to investigate the complaint.

17 401 Q. Mr. Barry, yet again you're seeking to reposition
18 yourself. Going back to the position in 2014, you have
19 solicitors on board, you have initiated civil
20 proceedings, your PIAB authorisation was issued in 14:53
21 August 2014, you were clearly intending to introduce
22 proceedings, we've seen the papers, the letter from
23 your solicitor, Séan Costello at that time, with an
24 undertaking to St. Paul's credit union, clearly
25 indicating that you were thinking about instituting 14:54
26 proceedings. But would you not agree with me that
27 notwithstanding that view, you never brought an
28 application to stop Chief Superintendent Kehoe from
29 carrying out her work, suggesting that she was biased

1 or preconceived?

2 A. I was not aware of the Regulation 14(5) re-appointment
3 or the fact that she was aware that she was subject to
4 my High Court action.

5 402 Q. You see, I have to suggest to you that it would be open 14:54
6 to the Chairman to consider that in this situation this
7 is another re-positioning, that having seen the
8 Tribunal documentation you're trying to get away from
9 the fact that, in truth you knew an awful lot about
10 what was taking place in 2014 because Chief 14:54
11 Superintendent Kehoe told you what she was doing?

12 A. I had raised concerns before any discovery about Chief
13 Superintendent Kehoe's conduct in the investigation.

14 403 Q. You raised concerns to her about various aspects and
15 she listened to you and -- 14:55

16 A. And the minister.

17 404 Q. And the statements we saw this morning confirmed that
18 also. Just one issue I think that you've raised in the
19 course of your evidence and in the course of the last
20 couple of days, which again seems to be arising from 14:55
21 your review of the Tribunal papers, is you've suggested
22 that somehow delay led to the investigation not being
23 able to access phone information. Did I understand
24 that correctly?

25 A. That's what I was told by Chief Superintendent Kehoe, 14:55
26 yes.

27 405 Q. And Detective Sergeant Sheeran, who I represent, will
28 be in a position to indicate the steps which he took in
29 relation to the phone records that were accessed by the

1 investigation, which are referred to in the report to
2 the DPP, and he will indicate, let me just put this to
3 you, that whereas it was not possible to get phone data
4 under a warrant, because time had expired, he did
5 suggest obtaining the phone billing records with the 14:56
6 consent of the parties who were under investigation.
7 And that's what took place in this case. So you've
8 seen the references to the phone records in the course
9 of the files, have you not?

10 A. Yes, but that is not what was relayed to me at the time 14:56
11 by Chief Superintendent Kehoe.

12 406 Q. But you now know, looking at the documentation, that
13 there's copious references to outgoing calls, incoming
14 calls, there's an analysis of that, and he says in the
15 course of his statement, and perhaps I could just ask 14:56
16 it to be brought up for a moment, please, it's at page
17 4850. This is Detective Sergeant Sheeran, who is an
18 experienced investigator whom you have very fairly said
19 you have nothing against. First of all, could I just
20 draw your attention to the end of 4540. He will say 14:57
21 that he comprised a spreadsheet of all the phone
22 numbers, Superintendent Quilter's phone number,
23 covering periods of particular dates, and then checked
24 number on Pulse, and then also prepared a spreadsheet
25 and identified phone numbers of interest, page 4851, 14:57
26 but that ultimately in this case the investigation
27 adopted to circumstances and he will be in a position
28 to give evidence that by obtaining the consent for
29 access to the records, they were able to secure

1 information relating to all the outgoing calls from the
2 phone numbers in question and, therefore, they were in
3 a position to secure records relating to calls between
4 Superintendent Comyns and Inspector Quilter and that in
5 those circumstances that was the focus of the
6 investigation. 14:58

7
8 Now, from what you've seen of the report, would you
9 agree with me it is clear that the investigation
10 accessed information concerning the time of phone calls 14:58
11 and whether the phone calls were incoming or outgoing?

12 A. In relation to those persons, yes. But my
13 understanding was that there were other people she
14 could not access the phone records of, because of the
15 time lapse. 14:58

16 407 Q. I am very sorry, I was distracted there for a moment?

17 A. Sorry, what she indicated to me at the time was that
18 there were people who she couldn't access the phone
19 records of because of the time lapse. This is a
20 different matter. 14:58

21 408 Q. Well, insofar as the persons who were under
22 investigation were concerned, those persons?

23 A. And other people involved.

24 409 Q. And phone calls from them to other people could be
25 identified, isn't that right? 14:59

26 A. And other people relevant to the investigation.

27 410 Q. So I have to suggest to you that there wasn't actually
28 a deficit in the investigation but the investigators,
29 as good investigators, sought to adapt and gain access

1 to material information in the way that's outlined in
2 the report, which you've seen?

3 A. For those people, yes, but not for others.

4 411 Q. And again, I think from the point of view of his
5 evidence, he will say that he did not observe any 14:59
6 targeting or discrediting of you, and insofar as the
7 steps that were taken are concerned, I think you will
8 agree with me that the reports of the DPP logged all of
9 those steps and tabulated them in the report?

10 A. For Sergeant Sheeran? 14:59

11 412 Q. Yes.

12 A. Yes.

13 413 Q. Thank you. Just before we move from point number 6,
14 Mr. Fitzgerald is just reminding me of one further
15 document which I ought to have mentioned this morning. 15:00
16 I wonder if we could be shown document 1199, please,
17 just for the sake of completeness. So I think this is
18 the second page of a letter of 11th February 2016, and
19 it's written by Chief Superintendent Catherine Kehoe to
20 the assistant commissioner of the Southeastern Region. 15:00
21 And just again, it really relates to something you said
22 before lunch, which I think suggested that perhaps
23 Chief Superintendent Kehoe was positively agitating to
24 investigate. In fact, can I just point to the end of
25 page 1199, where she will say that she wrote a letter 15:00
26 saying that: "Disciplinary investigation is at an
27 advanced stage. I am currently compiling a file,
28 service with notice of interview with Chief
29 Superintendent Michael Comyns."

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Then she refers to a High Court case, and says:

"Prior to finalising the disciplinary aspect, I would appreciate advices as to the appropriateness of my continuance in the disciplinary matters to interview and determination in light of the judgment referred to above and I attach a copy of the judgment for ease of reference."

15:01

15:01

So, insofar as that is concerned, can I suggest to you that that indicates again prudence on the part of Chief Superintendent Kehoe seeking advice and directions before she moves to the next and final phase of the investigation?

15:01

A. Yes, she is seeking clarity in her appointment under Regulation 14(5) for the initial appointment there.

414 Q. Just on the question of 14(5), can I ask you to be shown document 3159, please. This is a letter of 17th January 2014, addressed to you in reply to an earlier letter that you had sent on the 3rd January. It seems that that on that date you had sought a copy of Regulation 14(5) of the discipline regulations. This letter told that you Regulation 14(5) can be found on the Garda portal. Do you notice that?

15:02

15:02

A. Yes.

415 Q. And then also you are informed by Chief Superintendent Kehoe that she had completed her investigation into the matters relating to the complaint made under the

1 bullying and harassment policy. You note that?

2 A. Yes.

3 416 Q. Then she confirmed to you, as of that date, that: "In
4 relation to your complaint of 21st November 2012, she
5 is being investigated under the Garda (Discipline) 15:03
6 Regulations 2007 and any criminal matters arising, I
7 wish to advise you the investigation into this matter
8 is ongoing."

9

10 So would you agree with me that it is clear from that 15:03
11 time that you were aware from what Chief Superintendent
12 Kehoe told you, that Regulation 14(5) was a matter that
13 was engaged. And secondly, that the letter confirms in
14 black and white that this was something that she was
15 doing? 15:03

16 A. Yes, she correctly informed me that she had an issue
17 with Regulation 14(5).

18 417 Q. And that the progress of the investigation was under
19 her control in relation to that and the criminal
20 aspects, as she outlined? 15:03

21 A. Yes.

22 418 Q. The reason I ask you that question is because it
23 appeared from what you said this morning that you only
24 became aware of the issue of Regulation 14(5) during
25 this Tribunal or in receipt of the Tribunal documents. 15:04
26 Do you want to reconsider that answer in the light of
27 that document?

28 A. No. That is in relation to the initial appointment. I
29 am referring to the appointment in 2015.

1 419 Q. So again I have to suggest to you that we disagree on
2 that but ultimately, it's clear that you were given
3 very clear black and white indications that the
4 disciplinary investigation was proceeding and that
5 Regulation 14(5) was engaged. 15:04
6
7 So, Chairman, with your leave I proceed now to deal
8 with a number of other issues, if I might?
9 CHAIRMAN: Yes.
10 MR. MURPHY: That should terminate the issues 6A 15:04
11 through F.
12 CHAIRMAN: Thank you very much.
13 420 Q. MR. MURPHY: Mr. Barry, I am going to turn back to deal
14 with a number of the other issues, which are shorter
15 and briefer and hopefully I won't be too much longer 15:05
16 with you in this phase of the examination. But first
17 of all can I ask you to go back to 3H. Briefly, this
18 relates to a criticism or a complaint rather that Chief
19 Superintendent Dillane made implicit criticism of you
20 insofar as you may have been required to make a report 15:05
21 in respect of a fatal fire that had occurred on 9th
22 April 2013. I think you have given evidence about the
23 circumstances of that as well in the past. Can I put
24 to you a number of points that Chief Superintendent
25 Kehoe will say so that you can comment on them. 15:05
26 A. Dillane, sorry.
27 421 Q. Sorry, Chief Superintendent Dillane will say. And
28 first of all, would you agree, as he will say, that you
29 were the only sergeant who attended the fatal fire

1 along with five gardaí?

2 A. I was the only sergeant who attended.

3 422 Q. I think we covered yesterday -- sorry. We covered
4 yesterday the importance of the role of the sergeant in
5 frontline investigation, especially in serious matters 15:06
6 and I think you agreed that that was something that you
7 fully understood and that you sought to implement. And
8 he will say that because you were the only sergeant who
9 attended the fatal fire with five gardaí, that it was
10 your duty as a sergeant to ensure that the full facts 15:06
11 were reported according to the instructions that had
12 been received from the regional office that we saw. I
13 understand what you said, that you believe that a
14 different person was responsible for making the report,
15 but he will say because of your rank, because of your 15:07
16 experience, because of your location, that it was in
17 fact your responsibility and it was therefore
18 legitimate to raise a query as to where that particular
19 report was. Can I invite your comment in relation to
20 that? 15:07

21 A. I disagree with his assertion.

22 423 Q. But can I put it to you that in this situation what he
23 will say is that he's not seeking to target or
24 discredit you by raising the issue, he is saying that
25 it has to be seen in the context of the instruction 15:07
26 that had come from the regional office that we saw
27 yesterday in relation to the critical incidents?

28 A. There is no reference to the sergeant in that document.

29 424 Q. But the reference is ultimately to the local chain of

1 command, I think you agreed with me a moment ago that
2 you were the senior officer amongst the other five
3 gardaí at that time?

4 A. And if that is the case, then an order should come out
5 saying that from now on sergeants compile reports for 15:07
6 all gardaí who attend critical incidents.

7 425 Q. You see, I have to suggest to you that it is clear that
8 a practice had developed at that stage where the
9 responsibility was expected of the sergeant in that
10 regard and he will say that in this case there was a 15:08
11 gap?

12 A. No. The only responsibility for a report where a guard
13 would attend a critical incident is in relation to a
14 fatal accident. Any other incident, a garda is able to
15 commit a report himself. But in relation to a fatal 15:08
16 accident, the sergeant has to take charge in Fermoy
17 district of a fatal accident.

18 426 Q. Well, can I just suggest to you that on the facts of
19 this case that it was reasonable for him to raise this
20 query because ultimately he's effectively responsible 15:08
21 to ensure that the overall policy that you have
22 accepted exists, that overall policy is implemented?

23 A. And it was implemented, a report was sent to the
24 regional office the following morning.

25 427 Q. And I have to suggest to you that in terms of the 15:08
26 approach that was adopted, he was entitled to
27 investigate why it had not occurred in the terms that
28 were expected, namely the rule --

29 A. And I believe the form C 71, which clearly states,

1 report to the district officer, as in the
2 superintendent, was supplied by Garda ward, and he had
3 sufficient details from the Pulse incident and the C 71
4 to e-mail a report to the regional office, whose
5 purpose is to brief the Garda Press Office. 15:09

6 428 Q. But isn't there a problem here, Mr. Barry, which is
7 that if you have a view about what's appropriate but
8 your superiors, that is to say Chief Superintendent
9 Dillane or Inspector O'Sullivan, are of the view that a
10 C 71 isn't enough, that this particular reporting 15:09
11 structure is not talking about C 71, it's talking about
12 a different type of report, that they need to be
13 obeyed?

14 A. The only -- as I stated, I had no further information
15 than what was contained in the C 71. If I had typed 15:09
16 what was contained in the C 71, the report would have
17 to be compiled from that.

18 429 Q. But do you accept, Mr. Barry, that from the point of
19 view of your superiors, if there is a gap in the
20 process, they're entitled to investigate whether that 15:10
21 gap was justified or whether it was?

22 A. Well I didn't believe there was a gap. There was a
23 report submitted.

24 430 Q. But if they did believe there was a gap --

25 A. Well they're entitled to believe that. 15:10

26 431 Q. They are entitled?

27 A. Absolutely, yes.

28 432 Q. I'm saying in this case that's all they did?

29 A. That's perfect.

1 433 Q. And if I could then can you to move on please to 4F.
2 This is the allegation that Chief Superintendent
3 Dillane accused you of inciting Sergeant Jerry Quinn to
4 resurrect a complaint concerning the planting of drugs
5 in Mallow by a garda. Can I just put to you what he 15:11
6 will say: He will say in his evidence that he never
7 accused of inciting Sergeant Jerry Quinn to resurrect a
8 complaint concerning the planting of drugs in Mallow by
9 a garda. So, insofar as that is the case, he will say
10 quite flatly that he just simply never made that 15:11
11 accusation?

12 A. Sergeant Quinn, to the best of my memory, went sick on
13 the 20/1, I think it was of 2015, and on the same day I
14 had a meeting with Chief Superintendent Dillane, in his
15 office, where he accused me of inciting Sergeant Quinn 15:11
16 to resurrect that complaint, and Sergeant Quinn himself
17 has indicated that I did not incite him.

18 434 Q. Well again, there seems to be a flat contradiction
19 between you, but he will say that is not the case and
20 that he never accused of inciting Sergeant Quinn in 15:11
21 that regard?

22 A. He did so on the same day that Sergeant Quinn went
23 sick.

24 435 Q. And also I have to put it to you --

25 436 Q. CHAIRMAN: Sorry, could you just remind me of that 15:12
26 again, Mr. Barry. In what way, he accused you, you
27 say, at this meeting?

28 A. Yes. He said that I was inciting Sergeant Quinn to
29 resurrect a previous complaint that he had made.

1 437 Q. CHAIRMAN: That Sergeant Quinn had made?
2 A. That Sergeant Quinn had made, yes.
3 438 Q. CHAIRMAN: Against?
4 A. Against --
5 439 Q. CHAIRMAN: Somebody else? 15:12
6 A. Somebody else, but it had nothing to do with me.
7 440 Q. CHAIRMAN: Okay. So what you say was the accusation to
8 you was the incitement, there was no other issue. He
9 was just saying you were causing trouble?
10 A. Yes, he was. 15:12
11 441 Q. CHAIRMAN: Is that right?
12 A. Yes.
13 442 Q. CHAIRMAN: stirring up trouble?
14 A. That I had made Sergeant Quinn resurrect --
15 443 Q. CHAIRMAN: I understand. Tell me, he had met Sergeant 15:12
16 Quinn before, is this right or after, just what was the
17 scenario? I slightly missed that?
18 A. Sergeant Quinn had reported sick that morning from
19 work-related stress, the morning that I met Chief
20 Superintendent Dillane. 15:13
21 444 Q. CHAIRMAN: Okay.
22 A. In his office.
23 445 Q. CHAIRMAN: Independently Sergeant Quinn reported -
24 A. Nothing to do with me.
25 446 Q. CHAIRMAN: - work-related stress and he's off duty. 15:13
26 okay.
27 A. Yes.
28 447 Q. CHAIRMAN: So, are you suggesting that Chief
29 Superintendent Dillane thought that you had something

1 to do with the sickness, the work-related stress of
2 Sergeant Quinn, is that it?

3 A. No, not with him, not with his sickness, with him
4 reporting -- with him bringing back up his original
5 complaint about an incident that happened in Mallow 15:13
6 before.

7 448 Q. CHAIRMAN: Had he brought up the original complaint?
8 A. I believe he had brought it up with the inspector, not
9 Inspector O'Sullivan now, Inspector O'Connor.

10 449 Q. CHAIRMAN: A different inspector. Maybe it is a 15:14
11 mistake to ask this but I am just trying to get to the
12 bottom of it?

13 A. I know.

14 450 Q. CHAIRMAN: So, before he went on sick leave with
15 work-related stress, Sergeant Quinn reported to 15:14
16 Inspector O'Connell?

17 A. O'Connor, sorry.

18 451 Q. CHAIRMAN: O'Connor, so to speak, resurrected a
19 previous complaint that he, Sergeant Quinn, had made?

20 A. I believe so, yes. 15:14

21 452 Q. CHAIRMAN: Is that right?

22 A. Yes.

23 453 Q. CHAIRMAN: So there was a previous complaint, it was
24 dormant for all anybody knew, and now Sergeant Quinn,
25 so to speak, resurrected it, that may be the wrong 15:14
26 word, with Inspector O'Connor?

27 A. I believe so.

28 454 Q. CHAIRMAN: Following which Sergeant Quinn went on sick
29 leave with work-related stress?

1 A. Yes.

2 455 Q. CHAIRMAN: So that's the state of affairs that exists.
3 Now, did Chief Superintendent Dillane arrive in the
4 station? Who came where? How did it all happen?

5 A. I had a meeting with Chief Superintendent Dillane on 15:15
6 the same date that Sergeant Quinn went sick.

7 456 Q. CHAIRMAN: An arranged meeting?

8 A. An arranged meeting prior to this.

9 457 Q. CHAIRMAN: Yes.

10 A. And it was at that meeting that he accused me of 15:15
11 stirring things with Sergeant Quinn, inciting him.

12 458 Q. CHAIRMAN: How did Sergeant Quinn come up?

13 A. I presume because he had gone sick that morning.

14 459 Q. CHAIRMAN: But how did it in the conversation? He's
15 talking to you about whatever business you had. 15:15

16 A. Yes.

17 460 Q. CHAIRMAN: Which did not relate to -

18 A. No.

19 461 Q. CHAIRMAN: - the complaint of Sergeant Quinn. So you
20 are talking about that business, is that right? 15:15

21 A. Yes.

22 462 Q. CHAIRMAN: Did you complete your work on that business?

23 A. It was all to do with what was going on with my own
24 case.

25 463 Q. CHAIRMAN: Oh right, I'm sorry. It was relevant to the 15:15
26 matters that we're looking at here?

27 A. Yes, yes.

28 464 Q. CHAIRMAN: Very good. Okay, so tell me how Sergeant
29 Quinn came up?

1 A. He said Sergeant Quinn had gone sick from work-related
2 stress and that it was because I incited him to
3 resurrect his complaint.

4 465 Q. CHAIRMAN: Okay. Thanks very much. Was that at
5 beginning of the conversation, the middle or the end? 15:16

6 A. That date wasn't the first time that sergeant Quinn's
7 complaint had been put to management. I believe there
8 was a scoping exercise carried out by Chief
9 Superintendent Dillane in relation to it, prior to
10 this. 15:16

11 466 Q. CHAIRMAN: Well now, we're not investigating Sergeant
12 Quinn's thing or Sergeant Quinn's work-related stress
13 or anything like that, I am just concerned about when
14 this issue came up with you in your conversation with
15 Chief Superintendent Dillane, at the beginning, in the 15:16
16 middle or at the end?

17 A. It was --

18 467 Q. CHAIRMAN: If you know what I mean?

19 A. I don't know whether it was beginning, the end or
20 whatever, but I was accused of it during the meeting. 15:17

21 468 Q. CHAIRMAN: Out of the blue?

22 A. Well, it was out of the blue for me, because --

23 469 Q. CHAIRMAN: That's what I mean?

24 A. -- I had nothing -- I had no knowledge of Sergeant
25 Quinn's complaint other than -- 15:17

26 470 Q. CHAIRMAN: Discussing your matter, out of the blue, I
27 am not saying this is wrong, or that you are wrong
28 about this, I am just trying to -- out of the blue he
29 said, and another thing, you're winding up Sergeant

1 Quinn, is that right?

2 A. Yeah, because I was working with Sergeant Quinn in
3 Mitchelstown at the time.

4 471 Q. CHAIRMAN: You which?

5 A. I was working with Sergeant Quinn in Mitchelstown. 15:17

6 472 Q. CHAIRMAN: Okay, he was in Mitchelstown at the time,
7 very good. This conversation took place where?

8 A. In Chief Superintendent Dillane's office in Fermoy, I
9 believe.

10 473 Q. CHAIRMAN: Thank you very much. And just before that, 15:17
11 had Sergeant Quinn been in Fermoy also?

12 A. No. He was stationed in Mitchelstown at the outset of
13 my complaint.

14 474 Q. CHAIRMAN: And he spoke to Inspector O'Connor, where?

15 A. I'm not sure where, but I do know that Inspector 15:18
16 O'Connor referred to it.

17 475 Q. CHAIRMAN: I am just trying to get the sequence here?

18 A. I didn't know it at the time but I found it out in
19 discovery that he had spoken to Inspector O'Connor.

20 476 Q. CHAIRMAN: I see. Thank you very much. That explains. 15:18
21 You didn't know anything about this?

22 A. No, no.

23 CHAIRMAN: Okay. Very good. Now, sorry, thanks,
24 Mr. Murphy?

25 MR. MURPHY: Yes, Chairman. 15:18

26 477 Q. Mr. Barry, can I just put it formally on behalf of
27 Chief Superintendent Dillane that there is simply no
28 evidence of targeting or discrediting by him in
29 relation to this particular complaint?

1 A. Well, the accusation was made to me, I don't have a
2 recording of the conversation.

3 478 Q. And moreover, can I just put it to you that even on
4 your own evidence, there's no evidence that anything
5 that you say was said was done to target or discredit 15:18
6 you because you made a protected disclosure?

7 A. I disagree.

8 479 Q. Just pausing for a moment before we move to the next
9 element, could I double back for a moment to the fatal
10 fire issue and just raise a point that may fit into 15:19
11 some of the other points as well. Can I can you to be
12 shown document 410 please. So this is a letter issued
13 by Chief Superintendent Dillane on the 10th May, I
14 think it is, of 2013. It's after the dust has settled
15 from the critical incident issue. Your report explains 15:19
16 your view has gone up the line. Can I point out to you
17 that Chief Superintendent Dillane says:

18
19 "I have noted Sergeant Barry's report. In future for
20 any critical incident that occurs in your district, I 15:20
21 expect a comprehensive report to be submitted by the
22 working sergeant in line with Assistant Commissioner
23 Quilter's minute dated 3rd August 2012."

24
25 So, just two points there. The first is, would you 15:20
26 agree with me that that indicates that Chief
27 Superintendent Dillane didn't take any action adverse
28 to you, instead he said he wanted to make a future
29 request, for future incidents?

1 A. Yes. And I believed, because his future reference
2 wasn't made previously, that that's why he wasn't able
3 to take --

4 480 Q. So in that situation you're not being sanctioned or
5 punished, but he's saying as a marker for the future, 15:20
6 this is what I expect?

7 A. That is what he requested, yes.

8 481 Q. Would you agree with me that a superior officer is
9 entitled to effectively set down, as it were, a marker
10 and to ask for certain things to be observed in the 15:20
11 future?

12 A. He would be entitled, yes.

13 482 Q. In terms of this particular issue, as I understood your
14 earlier responses, you seem to feel that a C 71 form
15 would have been sufficient even now, but in the light 15:21
16 of this document, would you not accept that it was very
17 clear as of the 10th May that what was required by your
18 superiors was compliance with the minute of the 3rd
19 August 2012?

20 A. No. 15:21

21 483 Q. And I think you've agreed they were entitled to expect
22 that?

23 A. They were entitled to expect that, but if that was the
24 requirement it should have been specified in the
25 original. 15:21

26 484 Q. If you disagreed with it, Mr. Barry, disagreed with the
27 minute of the 3rd August 2012, you do accept, do you
28 not, that your superiors were entitled to investigate
29 compliance with that and to ask you to comply with it

1 in future?

2 A. It was complied with at the time to the best of my
3 belief.

4 485 Q. The reason I mention this is because I have to suggest
5 to you that it was entirely legitimate, as I have, for 15:21
6 Chief Superintendent Dillane to make the enquiries that
7 he did, but it's clear from the record of the incident
8 that in fact there was no adverse impact on you as a
9 result of what he did?

10 A. Because I complied with what was requested of me. 15:22

11 486 Q. And again, we disagree with that, Mr. Barry, but I do
12 suggest it undermines the suggestion that this was
13 something which represented targeting or discrediting
14 of you for making a protected disclosure?

15 A. I disagree. 15:22

16 487 Q. Could I move on then to, please, Chairman in relation
17 to 4H. This is the allegation that by sanctioning
18 disciplinary proceedings against Sergeant Barry in
19 respect of emergency family leave between the 15th and
20 17th April of 2013. So the first point, can I just -- 15:22

21 A. Sorry, did you say 4H?

22 488 Q. I did. 4H?

23 A. 4H.

24 489 Q. By sanctioning, do you have that?

25 A. I have 4E, up to 4E. 15:22

26 490 Q. Sorry. It may be that you have a different form?

27 A. Mine stops at E.

28 MR. COSTELLOE: It may be the old one.

29 CHAIRMAN: We have to get you -- we don't have

1 Ms. Doolan, I'm afraid. So, Mr. McGuinness, can you
2 help us here?

3 MR. McGUI NNESS: I have a spare copy. It is relatively
4 unmarked. No comments on it.

5 CHAIRMAN: It's not marked? 15:23

6 MR. McGUI NNESS: No comments on it.

7 THE WITNESS: I can pass it back to you. I will give
8 it back to you.

9 MR. McGUI NNESS: Oh don't worry.

10 CHAIRMAN: We will get you a copy as soon as we can. I 15:23
11 am sorry about that.

12 THE WITNESS: That's all right.

13 MR. MURPHY: Thanks very much, Mr. McGuinness, Chair.

14 CHAIRMAN: I think you will probably recognise the
15 element, the criticism that you make, this is in 4H. 15:23

16 491 Q. MR. MURPHY: So this is the suggestion that -- the
17 allegation, I should say, that he sanctioned
18 disciplinary proceedings against you in respect of
19 emergency family leave between the 15th and 17th April
20 2013, the force majeure issue about which you have 15:24
21 given evidence. So, just on the first point, can I put
22 to you that Chief Superintendent Dillane will say that
23 he didn't sanction disciplinary proceedings against
24 you, but what he did was he initiated an inquiry under
25 Regulation 14 of the disciplinary regulations. From 15:24
26 your experience, would you agree that there is a
27 distinction between sanctioned, as in punished, for
28 disciplinary matter and being subject to an inquiry as
29 to whether there is any disciplinary issue arising?

1 A. Well, the initial application under the regulation
2 would be to carry out the inquiry, but I believe his
3 ultimate purpose was to discipline me.

4 492 Q. If we just take that in two parts then, Mr. Barry. You
5 do accept then that what he did as opposed to what you 15:24
6 think he was doing, what he did was to initiate the
7 inquiry under Regulation 14?

8 A. It's an inquiry under the discipline regulations,
9 that's how I construed it.

10 493 Q. And we know from the facts of the case that the matter 15:25
11 was investigated and that ultimately the recommendation
12 from the independent investigator was that there should
13 be no further steps taken?

14 A. And that could all have been prevented from day one,
15 had he asked me did I report and who did I report to. 15:25

16 494 Q. Well again, I think I understood you to accept a moment
17 ago that there is this distinction between being
18 sanctioned on the one hand, punished for discipline,
19 and an inquiry being conducted. So just looking at the
20 situation that prevailed when the inquiry was 15:25
21 initiated, would you agree with me that force majeure
22 is an unusual event?

23 A. Not if you've a family and young children.

24 495 Q. No, within An Garda Síochána it is perceived to be an
25 unusual claim to invoke? 15:25

26 A. Pardon?

27 496 Q. It's an unusual claim to invoke, isn't it? Remember we
28 discussed in your evidence that it's there for a fixed
29 number of days per year?

1 A. That's correct.

2 497 Q. It's an exceptional measure, is it not?

3 A. What, three days in a year?

4 498 Q. No, the force majeure is to deal with exceptional
5 circumstances? 15:26

6 A. Oh sorry, yes, it is.

7 499 Q. And in this situation I think you've accepted that,
8 prior to the date of your accepting force majeure,
9 seeking it, that you had hoped or expected at a
10 previous time to have leave during those days, is that 15:26
11 correct, in terms of the 15th, 16th and 17th April,
12 before the day when these things happened, it had been
13 your hope that you would secure leave during those
14 days?

15 A. Yes, I had applied for leave that month. 15:26

16 500 Q. And you had been refused?

17 A. And leave granted.

18 501 Q. And just in terms of force majeure, I think just to
19 help the Chairman understand your position on that one,
20 as I understand it, all the documents that were gone 15:27
21 through with Mr. McGuinness demonstrated -- sorry?
22 CHAIRMAN: You can give that one back to
23 Mr. McGuinness. Thank you. [SAME HANDED].

24 502 Q. MR. MURPHY: So I think in terms of the factual
25 circumstances that you've described, you've indicated 15:27
26 that a force majeure was necessary for family reasons,
27 because had you to be in the family home.

28 A. That's correct.

29 503 Q. And you were needed because there was ultimately no

1 other cover for your wife who was in difficulties that
2 the?

3 A. That's correct.

4 504 Q. So can we take then that for those three days they were
5 necessary because you remained at home during that 15:28
6 time?

7 A. Yes, I did.

8 505 Q. And would have stayed there during that period?

9 A. Apart from taking my children to school, college and
10 shopping and whatever. 15:28

11 506 Q. So apart from childcare and looking at your wife at
12 home?

13 A. That's correct.

14 507 Q. I wonder if you could be shown page 5123, please. This
15 is a report that is in the papers starting at 5121. 15:28
16 Just about a very specific point. This is a report by
17 Dr. Dennehy for 31st July 2014. Could I just ask you
18 to move forward to page 5123, please. 5123. Thank you
19 very much. If I ask you to scroll up a little bit,
20 just so we can get to the centre of the page. So, 15:29
21 Mr. Barry, just look at the heading please, "Further
22 contact with services", do you see that?

23 A. Yes.

24 508 Q. Can I just draw your attention to the middle line,
25 which indicates that you had contact with Dr. Dennehy 15:29
26 and his service on 15th April 2013?

27 A. Yes.

28 509 Q. Again, just so the Chairman understands, you had
29 indicated that you had been at home, that apart from

1 childcare facilities you hadn't left the home?

2 A. I never said I hadn't left the home.

3 510 Q. You indicated that you were required in your home?

4 A. Yes, I was.

5 511 Q. You indicated that apart from bringing the children to 15:29
6 school and going shopping --

7 A. Yes.

8 512 Q. - that -

9 A. Do you expect me to remember a medical appointment -

10 513 Q. Well -- 15:29

11 A. - going back to 2012?

12 514 Q. Well, it's your medical report, I am just asking you to
13 confirm to the Chairman that is part of the factual
14 results for that day, this is 31st July 2014?

15 A. Yes, I saw my doctor. 15:30

16 515 Q. In terms of the overall approach towards the force
17 majeure, can I suggest to you that in this case the
18 investigator carried out a thorough investigation and
19 ultimately decided not to expose you to disciplinary
20 sanction, isn't that right? 15:30

21 A. And correctly so.

22 516 Q. Even though in the course of his discussions he was not
23 able to identify a person who you had spoken to in the
24 station, you were given the benefit of that doubt?

25 A. Because of the six-month time lapse. He was given 15:30
26 phone records to show I made contact with the station.

27 517 Q. But I think he indicated he didn't accept that there
28 was evidence that you had spoken spoke to anyone in the
29 station, isn't that right?

1 A. That's his prerogative, he's the investigator.

2 518 Q. And I think you agreed in your evidence that it was a
3 small station, small number of people?

4 A. I think interviewed four possible persons.

5 519 Q. And all of them were interviewed and they indicated 15:31
6 that they hadn't spoken to you?

7 A. After six months.

8 520 Q. And in addition to that, if I can just ask you to go to
9 page 188, please. Just to the centre of the page,
10 please. That again there was reference to, your 15:31
11 certified reasons were owing to an illness and
12 inquiry -

13 CHAIRMAN: And injury.

14 MR. MURPHY: - my immediate presence was required.

15 CHAIRMAN: Mr. Murphy, owing to an illness and injury, 15:32
16 surely.

17 MR. MURPHY: Sorry, "Owing to an illness and
18 injury...", yes, Chairman, "...my immediate presence
19 was required at the family home to look after my wife
20 and family and as such I was indispensable." 15:32
21

22 And that was a very specific indicator that you had
23 given in that report?

24 A. That's correct.

25 521 Q. But I think will you agree with me that there is no 15:32
26 reference there to attending a medical appointment?

27 A. No, and I don't believe any reference was required.

28 522 Q. But this --

29 523 Q. CHAIRMAN: How far away was the doctor, Mr. Barry?

1 A. Twenty minutes approximately.

2 524 Q. CHAIRMAN: where was the doctor located?

3 A. The Mercy Hospital in Cork City. 20 minutes.

4 525 Q. CHAIRMAN: Cork City. Did you have an appointment?

5 A. I would have, if I attended. 15:32

6 526 Q. CHAIRMAN: Did you have to wait?

7 A. Yes.

8 527 Q. CHAIRMAN: Line up like everybody else?

9 A. Yes, you normally wait.

10 528 Q. CHAIRMAN: Park the car, line up, wait for the doctor? 15:32

11 A. No, it's not a big clinic, it's normally about half an

12 hour waiting time.

13 529 Q. CHAIRMAN: Okay, half an hour wait and you had to park

14 the car?

15 A. Yes. 15:33

16 530 Q. CHAIRMAN: That'd take a while?

17 A. Yes.

18 531 Q. CHAIRMAN: Do you think, Mr. Barry, when you looked for

19 leave for these two days, and then force majeure came

20 up, do you not think it looked a bit fishy? 15:33

21 A. I don't believe so.

22 532 Q. CHAIRMAN: Did it look a little suspicious?

23 A. Not under the circumstances.

24 533 Q. CHAIRMAN: How did it happen that when Mr. Barry's,

25 when his leave was refused, up came force majeure for 15:33

26 the days that he had been refused. Do you think that

27 looked a bit odd? I'm not saying it was odd, not for a

28 moment, but do you think it was reasonable in those

29 circumstances to say, what's the story here, let's

1 investigate?

2 A. I don't believe so, Mr. Chairman.

3 534 Q. CHAIRMAN: why not?

4 A. Because of the evidence that I supplied. When I would
5 see my doctor on those occasions, he would -- 15:34

6 535 Q. CHAIRMAN: what evidence had you supplied?

7 A. In relation to the phone records and the previous --

8 536 Q. CHAIRMAN: I'm sorry?

9 A. The phone records and the previous treatments my wife
10 received for her back injury. 15:34

11 537 Q. CHAIRMAN: No, I understand, sorry, there's nothing
12 here to say that factual -- all I'm saying is, look at
13 the way it looks, that's all I am saying. There's no
14 question, nobody is suggesting, I certainly would be
15 the last one to suggest there was anything -- but look 15:34
16 at what it looks like. Do you think that anybody is
17 entitled to say, I wonder about this?

18 A. Yes, they would be entitled to wonder, but to initiate
19 an investigation, I don't believe so.

20 538 Q. CHAIRMAN: Okay, okay. You think that was going too 15:34
21 far?

22 A. I do think so.

23 539 Q. CHAIRMAN: Okay.

24 A. And just in relation to my doctor --

25 540 Q. CHAIRMAN: Do you think it is a bit unlikely that 15:35
26 nobody could remember in the station? was that a bit
27 unlucky?

28 A. No, I think --

29 541 Q. CHAIRMAN: You can't remember who you spoke to and none

1 of them can remember your phone call, so that seems
2 like a bit unlucky?

3 A. Well, I had the phone record that I made the call.

4 542 Q. CHAIRMAN: I understand that?

5 A. And it was six months later when those persons -- 15:35

6 543 Q. CHAIRMAN: There's no doubt that you made a call,
7 that's for a fact. But anyway, there it is. You think
8 that initiating the inquiry, you think that was over
9 the top, so to speak?

10 A. Yes. 15:35

11 544 Q. CHAIRMAN: Okay.

12 A. And when I would attend my doctor, Mr. Chairman, he
13 would give me a script for my medication each time.

14 545 Q. CHAIRMAN: I understand.

15 A. So that's why I would have had to attend my doctor. 15:35

16 546 Q. CHAIRMAN: I see what you mean. You had that
17 appointment previously made?

18 A. Yes.

19 547 Q. CHAIRMAN: So one way or the other you were going to
20 immediate to attend that appointment? 15:35

21 A. I would have to, yes.

22 CHAIRMAN: I'm with you, I understand, as I say. Okay.

23 548 Q. MR. MURPHY: Just on that point, Mr. Barry, if you were
24 to go back to 188 for a moment, it's just on the screen
25 there, I think as you've indicated in the centre of the 15:36
26 page you certify that your presence was indispensable
27 but looking at the bottom of the page, I think that you
28 were filling this out on 18/4/2013, that's to say after
29 you had taken the leave.

1 A. That is the requirement.

2 549 Q. I see. Would you agree with me there's no reference to
3 the medical visitation of the 15th in this note?

4 A. No, you don't get force majeure to attend a doctor, you
5 get it to look after your family. 15:36

6 550 Q. Did you not think it might be prudent to incorporate
7 that in the explanations three days --

8 A. Well, I didn't include the school runs or the shopping
9 either.

10 551 Q. CHAIRMAN: When you were looking for the leave, did you 15:36
11 say, I have a medical appointment?

12 A. No, I didn't.

13 552 Q. CHAIRMAN: You'd have needed it anyway because you had
14 an appointment coming up?

15 A. Yes. 15:36

16 553 Q. CHAIRMAN: An important appointment?

17 A. Yes.

18 554 Q. CHAIRMAN: Okay.

19 A. Exactly.

20 555 Q. MR. MURPHY: I think you then indicate the details are 15:37
21 true and complete but there isn't any reference to the
22 medical appointment.

23 A. Nor school runs or shopping, walking dogs, whatever.

24 556 Q. Again, can I suggest to you that in this case that the
25 inquiry and the steps taken to inquire were reasonable 15:37
26 and were not attempts to target or discredit you by
27 reason of making a protected disclosure?

28 A. I disagree.

29 557 Q. Can we move then please, Chairman, to 4I.

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There is a complaint that Chief Superintendent Dillane, by stating in a letter to John Barrett of HRM, dated 7th August 2015, that you were having a negative effect on policing in the Fermoy district amounted to targeting and discrediting of you.

15:37

So, first of all, can I say that Chief Superintendent Dillane will indicate that that was not targeting or discrediting but by the time he spoke to Mr. Barrett that there had been, shall we say, a lot of turbulence as a result of your response to events within the district and I think you were aware of that?

15:38

A. I was aware of events, yes.

558 Q. I think towards the end of your examination in chief by Mr. McGuinness, you accepted that Chief Superintendent Dillane had had to address quite a lot of issues that had arisen because of the way matters unfolded?

15:38

A. Excuse me, he addressed issues, I don't know?

559 Q. Issues in relation to you?

15:38

A. How did he address them?

560 Q. In terms of the issues that you are complaining about?

CHAIRMAN: I am not entirely clear, Mr. Murphy, I have to confess.

561 Q. MR. MURPHY: Yes. In terms of the period that we are reviewing and that this Tribunal is looking at, we have gone through a series of different points demonstrating that issues arose in relation to the different points we've just gone through, issues in relation to making

15:38

1 reports, issues in relation to the force majeure,
2 issues in relation to turning up for conferences, or
3 issues in relation to turning up at Fermoy, I mean all
4 of those issues, the morning briefings, Mr. O'Higgins
5 reminds me also. We've gone through all of those 15:39
6 different elements. So again can I just suggest to you
7 that in that situation, that Chief Superintendent Kehoe
8 vis-à-vis his own position, was entitled to reasonably
9 conclude that all of these matters taken together by
10 virtue of your attitude towards these issues were 15:39
11 having a negative effect on the policing in Fermoy
12 district.

13 A. I disagree.

14 562 Q. Would you agree with me that if a superintendent, in
15 this case Superintendent Comyns, reports to his 15:40
16 superior that he can't perform his duties because of a
17 member's behaviour, that that is a matter of concern?

18 A. Because of a member complying with his doctor's
19 certificate.

20 563 Q. Would you agree with me that he was entitled to be 15:40
21 concerned that you weren't attending briefings in
22 Fermoy Garda Station?

23 A. Not under the circumstances, no.

24 564 Q. And again I have to suggest to you that he will say
25 that he was reasonably understood to have concerns 15:40
26 about the fact that you weren't attending the sessions
27 during the early and night shifts and that he was
28 seeking to ensure that there was a proper
29 implementation of general Garda policy in that regard?

1 A. I disagree.

2 565 Q. And that he was entitled to consider that your attitude
3 towards Superintendent Comyns or your public refusal to
4 comply with requirements put forward, was a matter that
5 was also having a negative effect on policing in the 15:40
6 district?

7 A. I disagree.

8 566 Q. In terms of his discussions with you in relation to
9 transfers, again he will say that that was all an
10 attempt on his part to try and find the solution to a 15:41
11 real problem that was developing from his point of
12 view, which I thought you had accepted, you understood
13 that he might have had a difficulty with you because of
14 all the issues which had arisen?

15 A. Sorry, who are you saying was initiating the transfer? 15:41

16 567 Q. In terms of this, Mr. Barry, I am putting it to you
17 that in terms of all of the issues that arose at the
18 time, that they were issues which he was entitled to be
19 concerned about, he had a senior member, you, who was
20 effectively seeking to be treated differently to 15:41
21 everybody else?

22 A. He had a senior member who had a doctor's certificate
23 to protect his mental health, that is what the
24 situation was. And there was no temporary
25 accommodations put in place, other than a transfer 15:41
26 offer, to address those concerns. Not my fault.

27 568 Q. A transfer offer that in every single instance was
28 either rejected or appealed by you?

29 A. Not always.

1 569 Q. And again, for the reasons we've gone through earlier,
2 I have it suggest that it was. So just pausing at this
3 level, can I suggest to you that in the light of all of
4 the events that have taken place, that the Tribunal has
5 heard in evidence that you have spoken about, that for 15:42
6 Chief Superintendent Kehoe to write a letter of the 7th
7 August saying that you are having a negative impact was
8 a reasonable statement for him to make. You may
9 disagree with his statement, you may disagree with his
10 view, but he had reasons to state it? 15:42

11 A. I believe the negative impact was because of garda
12 management's attitude, and Garda Murphy addresses it is
13 in his own notes, where he says he believed that the
14 matters were not addressed by Garda management.

15 570 Q. You see, I have to suggest to you that there is nothing 15:42
16 in this particular correspondence for 7th August 2015
17 that amounts to targeting or discrediting of you for
18 making a protected disclosure, at all?

19 A. I disagree.

20 571 Q. CHAIRMAN: Garda Murphy addressed it, where does he 15:43
21 come into the picture?

22 A. Pardon?

23 572 Q. CHAIRMAN: where does Garda Murphy come into the
24 picture?

25 A. In relation to tensions within the garda district at 15:43
26 the time. Members were asked about was there tension
27 its and Garda Murphy said there were, but they weren't
28 addressed by Garda management.

29 573 Q. CHAIRMAN: Okay. So he said there were tensions in the

1 station?

2 A. There were bound to be.

3 574 Q. CHAIRMAN: why are we here?

4 A. There were, because members were being transferred
5 because of me from units. 15:43

6 575 Q. CHAIRMAN: I understand.

7 A. And Garda wall was disciplined because of me.

8 576 Q. CHAIRMAN: And Garda Murphy on the occasion when he was
9 asked, said that there were tensions but they weren't
10 addressed by Garda management? 15:43

11 A. That's correct.

12 577 Q. CHAIRMAN: Okay.

13 A. And Garda wall was disciplined because of me and Garda
14 ward had to questioned in relation to a report on the
15 fatal fire, to get at me. And I felt responsible for 15:43
16 all those things. It was because of me that all those
17 things were happening.

18 CHAIRMAN: Okay.

19 578 Q. MR. MURPHY: In the course reading the papers, you do
20 recall the statement of Inspector Eoghan Healy? 15:44

21 A. Yes.

22 579 Q. I think -- I will try and identify the page reference.
23 I think that you will recall that it got to a stage
24 where you were making complaints about issues and he
25 was then called in from outside Mitchelstown to examine 15:44
26 the scenario, do you remember that?

27 A. Sorry, it was my understanding that the matters looked
28 into by Inspector Healy were not to be addressed by me.

29 580 Q. No, no, I'm not talking about the substance of them or

1 details of them, not at all?

2 A. Right.

3 581 Q. what I am talking about is the fact that at that stage
4 what he did comment on was --

5 582 Q. CHAIRMAN: Mr. Murphy, sorry, are we talking about 15:45
6 something wholly different that Inspector Healy was
7 called in to deal with or are we talking about the
8 matters that we know about? Is this something
9 totally -- you know about this?

10 A. I think it's the same thing. 15:45

11 583 Q. CHAIRMAN: Is it the same stuff we're talking about?

12 A. Yes.

13 584 Q. CHAIRMAN: Okay, and which particular ones was
14 Inspector Healy dealing with? where does he come in?
15 MR. MURPHY: Chairman, I will pass from that point in 15:45
16 case there is an issue of boundary of limitation.
17

18 Can I summarise the position on this point to say that
19 ultimately in this scenario Chief Superintendent Kehoe
20 will indicate that he had to respond -- 15:45

21 CHAIRMAN: Dillane, I think you mean.

22 585 Q. MR. MURPHY: Sorry, Dillane, that he had to respond to
23 the circumstances as they arose and he formed the view
24 that you were having negative effect on policing in
25 Fermoy district based on his experience, based on his 15:45
26 observations and not out of any desire to target or to
27 discredit you.

28 A. I disagree.

29 586 Q. Then can I ask you to move please to 4A and B? Again,

1 Mr. McGuinness has dealt with this in some detail.
2 This is the allegation that Chief Superintendent
3 Dillane targeted or discredited you because you made a
4 protected disclosure by (a) refusing to issue a
5 Certificate of Service, or (b) by classifying your
6 service as very good instead of exemplary.

15:46

7
8 So again, without prejudice, Chairman, I think to the
9 point that you've given us leave to articulate in
10 submission at a later stage as to whether this is
11 covered by the process or not?

15:46

12 CHAIRMAN: Yes.

13 MR. MURPHY: But just to deal with the facts de bene
14 esse.

15 587 Q. CHAIRMAN: I think essentially it is (b), I think,
16 because I know there was a delay in issuing the
17 statement. Mr. Barry, correct me if I am wrong, I
18 think essentially your complaint is very good, not
19 exemplary.

15:46

20 A. Yes.

15:47

21 588 Q. CHAIRMAN: In all the -- I mean, the fact that it took
22 a while to get it out or something doesn't seem like
23 the big business, the real complaint is he was -- you
24 say he was targeting you, it was unfair and
25 unreasonable, it was bad for him to withhold the top
26 category?

15:47

27 A. Yes.

28 589 Q. CHAIRMAN: That's essentially the point?

29 A. That's the main point, Mr. Chairman, yes.

1 CHAIRMAN: Okay.

2 590 Q. MR. MURPHY: So in terms of that classification issue,
3 Chief Superintendent Dillane will indicate that he, as
4 the Chairman said, firstly is not responsible for
5 issuing the certificate, that's a function of Garda 15:47
6 Headquarters you're aware of that.

7 A. They issue the certificate based on his
8 recommendations.

9 591 Q. In terms of the documents, they're all documents put to
10 you by Mr. McGuinness, but in terms of the 15:47
11 classification, he's indicated that he gave reasons,
12 which were outlined and shown to you, again when you
13 gave evidence to Mr. McGuinness, in relation to why he
14 put down very good in the first instance, because he
15 focused on that narrow period of time, which is the 15:48
16 subject of the review of this Tribunal and his
17 experience of dealing with you at that time. And I
18 think you accepted, did you not, in your evidence that
19 he would have felt that you were discourteous to him or
20 that he would have to do a lot of work because of the 15:48
21 issues you had raised?

22 A. Sorry, could you repeat the last part?

23 592 Q. Yes. You do accept, do you not, putting yourself in
24 his position, that a lot of issues arose which you had
25 raised at that time, that he had to deal with? 15:48

26 A. He had to deal with issues I raised?

27 593 Q. Yes.

28 A. Yes, he to deal with issues.

29 594 Q. And that in terms of the interaction between you, that

1 in relation to a number of the issues it appeared to
2 him that you were having a negative impact on the
3 policing of Fermoy district during that period of time?
4 A. Well, he said I was discourteous.
5 595 Q. Yes. 15:49
6 A. And the other word...?
7 596 Q. Discourteous to him?
8 A. Yes.
9 597 Q. Do you accept that that is something that could have
10 appeared to him to be the case? 15:49
11 A. I don't think so, because even when he granted my leave
12 for the family holiday, I thanked him. I was never
13 discourteous to him.
14 598 Q. But in fact when we look at the documents in the case,
15 as you saw when you gave evidence the other day, that 15:49
16 he reflected on the issue, consulted with other former
17 superiors of yours and decided to allow the
18 recommendation go forward as exemplary, taking into
19 account your entire record?
20 A. And I believe he should have done that from the outset, 15:49
21 because it's for my service, not for the last part of
22 your service.
23 599 Q. But insofar as he has given an indication as to why he
24 acted as he did, I have to suggest to you that he
25 responded to the circumstances that affected him but 15:49
26 then regrouped, and far from targeting you, he actually
27 reflected on the position and facilitated the
28 certificate to be recommended in the end as exemplary?
29 A. I do not agree with that.

1 600 Q. And therefore, I have to suggest to you that this was
2 not something which was either targeting or
3 discrediting of you because you'd made a protected
4 disclosure?
5 A. It was downgrading my service. 15:50
6 601 Q. And, in fact, this had no implication for your pension,
7 isn't that correct?
8 A. Pardon?
9 602 Q. It had no implications for your pension or your
10 payments? 15:50
11 A. No, it's my personal and my future -- should I submit
12 that document to somebody, suppose I was in a position
13 to seek employment, and they questioned the categories,
14 well what did you do.
15 603 Q. But in fact there never was a document to submit until 15:50
16 this final document was produced, isn't that right?
17 604 Q. CHAIRMAN: It's what he was going to do until you
18 protested about it, isn't that right?
19 A. That's correct.
20 605 Q. CHAIRMAN: So I suppose the two ways of looking at 15:50
21 this, Mr. Barry, are: Did he have it in for you the
22 first time because he said very good rather than -- and
23 we all know the significance that he didn't -- that it
24 meant less than perfect, if you like?
25 A. Yes. 15:51
26 606 Q. CHAIRMAN: Or, if he was really going to target you,
27 would he not have kept up with very good and said,
28 that's the way I am going to be, or did he take the
29 harm out of it by changing his mind and giving you --

1 isn't that the real issue in the case?

2 A. Yes.

3 607 Q. CHAIRMAN: If you like?

4 A. Yes, Mr. Chairman.

5 608 Q. CHAIRMAN: I mean we will have to hear from Chief 15:51
6 Superintendent Dillane, but I think that's the
7 position, Mr. Murphy.

8 MR. MURPHY: That's correct yes.

9 CHAIRMAN: That really, I mean, presumably will he be
10 saying, look, if I wanted to target Mr. Barry I'd have 15:51
11 stuck to my guns and said very good, I wouldn't have
12 changed my mind.

13 MR. MURPHY: Yes.

14 CHAIRMAN: And Mr. Barry says, well, I'm sorry, because
15 he was thinking this in the first place, it indicates 15:51
16 targeting, an intention to target.

17 MR. MURPHY: Yes.

18 CHAIRMAN: Is really what he comes down to.

19 MR. MURPHY: Chairman, again I perhaps will be another
20 five or ten minutes, if I have leave to proceed. 15:52
21 CHAIRMAN: No, problem take your time.

22 609 Q. MR. MURPHY: Mr. Murphy, just in general terms, can I
23 put a number of matters to you. The first is that in
24 this particular case can I suggest to you that in this
25 instance regrettably you've chosen to make allegations 15:52
26 against some of the clients who I represent, including
27 Chief Superintendent Kehoe and Chief Superintendent
28 Dillane, suggesting, in your words, criminality,
29 corruption and perversion of the course of justice. I

1 have to suggest to you that those are very serious
2 allegations to make against members of An Garda
3 Síochána. Do you accept that?

4 A. I do.

5 610 Q. And then I have to suggest to you that it behoves 15:52
6 somebody who puts forward those kind of allegations not
7 to do so unless they have evidence to support them to a
8 high level of certainty -

9 A. I believe I have the evidence.

10 611 Q. - and in this case you do not? And secondly, I put it 15:52
11 to you that in this case, on behalf of my clients, to
12 suggest that to you that you have persisted in making
13 your allegations, despite the fact that that evidence
14 has emerged in some instances demonstrating that they
15 entirely wrong, or there is a different interpretation 15:53
16 to attach to them. But that ultimately in this case, I
17 have to suggest to you, there is no evidence to suggest
18 that the persons who I represent or An Garda Síochána
19 were guilty of perversion of the course of justice,
20 corruption, criminality, targeting or discrediting of 15:53
21 you at all?

22 A. You make it sound like I am accusing every member of
23 perverting the course of justice, criminality, I'm not.

24 612 Q. Can you see, Mr. Barry -- thank you for that 15:53
25 qualification, but can you see how by impugning people
26 in this way you are effectively attacking their good
27 name but also the people with whom they worked, the
28 colleagues with whom they endeavoured to investigate
29 matters in the field, all of them?

1 A. I made no allegation against the colleagues who --
2 CHAIRMAN: Mr. Murphy, may I respectfully suggest that
3 the comments you make may well be more appropriate, if
4 I may say so, for a submission at the end. It's, I
5 suggest, very difficult for Mr. Barry to deal with a 15:54
6 block. I see the point you're making, but it does
7 strike me that it is more of a submission to which
8 people may reply rather than a broad brush to say that
9 he is attacking --
10 MR. MURPHY: Yes. 15:54
11 CHAIRMAN: And he's entitled to say, hold on a second,
12 I'm not accusing Chief Superintendent Dillane of
13 criminality, I'm saying he was targeting me, and let's
14 get you to the other one, and then you said the people
15 they worked with, and I think you have made that point 15:54
16 in regard Chief Superintendent Kehoe and her
17 investigation and Mr. Barry has said he exonerates all
18 except Inspector O'Sullivan and it seems to me that he
19 narrowed his focus on Inspector O'Sullivan to a
20 particular episode. But I mean, it is very difficult 15:55
21 for him to deal with or, indeed, for me to take a note,
22 if you like, on a comprehensive collection of
23 allegations, if you know what I mean.
24 MR. MURPHY: Yes, Chairman.
25 CHAIRMAN: Now, that is not a criticism, I am 15:55
26 suggesting that a different place may be appropriate
27 for the propositions.
28 613 Q. MR. MURPHY: I acknowledge that, Chairman. I am
29 grateful for that indication. But then in those

1 circumstances can I simply put it to you formally and
2 for the record, that in this particular instance that
3 there is no evidence to support your allegations that
4 the people I represented either targeted or discredited
5 you because you had made a protected disclosure. 15:55

6 A. I disagree with you, Mr. Murphy.

7 CHAIRMAN: And if it happened, Mr. Murphy, because of
8 frankly the range of specific allegations that we have
9 extracted from the materials in an effort to clarify
10 the situation, it is possible that there's some area 15:56
11 that you might discover you hadn't covered and that the
12 evidence comes back, this being an inquiry, we will
13 look at that situation if it arises and say, what's the
14 fair thing to do. It's possible that we might ask
15 Mr. Barry to come back and deal with some issue that 15:56
16 had been overlooked in some way. It's unlikely that
17 between Mr. McGuinness or Mr. Murrinan and Ms. McGrath
18 and the other counsel, it is unlikely that something --
19 but in the unlikely event --

20 MR. MURPHY: Thank you, Chairman. I had sought to 15:56
21 endeavour to complete the time estimate that we
22 discussed.

23 CHAIRMAN: No, I perfectly understand that.

24 MR. MURPHY: Thank you, Chairman.

25 614 Q. CHAIRMAN: Anyway, thanks very much. Do you understand 15:56
26 what I am saying there, Mr. Barry?

27 A. Yes.

28 615 Q. CHAIRMAN: It's very difficult for you to answer a
29 global kind of suggestion when I really have to look at

1 them individually. Do you understand?
2 THE WITNESS: Yes, Mr. Chairman.
3 CHAIRMAN: Okay.
4 THE WITNESS: Thanks.
5 CHAIRMAN: Okay. Mr. Murphy, where do you want to go 15:57
6 to next?
7 MR. MURPHY: That concludes my examination.
8 CHAIRMAN: Oh that concludes your cross-examination, is
9 that right?
10 MR. MURPHY: Yes. 15:57
11 CHAIRMAN: Thank you very much.
12
13 END OF EXAMINATION
14
15 THE WITNESS: Sorry, Mr. Chairman, I thought he was 15:57
16 going to address point number 7.
17 CHAIRMAN: That's no problem, which is point number 7?
18 THE WITNESS: In relation to A/C Fintan Fanning and
19 Chief Superintendent John Grogan.
20 CHAIRMAN: Mr. Murphy doesn't appear for them, so he 15:57
21 doesn't have to. Don't worry.
22 A. I thought they were on the list.
23 CHAIRMAN: Mr. Barry, thank you for your thoroughness
24 and thank you for your astuteness but don't worry, we
25 will be coming to those, because counsel in due course 15:57
26 will be coming to those. Mr. Costelloe, do you want to
27 say something?
28 MR. COSTELLOE: I do, Chairman, I was hoping for, I
29 wouldn't go so far as to raise it to the level of a

1 ruling but for some clarification, and I say it to you,
2 Chair, in the presence of the other legal teams because
3 it will circumvent and short-circuit matters. I have
4 taken the view that the ordinary Rules of Evidence
5 apply and insofar as my client is under 15:58
6 cross-examination at the moment, I have not spoken to
7 him. I wonder if I could seek clarification as to
8 whether or not it would be acceptable to have a
9 conversation with my client, acknowledging the fact
10 that he's still under cross-examination, that there are 15:58
11 other parties who have yet to go, if I put it that way.
12 CHAIRMAN: Mr. Costelloe, let me give my view on this.
13 I have never regarded the rule of practice or, indeed,
14 it may be a -- it's scarcely a rule of law, but I have
15 never regarded it as absolute and unalterable in every 15:58
16 circumstance, because there may be circumstances, I was
17 often in that situation myself, where it was strictly
18 necessary to. So my view is in this case, I would have
19 no doubt and I would be comfortable in placing my trust
20 in your professional ethical standard and judgement, so 15:59
21 I personally would have no difficulty with that. Let
22 me just invite -- but if anybody else had an objection
23 and there will be no question of thinking the worse or
24 the lesser of anybody who had an objection if they did
25 have. I'll tell you what to do, if they did have such 15:59
26 an objection, so they don't have to make it in public,
27 would counsel who might have any such objection make it
28 known to Mr. McGuinness. If agreement can be reached,
29 well and good, if agreement can't be reached, the

1 matter can be presented to me on the morning and I will
2 rule on it specifically. But I have given my
3 indication that I wouldn't have any difficulty and I
4 think it would be perhaps a very useful facility to
5 have available, to have Mr. Costelloe having the 16:00
6 facility to be able to talk to his client.
7 MR. COSTELLOE: Thank you.
8 CHAIRMAN: So that would be my view, but anybody else,
9 mention it to Mr. McGuinness and if we need to, we can
10 revisit it. 16:00
11 MR. MURPHY: Chairman, if it facilitates Mr. Costelloe,
12 I have no objection on behalf of my client.
13 MR. COSTELLOE: Obligated.
14 CHAIRMAN: I am slightly reluctant to kind of canvass
15 everybody else, because if somebody objects, it might 16:00
16 look as if they're presenting and looking as -- so the
17 reason I'm providing for this anonymity or sort of
18 comfort is to allow for that. I don't anticipate any
19 objections to it. But look, that is my view, knowing
20 the parties involved and knowing and having a 16:00
21 particular view of the professional standing and
22 ethical approach of the persons involved. So that
23 would be my view. Thank you very much.
24
25 Anyway, thanks very much, Mr. Barry, you have still a 16:01
26 bit to go, okay.
27 THE WITNESS: Thank you.
28
29 CHAIRMAN: Thank you very much.

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THE HEARING ADJOURNED TO THURSDAY, 26TH MAY 2022,
AT 11 A.M.