

MEDICAL COUNCIL OF IRELAND

FITNESS TO PRACTISE COMMITTEE

UNDER PART 8 OF THE MEDICAL PRACTITIONERS ACT 2007

RE: REGISTRANT [WITNESS B]

REGISTRATION NO: 405670

HEARING BEFORE THE FITNESS TO PRACTISE COMMITTEE

AT KINGRAM HOUSE, KINGRAM PLACE, DUBLIN 2

ON MONDAY, 10TH FEBRUARY 2025 - DAY 6

6

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APPEARANCES

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MS. MARY DEVINS
DR. MARY DAVIN-POWER

LEGAL ASSESSOR :

MR. DIARMAID MCGUINNESS SC

FOR THE CEO:

MR. HUGH McDOWELL BL

INSTRUCTED BY:

MS. SARA O'SULLIVAN
SOLICITOR
MESSRS. FIELDFISHER
SOLICITORS

FOR THE REGISTRANT :

MS. MAURA McNALLY SC

INSTRUCTED BY:

MR. FAISAL KHAN
SOLICITOR
MESSRS. FSK SOLICITORS

ALSO PRESENT :

MS. JANE HORAN
PROFESSIONAL STANDARDS SECTION OF
THE MEDICAL COUNCIL

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INDEX

<u>WITNESS</u>	<u>PAGE</u>
DR. CLARE CULLEN	
CROSS-EXAMINED BY MS. McNALLY	10
RE-EXAMINED BY MR. McDOWELL	40
LEGAL ADVICE BY MR. MCGUINNESS	42
DR. CULLEN	
CONTINUED TO BE RE-EXAMINED	43
RE-CROSS-EXAMINED BY MS. McNALLY	45
FURTHER EXAMINED BY MR. McDOWELL	50
DR. SHANE RUSSELL	
CROSS-EXAMINED BY MS. McNALLY	53
RE-EXAMINED BY MR. McDOWELL	66
LEGAL ADVICE BY MR. MCGUINNESS	70
SUBMISSION BY MR. McDOWELL	71
SUBMISSION BY MS. McNALLY	71
DR. TOM LEE	
CROSS-EXAMINED BY MS. McNALLY	73
QUESTIONING BY THE COMMITTEE	80
MS. ANNETTE KELLY	
DIRECTLY EXAMINED BY MR. McDOWELL	86
CROSS-EXAMINED BY MS. McNALLY	90

QUESTIONING BY THE COMMITTEE	98
DR. NICK FLYNN	
DIRECTLY EXAMINED BY MR. MCDOWELL	100
SUBMISSION BY MS. MCNALLY	102
SUBMISSION BY MR. MCDOWELL	105
DR. FLYNN	
CONTINUED TO BE DIRECTLY EXAMINED BY MR. MCDOWELL	107
LEGAL ADVICE BY MR. MCGUINNESS	115
SUBMISSION BY MR. MCDOWELL	118
SUBMISSION BY MS. MCNALLY	118
SUBMISSION BY MR. MCDOWELL	119
DR. FLYNN	
CONTINUED TO BE DIRECTLY EXAMINED BY MR. MCDOWELL	120
CROSS-EXAMINED BY MS. MCNALLY	152
SUBMISSION BY MS. MCNALLY	156
LEGAL ADVICE BY MR. MCGUINNESS	157
DR. FLYNN	
CONTINUED TO BE CROSS-EXAMINATION BY MS. MCNALLY	158
QUESTIONING BY THE COMMITTEE	175

1 THE HEARING RESUMED AS FOLLOWS ON MONDAY,
2 10TH FEBRUARY 2024:

3
4 CHAIRPERSON: Good morning to you all. This is an
5 Inquiry by the Fitness to Practise Committee under Part 10:15
6 8 of the Medical Practitioners Act 2007. This is Day 6
7 of an Inquiry into allegations of professional
8 misconduct and/or poor professional performance and/or
9 a contravention of a provision of the Medical
10 Practitioners Act of 2007, including a provision of any 10:15
11 regulations or rules made under this Act on the part of
12 a registered medical practitioner.

13
14 Although this Inquiry is proceeding in public, the
15 Complainant is being anonymised as witness A, and the 10:16
16 Registrant is being anonymised as witness B.

17
18 In the event that either witness is inadvertently
19 referenced by their actual name, or in a way that might
20 identify them, the parties to this Inquiry are ordered 10:16
21 not to disclose that identity. The transcript of this
22 Inquiry will be amended as necessary to correct any
23 inadvertent disclosures.

24
25 So, let me just formally introduce the Fitness to 10:16
26 Practise Committee here today to you. My name is Paul
27 Harkin, I am chairing this Inquiry, I am not a medical
28 practitioner. Other members of the Committee include
29 Ms. Mary Devins, who is also not a medical

1 practitioner, and Dr. Mary Davin-Power, who is a
2 medical practitioner.

3
4 with the Committee is Mr. Diarmaid McGuinness, senior
5 counsel, he is the legal assessor to the Committee. I 10:16
6 will just give a brief word on the role of the legal
7 assessor.

8
9 The legal assessor is not a member of the Fitness to
10 Practise Committee, he is in attendance to assist the 10:16
11 Committee in relation to legal issues or arguments
12 which may arise during the course of the hearing.

13
14 Mr. McGuinness when he gives his legal advice to the
15 Committee will permit submissions to be made by the 10:17
16 parties on that advice. The Committee will then
17 retire, if necessary, to make its decision in private
18 in light of the legal advice of the legal assessor and
19 the submissions made.

20
21 So with that I will pause now and take appearances from
22 the parties. Thank you.

23 MR. McDOWELL: Good morning, Committee members, Hugh
24 McDowell is my name, and as you know I am a barrister
25 instructed by the Chief Executive of the Medical 10:17
26 Council, and I am attended by Ms. O'Sullivan of
27 Fieldfisher Solicitors.

28 MS. McNALLY: Good morning, my name is Maura McNally, I
29 am instructed by solicitor, Mr. Faisal Khan, and we

1 represent witness B.

2 CHAIRPERSON: So, before I invite Mr. McDowell to
3 present his next witness, I will just check whether
4 either party has any preliminary applications they wish
5 to make?

10:18

6 MR. McDOWELL: I don't, Chairperson.

7 MS. McNALLY: At this juncture no, much obliged.

8 CHAIRPERSON: With that I am happy for you to call your
9 next witness.

10 MR. McDOWELL: Chair, what I have sort of agreed in
11 outline with Ms. McNally is that this morning there are
12 three witnesses being tendered for cross-examination,
13 whom the Committee have previously heard from before.
14 Those individuals are Dr. Clare Cullen, Dr. Shane
15 Russell and Dr. Tom Lee. And Dr. Lee and Dr. Russell
16 are going to appear remotely.

10:18

10:18

17
18 And then after that we have Dr. Nick Flynn, who is the
19 expert witness being tendered on behalf of the Chief
20 Executive. And when his evidence is finished that will
21 conclude the Chief Executive's case.

10:18

22
23 And again subject to the Committee I would propose that
24 once we reach that point we would break for today and
25 resume on Thursday with the Respondent's case.

10:18

26 CHAIRPERSON: Okay.

27 MR. McDOWELL: So, unless there are any questions?

28 CHAIRPERSON: Any questions from the parties? No,
29 okay, so we are happy for you to proceed on that basis.

1 MR. McDOWELL: So, if we could call Dr. Clare Cullen.

2 CHAIRPERSON: Good morning, Dr. Cullen, you are very
3 welcome. Thank you for making yourself available again
4 for cross-examination. Just to remind you that the
5 Registrant in this case has been anonymised as Witness 10:20
6 B, so I would be grateful if you could refer to the
7 Registrant as Witness B. And the Complainant has been
8 anonymised as Witness A. I know that's quite difficult
9 sometimes to change the names, but we will correct the
10 transcript if you make any slips, but if I could just 10:21
11 ask you to refer to the Registrant as Witness B and the
12 Complainant as Witness A.

13 A. Perfect, thank you.

14 CHAIRPERSON: So, I will hand you over to Ms. McNally,
15 I presume -- 10:21

16 MR. McDOWELL: Yes.

17 CHAIRPERSON: -- at this point.
18
19
20
21
22
23
24
25
26
27
28
29

1 DR. CLARE CULLEN WAS CROSS-EXAMINED BY MS. McNALLY AS
2 FOLLOWS:

3
4 MS. McNALLY: Good morning, Dr. Cullen.

5 A. Good morning.

10:21

6 1 Q. Sorry, my apologies, I am not used to pressing the
7 buzzer, so please forgive me. My name is Maura McNally
8 and I am here witness B. So I just want to go through
9 your statement and also the evidence that you have
10 given to this hearing previously.

10:21

11
12 So, I don't know if you have a copy of your statement,
13 if I could -- it is on page 319 of the Book of Witness
14 Statements.

15 MR. McDOWELL: I am not sure we have a Book of Witness
16 Statements.

10:21

17 2 Q. MS. McNALLY: well, whilst people are trying to pull
18 that up, why don't we go to your evidence of the last
19 occasion, which was Day 2, and it's page 111 in my
20 booklet. I don't know if Mr. McDowell wants me to say
21 that or not --

10:22

22 MR. McDOWELL: Yes.

23 MS. McNALLY: So, apparently the witness statements
24 have not been furnished to the Committee. So I would
25 simply ask that the witness statement, that they are, I
26 will just put it now, they were furnished to witness B,
27 so it is in the booklet that we were given entitled
28 "Index to Book of Witness Statements" and there are two
29 witness statements, one at page 319 and 326, signed by

10:22

1 Dr. Clare Cullen, so I was going to be referring to
2 those. So I presume the Committee should have copies
3 of them. If you want me to wait while that happens. I
4 don't know how long these things take, so my apologies.

5 CHAIRPERSON: You will need to give us some assistance 10:23
6 as to where to find those.

7 MS. McNALLY: I can plough on, as I say, while the CEO
8 obtains a booklet of those witness statements for you,
9 because I will later in the day also be relying upon
10 the witness statements that were obtained by the CEO 10:24
11 from Dr. Shane Russell and also Dr. Tom Lee.

12
13 So I don't want to obviously reference documentation
14 that you don't have. So, just to put the CEO on notice
15 that I will be relying on those as well or using those. 10:24
16

17 3 Q. So sorry, Dr. Cullen, page 111 is, I believe, where
18 your evidence commenced on the last occasion, Day 2,
19 and here we are on Day 6.

20
21 So firstly, I just want to ask you about your
22 friendship with Witness A. You lived in a house with
23 her when you were both in Mayo, is that correct?

24 A. That's correct.

25 4 Q. And had you known her before that? 10:24

26 A. I had known her for the six months before that when we
27 worked in Galway Hospital together.

28 5 Q. So that would have been, and correct me if I'm wrong,
29 it would have been from about July '15 to that

1 Christmas?

2 A. That's correct.

3 6 Q. And then from January '16 up until the summer, again
4 June/July of '16 you both moved to Mayo, is that
5 correct?

6 A. That's correct, yeah.

7 7 Q. And did you live together in Galway?

8 A. No, we didn't.

9 8 Q. Okay. And then since the termination of that six
10 months in Mayo, have you seen witness A since? 10:25

11 A. We would have stayed in touch for a year or so after
12 that, and then just naturally drifted apart since.

13 9 Q. Okay. And when you say "stay in touch", was that, how
14 was that accomplished, was it by telephone?

15 A. Text message primarily, so probably on WhatsApp. We 10:25
16 would have gone to the Galway races, for example, with
17 a group of friends, that kind of thing.

18 10 Q. So visits to Galway, and would you stay with her if you
19 were down in Galway if she was in Galway?

20 A. Yes, I have, yeah. 10:25

21 11 Q. And has she stayed with you since she left Mayo?

22 A. Not that I can recall.

23 12 Q. Okay. And have you worked together since you were both
24 in Mayo?

25 A. No, we haven't. 10:25

26 13 Q. And can I just ask you, in respect of the evidence that
27 was adduced already, there is the suggestion of a
28 change in rota where you swapped with witness A --

29 A. Correct.

1 14 Q. -- to do the rota with witness B, is that correct?
2 A. That's correct.
3 15 Q. And can I ask you, have you made a complaint to An
4 Garda Síochána in any way about witness B when you were
5 working with him? 10:26
6 A. Not to the guards, no.
7 16 Q. Okay. And have you made a complaint to anybody else,
8 that answer implies you have made a complaint to
9 somebody?
10 A. No, I haven't made a complaint about him, no. 10:26
11 17 Q. Okay. So when you say "not to An Garda Síochána", what
12 you mean is you haven't made a complaint to anybody?
13 A. I haven't, no.
14 18 Q. Okay. And when you were working with him, how many of
15 those months would you have been working with him in 10:26
16 Mayo?
17 A. Six months.
18 19 Q. Six months. And during those six months no complaint
19 made by you?
20 A. I wouldn't have made a formal complaint, no. 10:26
21 20 Q. Okay, so either you did make a complaint or you didn't,
22 because a moment ago you said you made no complaint.
23 So, did you make a complaint? We need to be accurate
24 here considering the substance of what we are dealing
25 with? 10:26
26 A. Of course, but I suppose I am curious in terms of, as
27 far as I am aware, I am not allowed to bring anything
28 else into it in terms of my concerns about witness B --
29 21 Q. I didn't ask you about your concerns, I asked you about

1 complaints, it is a very simple word "complaints"?
2 A. I did not make a complaint to anyone in regards to
3 witness B.
4 22 Q. Okay. Did you ever bring an injunction about the
5 behaviour of witness B? 10:27
6 A. How do you mean by injunction?
7 23 Q. Any legal proceedings in respect --
8 A. No, I did not bring any legal proceedings.
9 24 Q. So, no complaint to the Gardaí, no complaint
10 whatsoever, no injunction whatsoever, and you worked 10:27
11 with him having swapped a rota with witness A, with
12 whom you lived and whom you had known for six months
13 before that?
14 A. Involuntarily swapped a rota, yes.
15 25 Q. Involuntarily, but you did it? 10:27
16 A. Yes, because I was directed by HR.
17 26 Q. Okay. And no complaints arising out of the time you
18 spent with witness B, as you have said you made no
19 complaint?
20 A. No. 10:27
21 27 Q. And just in respect of your meeting up with witness A,
22 was this issue ever discussed after you left Mayo by
23 you with witness A?
24 A. Yes.
25 28 Q. Okay, when was that discussed? 10:27
26 A. So during the year of, I mean we are going back eight
27 years now, but 2017, she informed me that witness B was
28 still contacting her inappropriately, so this would
29 have been through text messages, through calls. She

1 updated me on the process that she had to go through
2 with An Garda Síochána --

3 29 Q. Can I ask you, how many of those telephone calls did
4 you see or witness?

5 A. Telephone calls... I didn't live with her at the time, 10:28
6 so I didn't witness those calls.

7 30 Q. So none?

8 A. None that I was present for, no.

9 31 Q. So the answer is none?

10 A. Well, I mean -- 10:28

11 32 Q. I mean you are either there for the phone call or
12 you're not, isn't that fair to say?

13 A. A call log.

14 33 Q. A call log. So you saw a call log?

15 A. Yes. 10:28

16 34 Q. Okay. And to use witness A's word, the word
17 "manipulation" was used, apparently manipulation can
18 occur in respect of that, isn't that true?

19 A. I have no idea.

20 35 Q. No idea, so -- 10:28

21 MR. McDOWELL: That was witness B's words.

22 MS. McNALLY: No, witness A's words, if you want to go
23 to her evidence on the last occasion. So just in
24 respect of that, so you weren't present for any of
25 these purported phone calls? 10:29

26 A. Correct.

27 36 Q. Okay. And were you present when she received any of
28 the purported texts?

29 A. Not that I can recall.

1 37 Q. okay. were you present in 2016 when she received any
2 of the purported texts?

3 A. I was. 10:29

4 38 Q. You were there when she received them?

5 A. I was. 10:29

6 39 Q. Okay. And did you tell her, oh you had better keep a
7 copy of that?

8 A. No.

9 40 Q. No. Is it curious, or is it not curious that she lost
10 her phone and didn't keep a record of those purported 10:29
11 texts from 2016?

12 A. I don't find it curious.

13 41 Q. You don't find it curious. well, here is a person who
14 is allegedly worried about the behaviour of witness B,
15 but hasn't ensured... later on she says she is 10:29
16 concerned about Gardaí losing information, but at this
17 stage she hasn't retained what she maintains are
18 alleged texts that she received from Witness B. Isn't
19 that curious?

20 A. No, I don't find that curious. 10:29

21 42 Q. You don't find it curious, okay. And just in respect
22 of Exhibit 47, and it is, I believe, internal
23 pagination of 357 of 463. Sorry, I'm terribly sorry,
24 it is Exhibit 47, so it is Core Book, Folder 2 of 2,
25 and it is page 356. So, these were adduced in evidence 10:30
26 previously, this page 356 and page 357. And just at
27 the top of it, it says:
28
29 "18:39, touched to return call 0910...", and then there

1 is a telephone number 35383172169. Is that correct?

2 A. Yes, I see that.

3 43 Q. That I gather is a screenshot from your mobile phone?

4 A. Yes.

5 44 Q. Okay. And just so I am correct in the assumption, when 10:31
6 did you take that screenshot?

7 A. 2017, I suppose.

8 45 Q. Any idea when?

9 A. Whenever today is based on that, no, I have no idea.

10 46 Q. You have no idea when you decided to take a screenshot 10:31
11 of that, a screen grab?

12 A. I mean it says one unread message today, so it looks
13 like 1st April 2017.

14 47 Q. Well, that's just a screen grab. Can you tell us when
15 you took that screenshot? 10:31

16 A. This was eight years ago, so no I do not have the exact
17 date of when I took the screen grab. But based on this
18 it looks like it came in on that day and I took the
19 screenshot that day.

20 48 Q. So you don't know when you took the screenshot? 10:32

21 A. No.

22 49 Q. Okay. No, no, I just need to be accurate as to when
23 this took place or why it was recorded. And it says
24 here, the top of it says:
25
26 "No need."
27
28 And then there is a thumbs up on the right-hand side
29 that says:

1
2 "19:21."
3
4 Do I take it the thumbs up was yours from a previous
5 conversation? 10:32
6 A. Correct, yeah.
7 50 Q. Okay. And then we don't know the date of the
8 conversation above that that says "no need" on the left
9 and a "thumbs up" on the right?
10 A. We don't. 10:32
11 51 Q. We don't. And did you provide that telephone to anyone
12 carrying out any investigation?
13 A. No.
14 52 Q. Did anyone ask you for that telephone when they were
15 carrying out an investigation? 10:32
16 A. For the telephone... sorry, I don't understand the
17 question?
18 53 Q. For your actual physical mobile phone upon which --
19 A. My mobile phone, no.
20 54 Q. Nobody asked you for that? 10:32
21 A. No.
22 55 Q. Okay. And to whom did you send this screen grab?
23 A. I sent that to witness A.
24 56 Q. And when did you send it to witness A?
25 A. 1st April 2017. 10:33
26 57 Q. Well, I am sorry, I don't see a date on it. Where do
27 you see the date on it?
28 A. I am just looking at the --
29 58 Q. No, no, no, I haven't come to that caption that

1 somebody else has typed in on the bottom of that.

2 A. okay.

3 59 Q. I haven't come to that yet. Where on that screen grab

4 does it state a date?

5 A. It doesn't. 10:33

6 60 Q. And if we go to the following page, again that screen

7 grab, where on screen itself does it show a date?

8 A. It doesn't.

9 61 Q. It doesn't, okay. And do we know who typed in at the

10 bottom: 10:33

11

12 "Received message by friend of Witness A, 2017, 1st

13 April, at 18:38."

14

15 A. This seems to be the evidence, so, no, I don't know. 10:33

16 62 Q. So you didn't type that in?

17 A. No.

18 63 Q. And that doesn't appear on your phone?

19 A. No.

20 64 Q. Okay. Then it says: 10:33

21

22 "Hi Clare, sorry to disturb you, if you kindly help me

23 in one regard, I did send stupid message to your friend

24 [Witness A] and she is very annoyed. Would you please

25 call her and if possible pass on my apologies. I never

26 meant to offend her but I don't know why always this

27 happen. Please I would highly appreciate if you do

28 this and please keep it up to you. Thanks, Witness B."

29

1 And then:
2
3 "I am Witness B from Castlebar if you remember. Can I
4 call you for a moment?"
5
6 And you responded:
7
8 "No."
9
10 Is that correct? 10:34
11 A. Correct.
12 65 Q. And there is no suggestion in that text that the person
13 is hiding identity?
14 A. No.
15 66 Q. You didn't have to ask, who is this? 10:34
16 A. No, he told me who he was.
17 67 Q. It was forthcoming?
18 A. Yeah.
19 68 Q. And then you said no to the call:
20
21 "Okay, will you please do this. I didn't say anything
22 stupid, I just asked her if she would like to come with
23 her friend for dinner but I don't know why she take
24 everything negative. Tell her I am not contacting her,
25 take it easy."
26
27 And then you say:
28
29 "Witness B, I am not involved in this, don't message me

1 either."

2

3 what do you mean by "I am not involved in this"?

4 A. I mean I don't want to start getting multiple text

5 messages and phone calls from witness B in the same way 10:35

6 that witness A has done over the past year.

7 69 Q. well, in the way that witness A alleges. But isn't

8 there another interpretation of that:

9

10 "Witness B, I am not involved in this."

11

12 In other words, uh, there is something going on, I

13 don't want to be involved in it, leave me alone kind of

14 thing.

15 A. Please don't call me because it would be inappropriate. 10:35

16 70 Q. I don't see that written there.

17 A. When he asks, can I call you for a moment?

18 71 Q. Yes, and your answer was?

19 A. No.

20 72 Q. It wasn't, no, this is not appropriate, it was just no, 10:35

21 isn't that correct?

22 A. No, and my --

23 73 Q. So, you are just adding now to your evidence, is that

24 correct?

25 A. No, I am telling you based on having me sent the 10:35

26 message when I said, no, it was very firm. And it is

27 very clear that it would be totally inappropriate a

28 year later for a senior colleague to try and get in

29 contact --

1 74 Q. well, thank you for that, Dr. Cullen, reiterating
2 evidence given by other witnesses, but just where in
3 that does it say it is not appropriate? where in that
4 does it say to him, this is not appropriate, or to the
5 sender, it is not appropriate? 10:36
6 A. Having sent the message I don't think I could be more
7 blunt than saying, no.
8 75 Q. I don't see, I don't see it written there anywhere, nor
9 do you, isn't that correct?
10 A. No, but I sent the message, so I know what I implied. 10:36
11 76 Q. You took the screen grabs, but we don't know when,
12 there is no date on it. And we don't know when you
13 sent them on to anybody else, or do we? Do we have a
14 screenshot of when you sent them on?
15 A. I have no idea, I can go back and check. 10:36
16 77 Q. Okay, so the phone is still available?
17 A. My phone is available.
18 78 Q. So, if anyone had asked you, anyone carrying out a
19 thorough examination and investigation of this could
20 have asked you for your phone, isn't that correct? 10:36
21 A. I have the same phone.
22 79 Q. Yes, so the point is, if a thorough examination was
23 being carried out, a thoroughly investigation to
24 determine the accuracy of this, your phone was
25 available for those persons to -- 10:36
26 A. My phone is available, so as to whether my WhatsApp was
27 still available, I suppose, is probably where I have
28 misled you there.
29 80 Q. No, because nobody ever asked you, did they?

1 A. I can't recall because this investigation started over
2 seven years --

3 81 Q. Did the guards ask you for your phone?
4 MR. McDOWELL: The witness should be allowed to answer
5 the question. 10:37

6 82 Q. MS. McNALLY: Did the guards ask you for your phone?
7 A. The guards did not ask me for my phone.

8 83 Q. Did the CEO of the Medical Council ask you for your
9 phone?

10 A. I can't recall. 10:37

11 84 Q. You can't recall.

12 A. It was six years ago I think since it started.

13 85 Q. In the last six years has the CEO of the Medical
14 Council asked you for your phone?

15 A. I can't recall. 10:37

16 86 Q. No one has asked you for that evidence that could be
17 potentially exculpatory, isn't that correct?

18 A. I can't recall.

19 87 Q. You can't recall?

20 A. No. 10:37

21 88 Q. I have to put it to you, Dr. Cullen, you know well
22 nobody ask you for it?

23 A. I am sorry, but that's not fair to say, I can't recall
24 because this investigation started six years ago.

25 89 Q. If you gave them your phone, do you have a second 10:37
26 phone?

27 A. I did not give my phone to anyone --

28 MS. McNALLY: If --

29 MR. McDOWELL: I wonder could the witness just be

1 allowed to answer the question without interruption
2 please.

3 MS. McNALLY: I wonder if I could be allowed to carry
4 out my cross-examination without the constant
5 interruption that I have seen that has occurred on 10:38
6 other days of transcript. I am entitled to put certain
7 questions. I am entitled to prod in a particular way.
8 I am entitled to do that.

9 A. But you are assuming things.

10 MR. McDOWELL: If I could just respond to that comment. 10:38
11 I have no issue with any of the questions Ms. McNally
12 has asked the witness, all I'm asking is that the
13 witness be afforded the courtesy of being allowed to
14 finish her answer before the next question is asked.

15 A. Thank you. 10:38

16 MS. McNALLY: If we don't like the answer it is not a
17 reason to interrupt.

18 CHAIRPERSON: Just to be clear, I think the objection
19 was to you not allowing the witness to answer, not that
20 Mr. McDowell had any concerns about her answer. I 10:38
21 think his point was very clear, he would like you to
22 allow the witness to answer the question, and you are
23 entitled to make any questions you wish to the witness.

24 90 Q. MS. McNALLY: Do you have a second phone?

25 A. I don't have a second phone. 10:38

26 91 Q. So, if somebody had asked you for your phone and you
27 had given them your phone, you would have been without
28 a phone, isn't that fair to say?

29 A. Yes, my point is that I don't recall if anyone asked me

1 for the phone. I can tell you that I didn't give my
2 phone to anyone.

3 92 Q. So that potential of exculpatory evidence, as we know,
4 was an avenue that wasn't followed because they didn't
5 ask for your phone and you didn't give your phone,
6 isn't that fair to say?

7 A. No, because they could have asked me for it and I don't
8 have the WhatsApp records from then.

9 93 Q. But your phone -- is this -- how do you know this is a
10 whatsapp?

11 A. It is -- that's what whatsapp looks like.

12 94 Q. where does it say that, sorry I am lost?

13 A. It doesn't say "whatsApp" but that's a whatsApp
14 message. That's my --

15 95 Q. How can you prove it is a WhatsApp message, we can't
16 prove it because we don't have the phone, isn't that
17 fair to say?

18 A. But that's the screen... that's the background of my
19 whatsApps messages.

20 96 Q. Again, no exculpatory evidence, the guards didn't look
21 for this, the IMC didn't look for this, the CEO of the
22 IMC, nobody looked for it to corroborate that, isn't
23 that correct?

24 A. I have said all I can say on that.

25 97 Q. Okay. Just in respect of Dr. Shane Russell, do you
26 know Dr. Russell?

27 A. No, I don't.

28 98 Q. Okay. You didn't know him in Mayo?

29 A. Dr. Shane Russell, no.

1 99 Q. Dr. Shane Russell, just let me get the right name here,
2 Shane Russell?
3 A. No.
4 100 Q. You don't know him at all. And Dr. Lee, do you know
5 Dr. Lee? 10:40
6 A. Yes.
7 101 Q. He was your consultant?
8 A. He was Witness A and Witness B's consultant.
9 102 Q. Okay, so he wasn't... okay, so do I take it you were
10 with the other consultant, Dr. O'Malley, is that how it 10:40
11 works?
12 A. Yeah.
13 103 Q. Okay. Just in respect of your evidence on the last
14 occasion, which, as I say, starts at page 111. How do
15 you know about this meeting between Witness A, HR and 10:41
16 her consultant? It is on page 112. How did you know
17 about this meeting with HR and Witness A's consultant?
18 A. I would have been advised of it when I was asked to
19 switch my call rota.
20 104 Q. What do you mean advised of it? 10:41
21 A. When I was asked to switch my call rota, they would
22 have explained that there had been a meeting between
23 the consultants and the HR department.
24 105 Q. And who are they?
25 A. Presumably my consultants, but again I am sorry, we are 10:41
26 going back nine years so I don't remember the ins and
27 out.
28 106 Q. You don't remember. It wasn't Witness A who asked you
29 to swap?

1 A. No.

2 107 Q. You are certain of that?

3 A. I am certain.

4 108 Q. Okay. And could I ask you, in your evidence then
5 earlier in answer to a question on page 112, you say: 10:42
6
7 "They were just inappropriate messages to send to a
8 junior colleague. They were, you know, insisting on
9 meeting up, talks of, you know, marrying Witness B.
10 And, I suppose, as well not so much the content but the 10:42
11 persistency of it and persistent phone calls and things
12 as well."
13
14 But as you say, you weren't there for any of those
15 phone calls, that has been your evidence this morning? 10:42
16 A. Not during 2017, which is what you asked me earlier,
17 but during 2016 I would have been.

18 109 Q. Oh you were there for the phone calls in 2016?

19 A. Yes, when we lived together, yes.

20 110 Q. Okay. And what was the content of those phone calls, 10:42
21 if you are standing there?
22 A. He asked her to marry him when he was on -- he was
23 about to leave the country and he said that he wanted
24 to marry her.

25 111 Q. And that was in a phone call? 10:43
26 A. That was in a phone call.

27 112 Q. Okay, I thought it was in a text?

28 A. As well, yes.

29 113 Q. As well in a text?

1 A. Yeah.

2 114 Q. Okay. We will come back to that. And did you see the
3 number that was dialling up on the phone as it has been
4 answered, I know it is eight years ago, nine years ago,
5 no? 10:43

6 A. I presume -- I mean at the time we would have had his
7 number saved for work, so I wasn't in doubt as to who
8 it was, but I can't tell you for certain.

9 115 Q. And when you had those meet ups then with Witness A, as
10 referred to at page 113: 10:43

11

12 "So from time to time I would have been, you know, up
13 to speed, I couldn't really believe that it was still
14 going on through that year."

15

16 So, it was discussed then with you, was it, by Witness
17 A?

18 A. Yes.

19 116 Q. Okay. So, she is keeping you up to speed?

20 A. Yes. 10:44

21 117 Q. Okay. And then, as I say, we have looked at those
22 screenshots that you say you took. We don't know the
23 date when you took them or the date when you sent them,
24 and that's a screenshot of a message that you would
25 have sent to Witness A when you received a message from 10:44
26 Witness B, you say?

27 A. Correct.

28 118 Q. And on page 114, it says:
29

1 "Even though that number, the 083 number, is not saved
2 in your phone, you are satisfied that it was Witness
3 B."
4
5 So, were you satisfied that it was witness B? 10:44
6 A. Yes.
7 119 Q. And how did you satisfy yourself that it was witness B?
8 A. He told me.
9 120 Q. Yeah, so he wasn't hiding anything, isn't that correct?
10 He came straight out in those texts and told you 10:45
11 exactly who it was texting you, isn't that right?
12 A. Yeah.
13 121 Q. Never meant to cause any upset, isn't that what he
14 said. And he says:
15
16 "Sorry to disturb you."
17
18 Isn't that what he says?
19 A. That's what he says.
20 122 Q. Okay. So that text, the date of it, according to the 10:45
21 typing that has been put on the bottom of it because
22 there is no date on the screenshot, it says:
23
24 "Continuation of message received by friend of Witness
25 A, 2017, 1st April." 10:45
26
27 And then on page 115:
28
29 "No, I would say it would have been immediately because

1 I knew at the time that there were issues, she had gone
2 to the guards in relation to this, and I knew that
3 there were kind of various phone numbers being used by
4 somebody."
5
6 How did you know that? When had you met her? When had
7 you discussed this?
8 A. I can't tell you the exact date.
9 123 Q. You can't tell me the exact date. Was it 2016? Was it
10 2017? Any idea? 10:46
11 A. If we had finished in Galway summer of 2016, it was
12 probably later that year, 2016.
13 124 Q. I think you mean Mayo?
14 A. Yeah.
15 125 Q. Sorry, just for the record, Galway was the previous? 10:46
16 A. Apologies.
17 126 Q. No, no, that's fine, it is a long time ago. And then
18 you go on to say:
19
20 "I suppose...", sorry, I should read the whole 10:46
21 sentence, "...So, I suppose, I just wanted to do what I
22 could to support her evidence."
23
24 A. Mm-hmm.
25 127 Q. So, that's the purpose behind you being here, to 10:47
26 support her evidence, is it?
27 A. I suppose so.
28 128 Q. Okay. Not to be giving objective evidence, but just to
29 support her?

1 A. well, I can give objective evidence.

2 129 Q. well, no, because you said:

3 "I just wanted to do what I could to support her

4 evidence."

5

6 Those were your words that were given in direct

7 evidence?

8 A. That's in relation to sending her the text messages.

9 130 Q. No:

10

11 "She had gone to the guards in relation to this and I

12 knew that there was kind of various phone numbers being

13 used by Witness B, so I suppose I just wanted to do

14 what I could do to support her evidence."

15

16 A. I think that's in relation to as to why I sent her the

17 screenshots.

18 131 Q. So you were gathering evidence for her, is that

19 correct?

20 A. I was sending her what was relevant. 10:47

21 132 Q. That wasn't my question, you were gathering evidence

22 for her, is that correct?

23 A. No, that's not correct.

24 133 Q. So, why were you sending it to her?

25 A. Because it wasn't relevant to me, it is relevant to 10:47

26 her.

27 134 Q. Relevant to her in respect of what?

28 A. well, he is asking me to contact her, that's relevant

29 to her, she needs to know that.

1 135 Q. why does she need to know that? Surely you'd tell the
2 guards or your superiors or the IMC, but you made no
3 complaint to anybody?
4 A. But what is there to complain about, it is to let her
5 know, look, he is trying different avenues to contact 10:48
6 you.
7 136 Q. "I just wanted to do what I could to support her
8 evidence, you know, the harassment."
9
10 A. The harassment, yes. 10:48
11 137 Q. You have already made up your mind, you are gathering
12 evidence for her, you want to support her, you just
13 want to say what's going to help her, isn't that it?
14 A. Sorry, I am totally lost. At the time I didn't know
15 that there was a Medical Council hearing. So, in terms 10:48
16 of --
17 138 Q. You knew she had gone to the guards?
18 A. I knew she had gone to the guards, so surely that's
19 helpful for --
20 139 Q. And who told you she went to the guards? 10:48
21 A. She did.
22 140 Q. She did. Was that when you were living with her that
23 she told you, or was it in one of your various
24 meetings --
25 A. No, so that was --
26 141 Q. -- or telephone calls or whatsApps --
27 A. No, so that was afterward.
28 142 Q. In person or did she tell you by text?
29 A. In person.

1 143 Q. She told you in person?
2 A. Yes.
3 144 Q. And where would you have been when she told you in
4 person?
5 A. In her house in Galway for the Galway races. 10:49
6 145 Q. For the Galway races, okay. And when are the Galway
7 races, you will have to refresh my memory, I am sorry?
8 A. I presume August, September maybe.
9 146 Q. And would this have been 2016 or 2017?
10 A. 2016. 10:49
11 147 Q. That you were at the races. But you see according to
12 the typo at the bottom of the WhatsApp, the screenshot
13 that you took, sorry not WhatsApp, it was 2017, 1st
14 April at 18:38.
15
16 So, the gathering of evidence then ensued if the races
17 were in August 2016, that's six months later?
18 A. So, I am assuming then I probably -- I was still in
19 touch with her, as I said, we stayed in contact for
20 over a year, so possibly there were other incidents 10:49
21 that I have forgotten where she was still keeping me up
22 to speed with what was happening.
23
24 When I received text messages from witness B, asking
25 for me to contact witness A on her behalf, it seemed 10:50
26 relevant for me to send those on to her, so that she
27 knew what was happening.
28 148 Q. And in respect of giving her statement to the CEO, did
29 you not say to the CEO when giving this statement, that

1 we are going to come to now, by the way, I have got a
2 phone, you are not going to believe it, but I have got
3 all the stuff on my phone because really you should
4 examine the whole thing. Did you not say that to the
5 CEO when you were being asked for a statement? 10:50

6 A. I have a feeling that I don't have access to WhatsApp,
7 so while I have the same phone --

8 149 Q. That's not what I asked you?

9 A. It kind of is what you are asking me, because --

10 150 Q. No, no -- 10:50

11 A. Sorry, again can I finish?

12 151 Q. You can, but that is not what I am asking you, so you
13 are answering a question that I didn't ask you?

14 A. But I don't understand because you are saying, why did
15 I not, you know, say, oh here I have all of this. I 10:50
16 obviously didn't have it. So even though I have the
17 same phone, I don't have access to the same WhatsApp
18 messages.

19 152 Q. You can't say obviously you didn't have it. Now you
20 are speculating again, and that's a word that was put 10:51
21 to you by counsel for the CEO on page 116, it is
22 obviously just speculation, that's informed
23 speculation. So you are speculating, aren't you? You
24 never gave the phone. Nobody asked you for the phone.
25 We don't know whether it is WhatsApp, we don't know the 10:51
26 date.

27 A. But I can't tell you if nobody asked me for the phone.
28 All I can tell you is that I don't have access to the
29 WhatsApp messages from then. So in terms of if

1 somebody asked me for it or not, I can't tell you that,
2 I can just tell you I didn't have access to it.

3 153 Q. Could I ask, you have you come across witness B since
4 you were in Mayo?

5 A. I believe I saw him briefly in Tallaght Hospital. 10:51

6 154 Q. Was he there as a practitioner?

7 A. I have no idea.

8 155 Q. You have no idea. So you believe you saw him briefly.
9 was he on a gurney, looking like a patient, or in a
10 chair in a waiting room, or do you think he was 10:51
11 practising?

12 A. No, he was just in the main part of the hospital.

13 156 Q. And when that was?

14 A. 2018 or 2019.

15 157 Q. Okay. And did you text anyone about that? 10:52

16 A. I can't recall.

17 158 Q. You can't recall. Did you WhatsApp anyone about it?

18 A. I can't recall.

19 159 Q. Did you ring anyone about it?

20 A. I can't recall. 10:52

21 160 Q. You can't recall. So here you are worried about, let
22 me see the word that you used in your direct evidence,
23 here you are worried about harassment of your
24 colleague, so much so that you are taking photographs,
25 screen grabs of what you say are WhatsApps, and yet 10:52
26 here he is the following year in the flesh, in the
27 hospital where you were working, was it where you were
28 working?

29 A. Yes.

1 161 Q. And you didn't mention it to anybody, but you are going
2 out gathering evidence?

3 A. Gathering evidence?

4 162 Q. Yeah.

5 A. I don't believe I was gathering -- 10:52

6 163 Q. So you didn't think to send that bit of evidence?

7 A. -- evidence.

8 164 Q. Supporting her evidence. You didn't think to tell her
9 or to tell anybody?

10 A. I may well have done, I can't recall. 10:53

11 165 Q. Oh you can't recall?

12 A. I told you that just a second ago.

13 166 Q. You are supporting her evidence, but you can't recall
14 if you telephoned her or texted her or whatsApped her
15 or e-mailed her, or met her in person and said, low and 10:53
16 behold I have just seen witness B here where I work?

17 A. I could well have done, it was six or seven years ago.

18 167 Q. And after you saw witness B in Tallaght Hospital where
19 you were working --

20 A. Also I only -- 10:53

21 168 Q. Sorry?

22 A. -- thought I saw him.

23 169 Q. You thought you saw him, okay. So were you working
24 there for again a six month period?

25 A. I was there as part of my GP training. 10:53

26 170 Q. I am sorry, I don't know how long that lasts?

27 A. So, I would have been there twice for two four month
28 periods.

29 171 Q. Two four month periods, okay. So, here you are

1 potentially seeing the person who is responsible for
2 harassment, and your friend you are trying to support
3 her in evidence and you are concerned. And here he is
4 possibly at the same place where you work for in total
5 an eight-month period. Did you report it to anybody? 10:54

6 A. I can't recall.

7 172 Q. You just can't recall.

8 A. Well, no, I can't recall, again it was six or seven
9 years ago.

10 173 Q. There is this allegedly seriously issue going on of 10:54
11 somebody being --

12 A. But I just thought I saw him --

13 174 Q. -- apparently terrified and apparently harassed, so
14 much so that you are taking screen grabs and photos and
15 sending them on and assisting her -- sorry, supporting 10:54
16 her evidence, and you didn't think to mention that
17 Witness B was in the place where you are?

18 A. There is a difference between mentioning and reporting.

19 175 Q. But did you mention it to anybody in the IMC, or did
20 you mention it to Witness A? 10:54

21 A. I don't see how it would -- how could I report it to
22 the IMC.

23 176 Q. Did you mention it?

24 A. Mention it to who?

25 177 Q. To anyone, they were investigating, they are carrying 10:54
26 out this investigation. Did you mention it your
27 superiors? I mean you are concerned about Witness B?

28 A. But I suppose they are two very different questions.
29 So, in terms of when this Medical Council complaint

came up, yes I would have mentioned it at the time. So at some stage over the last four years that this has been ongoing.

178 Q. There was obviously no need to mention it?

A. I just told you, I did mention it. During the last four years of this Medical Council complaint, I have mentioned it.

10:55

179 Q. To whom?

A. To the evidence, whoever I was supposed to be talking to about this.

10:55

180 Q. But you weren't concerned enough about alleged harassment to feel that you were in any way threatened or anything like that in Tallaght having possibly seen witness B during part of your eight months in Tallaght?

A. Yes, so possibly --

10:55

181 Q. Possibly --

A. -- seeing him I wasn't going to make a complaint about possibly seeing somebody.

182 Q. And you accepted in direct evidence that you assumed at
the time when you were working in Castlebar that:

10:56

"A: We would have been the two closest medical interns. He knew that I lived with her so he would have assumed that we were close friends."

And the question was:

"Q: But that is obviously just speculation, that's informed speculation on your part, is that fair to say?

1 A: Absolutely, yes, informed speculation."
2
3 And I have to put it to you that you have engaged in
4 other speculation when you have given evidence to the
5 effect that you know the harassment, where you made no 10:56
6 complaint yourself to anybody, as you gave evidence at
7 the start of today?
8 A. Because I wasn't harassed personally.
9 183 Q. Personally.
10 A. But I was witness to the harassment of witness A. 10:56
11 184 Q. The harassment. And that was a phone call?
12 A. No, multiple phone calls.
13 185 Q. Multiple phone calls?
14 A. Multiple text messages.
15 186 Q. And did the guards contact you in respect of the 10:57
16 complaint that was made by witness A?
17 A. No.
18 187 Q. Even though you were supporting her in her evidence,
19 and even though you had sent screen grabs --
20 A. To witness A, correct. 10:57
21 188 Q. Sorry, just bear with me. Have you received any other
22 texts or communication from witness B?
23 A. Not that I can recall.
24 189 Q. Did you or didn't you? You have your phone, you would
25 know? 10:57
26 A. From when, sorry?
27 190 Q. Well, since you took the screen grab?
28 A. Yes, so since 2017, yes.
29 191 Q. Yes?

1 A. Yes.

2 192 Q. You have received other communications from witness B?

3 A. Sorry, witness B, no.

4 193 Q. Just that one day, and we don't know what day, there

5 was no date on it. 10:58

6 A. I believe so, yes.

7 MS. McNALLY: Thank you very much, Dr. Cullen.

8

9 DR. CULLEN WAS RE-EXAMINED BY MR. McDOWELL AS FOLLOWS:

10

11 194 Q. MR. McDOWELL: Dr. Cullen, I just want to ask you a

12 couple of questions if that's okay. So, I think

13 Ms. McNally was asking you about the time that you

14 think you might have seen witness B in Tallaght

15 Hospital. And you might recall that Ms. McNally, I 10:58

16 think, was asking you whether you had ever mentioned

17 that previously. Can I just draw your attention to

18 paragraph --

19 MS. McNALLY: Complaint was the word... sorry.

20 195 Q. MR. McDOWELL: If I could just draw your attention to 10:58

21 page 19 of the witness statement, if you have that, I

22 don't know if that's on the computer screen in front of

23 you?

24 CHAIRPERSON: Can I ask, have the witness statements

25 been uploaded? Thank you. 10:58

26 MR. McDOWELL: I think Ms. O'Sullivan has copies.

27 (Same handed to Committee and witness).

28

29 So, this is the witness statement that you signed on

1 the 1st -- on 16th January 2023, isn't that right?

2 A. Yes.

3 196 Q. And at paragraph 19 you say -- sorry, you say at 18:

4

5 "I have not had any further contact with Witness B. 10:59

6 However, in 2019 I was working in Tallaght Hospital and

7 I think I saw Witness B also working there. I believe

8 Witness B saw me and he turned and went in the other

9 direction."

10

11 You see that?

12 A. Yes.

13 197 Q. So, you included that in your witness statement in

14 2023, isn't that right?

15 A. Yes.

16 198 Q. So, can I just ask you about the screenshot that

17 Ms. McNally asked you about. So, this is a message

18 that you received, isn't that right?

19 A. Correct.

20 199 Q. And what date did you receive that message on? 10:59

21 MS. McNALLY: Sorry, that's asking her to speculate,

22 because she already said that she doesn't know --

23 MR. McDOWELL: Sorry, how could it be --

24 MS. McNALLY: Sorry, I have to object to that --

25 MR. McDOWELL: Sorry, how could it be asking somebody

26 to speculate to ask them what date they received a

27 message on. That's a ludicrous suggestion. I am of

28 course going to ask her and she is going to say, I

29 received it on a particular date, or I don't remember

1 what date I received it on. But the idea that she is
2 speculating about something that's obviously within her
3 knowledge is simply wrong.

4 CHAIRPERSON: I will ask --

5 MS. McNALLY: She can't recall was the answer to me, so 11:00
6 how could it be within her knowledge of the date.

7 CHAIRPERSON: Thank you for that. I will ask
8 Mr. McGuinness to give us some advice on the matter.

9
10 LEGAL ADVICE BY MR. MCGUINNESS:

11
12 MR. MCGUINNESS: Thank you, Chairman. The issue of
13 re-examination is a procedural right in the first
14 instance, but it is dependent upon the purpose of
15 re-examination being directed to try and either clarify 11:00
16 or amplify any matters raised in cross-examination.

17
18 And in relation to the matter, the subject of some
19 dispute or discussion between counsel, it is my advice
20 to the Committee that the matter having been raised in 11:01
21 cross-examination, Mr. McDowell is, as a matter of law
22 in my opinion, entitled to examine the basis upon which
23 the issue has been dealt with in cross-examination and
24 whether there is material which in his opinion may lead
25 to the Committee being assisted in its explanation or 11:01
26 consideration of the entirety of the evidence, whether
27 it achieves that purpose is another issue.

1 DR. CULLEN CONTINUED TO BE RE-EXAMINED AS FOLLOWS:

2
3 200 Q. MR. McDOWELL: So maybe I will ask the question a
4 different way, Dr. Cullen; do you remember receiving
5 the message that's in that screen grab? Sorry, I don't 11:01
6 know if you have it in front of you?

7 A. That's okay I know the message you mean. So, I don't
8 remember -- on this day I don't remember exactly
9 getting the message, but I trust my witness statement,
10 having now had access to it. And in this I say that I 11:02
11 received the message on 1st April 2017, and I trust
12 that.

13 201 Q. Yes. So, can I ask you to look at the message, it
14 might be appended to your witness statement, it might
15 be at the back of your witness statement? 11:02

16 A. Yeah.

17 MS. McNALLY: So just if I may, apparently there is a
18 date being referred to on the witness statement, I
19 don't have any dates on the witness statements that I
20 have. 11:02

21 MR. McDOWELL: If you look at paragraph 13 of the
22 second witness statement.

23 MS. McNALLY: I can only go to page 233 in the witness
24 statement. The signature is blank and the date is
25 blank. 11:02

26 MR. McDOWELL: So then at the next tab is the signed
27 version and -- yes, so if you look at paragraph 13 of
28 that version.

29 202 Q. So, is this a screen grab that you took from your

1 phone, Dr. Cullen?

2 A. Yes.

3 203 Q. And what application on your phone is that?

4 A. WhatsApp.

5 204 Q. Yes. And do you see at midway, halfway down the page 11:03
6 above the message the word "today" appears?

7 A. Yes.

8 205 Q. Does that enable you to say anything about when you
9 took the screen grab?

10 A. Yes, I took the screen grab on the day that the message 11:03
11 came in.

12 206 Q. Yes. And we see that, I know it is slightly faint, but
13 in the bottom right of the white messages there is a
14 time stamp on the message. Do you see that?

15 A. Yes. 11:03

16 207 Q. What time is that?

17 A. 18:38.

18 208 Q. Yes. And then at the top the screen you see the time
19 on your phone, I take it?

20 A. Exactly. 11:03

21 209 Q. And what time is that?

22 A. 18:39.

23 210 Q. Yes. And then if we go to the next page, you will see
24 that there are more messages in white?

25 A. Yes. 11:03

26 211 Q. And do you see that those have time stamps in the
27 bottom right?

28 A. Yes.

29 212 Q. And they say 18:38, 18:39, 18:40, 18:42 and 18:49. Do

1 you see that?

2 A. Yeah.

3 213 Q. So firstly, do you recall whether you received those
4 messages on the same day that you received the message
5 we just looked at? 11:04

6 A. Yes.

7 214 Q. So that's a continuation of a single --

8 A. Absolutely.

9 215 Q. -- block of communication. And then you see in the top
10 that the time stamp on the phone at the time is 18:50? 11:04

11 A. Yes.

12 216 Q. And do you know, or can you recall whether you took the
13 screen grab on the same day that you received these
14 messages?

15 A. Yes. 11:04

16 MR. McDOWELL: Thank you very much, Dr. Cullen, you
17 might answer any questions the Committee members might
18 have for you.

19

20 DR. CULLEN WAS RE-CROSS-EXAMINED BY MS. McNALLY AS
21 FOLLOWS:

22

23 217 Q. MS. McNALLY: well, I was going to say arising out of
24 that, I would like the original notes of this
25 statement. Did you type this statement yourself? 11:04

26 A. No.

27 218 Q. So, I would like the original notes please of the
28 statement?

29 CHAIRPERSON: Could I just ask, what is the purpose of

1 this...

2 MS. McNALLY: well, I would like to know, is it her

3 recollection or was this somebody else putting --

4 A. No, this is my recollection.

5 MS. McNALLY: If I just might, because it is typed on 11:05

6 the bottom. You know, I want to know exactly where the

7 wording within the statement came from. So there has

8 to be a handwritten note somewhere, a memo, I mean

9 it's --

10 CHAIRPERSON: Let me just try to establish -- 11:05

11 MS. McNALLY: It's --

12 CHAIRPERSON: -- I am a loss to understand, are we

13 trying to dispute the existence of this WhatsApp

14 message?

15 MS. McNALLY: No, no, times, et cetera, and there is no 11:05

16 mention of dates of screen grabs and all of that. So,

17 I just want to know where, if there was any prompting

18 in respect of dates, et cetera, all of that, and I am

19 entitled to know that.

20

21 If I gave a statement to An Garda Síochána, there would

22 be handwritten notes. Then that gets converted into a

23 typed version, et cetera. So, I am entitled to the

24 handwritten notes.

25 CHAIRPERSON: well, perhaps the witness might be able 11:05

26 to assist us.

27 A. So, if I could clarify, this was a conversation that I

28 had with the people who were gathering the information,

29 so with Fieldfisher, and they would have summarised it,

1 summarised the conversation into bullet points. Sent
2 it back to me to clarify. I read through it and made
3 sure that I was happy with it and signed it.

4 219 Q. Okay, so who were those people?
5 A. Fieldfisher. 11:06

6 220 Q. Well, any names?
7 A. Sara.

8 221 Q. Okay. So somebody took a note to be able to do bullets
9 points to sent it back to you?
10 A. So, we had a Zoom meeting. 11:06

11 222 Q. A Zoom meeting?
12 A. Yes, so possibly it was recorded and then summarised,
13 but it was my recollection, it is based on my wording
14 and I signed off on it.

15 MS. McNALLY: I am still entitled to the notes. 11:06

16 CHAIRPERSON: Okay, I have no doubt that you are
17 entitled to the notes, and you can get those notes via
18 Fieldfisher. But I would just like to establish, this
19 witness has given evidence that she took a screenshot
20 immediately or more or less immediate on receipt of
21 this message.

22 MS. McNALLY: That's her evidence now.

23 CHAIRPERSON: That, I think, was her evidence
24 previously as well.

25 MS. McNALLY: She couldn't clarify the date it was 11:06
26 taken. I can't -- and then there is typing on the
27 bottom.

28 CHAIRPERSON: She just said that immediately on
29 receipt, she has given evidence, that she forwarded

1 this message to Witness A. It says "today" on the
2 message. So the day immediately on receipt she
3 forwarded it.
4

5 She is not in a position to give evidence as to what 11:07
6 that day was, I think is what you said very clearly.
7 But somewhere in the course of the text message being
8 received someone has been able to fix the dates to the
9 message. And I think you are perfectly entitled to
10 pursue that, if you like, but I am not sure how it 11:07
11 assists your client in any way. This witness has given
12 evidence that she received a WhatsApp message and
13 forwarded it to Witness A.

14 MS. McNALLY: Yes.

15 CHAIRPERSON: Are you disputing that that has happened? 11:07

16 MS. McNALLY: No, no, I am not --

17 CHAIRPERSON: I would just like to get to the --

18 MS. McNALLY: No, no, I am not, but I am entitled to go
19 to --

20 CHAIRPERSON: I don't want to trammel across your 11:07
21 defence in any way, but I would just like to
22 understand, if there are things that we can agree on,
23 we should try to agree on, because there is an awful
24 lot of other matters which are in dispute.

25 MS. McNALLY: Yes.

26 CHAIRPERSON: But it shouldn't be in dispute that a
27 WhatsApp message was sent to Witness A. So, this
28 witness would have sent it, and Witness A would have
29 received it. And there should probably be two

1 sources --

2 MS. McNALLY: No, witness B sent it to her and then she
3 took a screen grab of it and then she sent it, I am not
4 sure when, but sent it then to witness B --

5 CHAIRPERSON: So you are correct, there is at least 11:08
6 three parties who can speak to the original WhatsApp
7 message being sent, witness B, Dr. Cullen and witness
8 A.

9 MS. McNALLY: That's not being disputed. What is being
10 disputed is the recollection of dates, somebody has 11:08
11 very helpfully typed in information. And now I gather
12 that there were WhatsApps, not WhatsApps, Zooms and
13 notes and bullet points and all of that.

14 CHAIRPERSON: Sure, I get that, but this witness isn't
15 speculating about dates. She said the day she received 11:08
16 the message, whatever day that was, she forwarded it
17 on.

18 MS. McNALLY: Yes.

19 CHAIRPERSON: So, I don't know that it is a dispute
20 with this witness -- 11:08

21 MS. McNALLY: No, no, not with this witness, except
22 there is no date on the screen grab is the point.

23 CHAIRPERSON: I understand that point. And you are
24 suggesting that perhaps via Fieldfisher you might be
25 able to ascertain the original? 11:09

26 MS. McNALLY: Well, we are entitled to the notes, and
27 we are entitled to know that all avenues of evidence,
28 exculpatory or otherwise, were looked into by the IMC.

29 CHAIRPERSON: Okay.

1 MS. McNALLY: Or the CEO I should say, apologies.
2 CHAIRPERSON: So have you anything further?
3 MS. McNALLY: No, not of Dr. Cullen.
4 CHAIRPERSON: So I will ask my Committee colleagues if
5 they have any questions for Dr. Cullen? 11:09
6 DR. DAVIN-POWER: I have no questions.
7 MR. McDOWELL: Sorry, Chair, before you conclude,
8 sorry, I wonder could I ask one further question of
9 Dr. Cullen if I might?
10 CHAIRPERSON: Please. 11:09
11 MS. McNALLY: Well, sorry, that's highly unusual, he
12 has had direct, I have had cross, he has had redirect.
13 CHAIRPERSON: Okay, well, I will allow you both as much
14 latitude as possible. I would just like to get to
15 establish some facts, and this is, you feel, you both 11:09
16 feel this is an important witness, so I would like to
17 give you both as much time as possible to get this
18 witness -- this witness has made herself available on
19 two occasions, and perhaps many other occasions, so we
20 have greatly inconvenienced her. I would like her 11:10
21 evidence to be taken fully, so I will let Mr.
22 McDowell --
23
24 DR. CULLEN WAS FURTHER EXAMINED BY MR. McDOWELL AS
25 FOLLOWS: 11:10
26
27 223 Q. MR. McDOWELL: Sorry, I was just going to ask one
28 thing, Dr. Cullen; are you able to check now on your
29 phone that you currently have whether you can see the

1 date on which you received these messages?
2 A. I don't think so, sorry.
3 MR. McDOWELL: Okay, thank you.
4 CHAIRPERSON: Ms. McNally, any further questions?
5 MS. McNALLY: Well no, because Dr. Cullen had already 11:10
6 said that she didn't have the whatsApps to her
7 recollection.
8 CHAIRPERSON: Yes, and that's not in dispute, that's
9 how I understood her evidence.
10 MS. McNALLY: No, no, I have no further questions for 11:10
11 Dr. Cullen.
12 CHAIRPERSON: Dr. Cullen, thank you very much for
13 your --
14 MS. McNALLY: Unless something arises in the notes when
15 I do get them, the original notes. 11:10
16 CHAIRPERSON: That's understood. Thank you very much
17 for making yourself available again, it's been very
18 helpful.
19 DR. CULLEN: Thank you.
20 CHAIRPERSON: And you may step down now, and I hope 11:10
21 that we don't need to inconvenience you any further.
22 Thank you again.
23 DR. CULLEN: Thank you.
24
25 THE WITNESS WITHDREW 11:10
26
27 MR. McDOWELL: So, Chair, the next witness is
28 Dr. Russell, who is giving evidence remotely from
29 Canada. I am instructed that he is going to be going

1 into the theatre at midday Irish time, so in 50
2 minutes, and obviously that is... if it takes longer,
3 it takes longer, but I am just flagging that time
4 constraint for the time being. So, I think we are just
5 working on getting him on the screen.

11:11

6 CHAIRPERSON: Good morning, Dr. Russell.

7 DR. RUSSELL: Good morning.

8 CHAIRPERSON: I believe it is a very early morning for
9 you. Thank you very much for your attendance here
10 today. My name is Paul Harkin, I am chairing this
11 Fitness to Practise Committee.

11:12

12
13 I want to thank you again for making yourself available
14 for cross-examination. The parties in this matter are
15 being anonymised, so the Complainant is being
16 anonymised as witness A. And the Registrant, against
17 whom the allegations are made, has been anonymised as
18 witness B. So, I would be grateful if you could try to
19 refer to them as witness A and witness B. If you
20 inadvertently slip we will make sure that the
21 transcript has been corrected to that effect. So, once
22 again, thank you for making yourself available.

11:12

11:12

23
24 I understand you are under some time pressure, so I
25 will hand you straight over to Ms. McNally, who is
26 counsel for witness B. Thank you.

11:12

1 DR. SHANE RUSSELL WAS CROSS-EXAMINED BY MS. McNALLY AS
2 FOLLOWS:

3
4 MS. McNALLY: Good morning, Dr. Russell, thank you for
5 agreeing to be here this morning. Sorry, the 11:12
6 microphone, sorry apologies, good morning, Dr. Russell,
7 I don't know if you can hear me, I keep forgetting to
8 press the button on the microphone, all this
9 technology. I much prefer it to be in person, but
10 anyway. 11:13

11 224 Q. You are responsible for two statements that were
12 gathered by the CEO of the IMC, and they appear at
13 pages 333 and 339. But in addition you gave evidence
14 on Day 2, and that appears at page 101 of the
15 transcript of Day 2. 11:13

16
17 So, I just want to ask you firstly about your
18 friendship with Witness A. How long have you known
19 Witness A?

20 A. We went to college together in Galway at the start of 11:13
21 2015, and we are still friends today.

22 225 Q. Okay. And have you been in touch, or has Witness A
23 been in touch with you about this Inquiry?

24 A. Not about the Inquiry, but I have been in contact with
25 her. 11:13

26 226 Q. Okay. And has the content of the Inquiry been
27 discussed by you with Witness A or vice versa during
28 those contacts?

29 A. No.

1 227 Q. So, when you lived together in Cork there were a few of
2 you sharing the house in Cork, is that correct?
3 A. Correct.
4 228 Q. And what period of time was that?
5 A. July 2019 to July 2020. 11:14
6 229 Q. Okay. And you were both working together, is that
7 correct?
8 A. We worked in the same hospital.
9 230 Q. Were you in the same, a bit like in Mayo, would you
10 have been in the same group or the same team or 11:14
11 anything like that or separately?
12 A. Different teams.
13 231 Q. Different teams, okay. And I gather from the evidence
14 from witness A that she seems to have sourced the
15 house, is that correct? 11:14
16 A. We sourced it together.
17 232 Q. Sourced it together. And she went off to America and
18 couldn't leave the key or something like that, that was
19 the evidence from her, is that fair to say? I am
20 paraphrasing? 11:15
21 A. I don't recall that.
22 233 Q. You don't recall that. And in respect of the messages
23 that you received from witness B, I am just going to go
24 to those, just bear with me while I try and find
25 them... tab 4. 11:15
26
27 I am just trying to find the... just bear with me, I am
28 sorry, I am trying to find the exact page here between
29 Core Booklets and exhibit. I have marked it down as

1 tab 63. I believe it is tab 63, page 421. No, that's
2 not it. Core Book, just bear with me, I am sorry --
3 MR. McDOWELL: Tab 6 of the Book of Witness Statements.
4 MS. McNALLY: Where is it in the Core Book?
5 MR. McDOWELL: It is not in the core Book, it is a 11:16
6 separate exhibit.
7 MS. McNALLY: Which book of exhibits?
8 MR. McDOWELL: So it is uploaded free standing to
9 TrialView, but it is -- if you have the Book of Witness
10 Statements it's appended -- 11:16
11 MS. McNALLY: No, no, I need the -- because I have
12 marked certain words. Sorry, we are just trying to
13 find the exhibit. I have marked it as Core Book, but
14 it's not it's an exhibit.
15 CHAIRPERSON: So, I have called it Exhibit 16, if 11:16
16 that's of any assistance to you, when I was receiving
17 them.
18 234 Q. MS. McNALLY: Book of Exhibits, 16... yes, thank you so
19 much. So, I don't know if you have those in front of
20 you, it is page 900 in the Book of Exhibits, Book 2? 11:17
21 A. Are you speaking to me?
22 235 Q. Everybody, so everybody is on the same page as they
23 say?
24 A. I don't have access to that information.
25 236 Q. I don't know how this work, does it get uploaded for 11:17
26 him to see or not? Not to worry, I will read out --
27 there is a, I presume it is a screen grab, and there is
28 a date on it, it says 8th June, do you remember that?
29 A. I can't see what you are referring to, so... but I know

1 what evidence I have submitted.

2 237 Q. Sorry, about this doctor, I thought everyone had the
3 facility of the stuff being uploaded.

4 MR. McDOWELL: Dr. Russell, if you --

5 A. I have a copy of my own statement that I have uploaded 11:18
6 on my second screen if --

7 238 Q. MS. McNALLY: Okay, and then it is the screenshots to
8 the back of that.

9 A. Yeah, that will load in about ten seconds.

10 239 Q. Okay, thank you.

11 A. They have a WhatsApp message, screenshot if that's --

12 240 Q. Okay, and it says -- on the top it says 8th June 2019?

13 A. Yes, we are looking at the same thing.

14

15 241 Q. "Hi Shane, bring the key." 11:19

16

```
17         And then it says:
```

18

19 "Sorry I text the wrong Shane."

20

21 That's on the left-hand side. And then on the
22 right-hand side:

23

24 "Who is this?"

25

26 And that's 21:46:

27

28 "I am H, sorry, I have your number from the past."

29

1 And then:

2
3 "Sorry for disturbance."
4

5 And then you went:

6
7 "From when?"
8

9 "I don't know, if I see your face maybe it remind me.
10 TC bye. Are you doctor?"
11

12 And then you say:

13
14 "Yup."
15

16 At 21:49. And then on the following page:

17
18 "That may be, me too, where you work. ED. You works
19 in ED, I works in meds. Maybe I recently work in
20 Tallaght. Do you work in Tallaght or Naas?"
21

22 That's 9th June. The next entry says:

23
24 "Just check you on Instagram, I think I know you from
25 Castlebar. Where do you work nowadays, I remember you
26 were preparing for exam time."
27

28 So, did you work in Castlebar?

29 A. I did.

1 242 Q. And what period of time were you in Castlebar?
2 A. For a six-month period, I think between January 2015
3 and July of 2015.
4 243 Q. And do you recall witness B when you were there?
5 A. I don't. 11:20
6 244 Q. You don't. And you then signed a statement, we have a
7 typed version of it, again we don't have the original
8 notes, the typed version is signed by you on 1st
9 January 2022, is that correct?
10 A. That's correct. 11:20
11 245 Q. And in respect of these screen grabs, do you remember
12 to whom you sent the screen grabs?
13 A. I don't remember sending them to anybody.
14 246 Q. Okay. So, can I ask you how the screen grabs then
15 appear attached to your statement? 11:21
16 A. Well, I would have taken the screen grabs that appear
17 but not sent them to anybody.
18 247 Q. Okay, so you just attach them to your statement?
19 A. Yes.
20 248 Q. Okay. And did you discuss those screen grabs after you 11:21
21 received them in 2018 or 2019 with anybody?
22 A. Yes, I mentioned them to witness A.
23 249 Q. Okay. And what period of time are you residing
24 together in Cork?
25 A. Again that was from July 2019 to July 2020. 11:21
26 250 Q. And in respect of the house that you resided in in
27 Cork, did you know everybody in the house before you
28 moved in?
29 A. No.

1 251 Q. No. And just in respect of other accommodations in
2 Ireland that you resided in when you were doing all
3 your hospital work on the different stints of six
4 months here and six months there, et cetera, did you
5 know everybody in everybody house that you moved into 11:22
6 prior to moving in?

7 A. I had 22 houses --

8 252 Q. Oh gosh, okay.

9 A. -- so I would have to sit down and think about that and
10 write out all the occupants. 11:22

11 253 Q. Okay. So, I have to put it to you that it is not
12 unusual that somebody might be looking for
13 accommodation if they are possibly going to be doing a
14 stint of work, as you say you have moved to 22
15 different houses, would that be fair to say? 11:22

16 A. Yeah.

17 254 Q. Okay. In respect of witness B, have you had any
18 contact with witness B since the WhatsApps on 8th June
19 2019 and 9th June, and again the 19:47 one on 22nd June
20 2020:

21

22 "Hi Shane, how are you? Everything all right, I am in
23 Ireland, any room vacant."

24

25 Any contact with him since? 11:23

26 A. No.

27 255 Q. Has he reached out to you at all since 22nd January
28 2020?

29 A. No.

1 256 Q. Can I ask you, do you remember seeing him in Mayo when
2 you were there?
3 A. No.
4 257 Q. And have you ever seen him in any other hospital where
5 you have worked since Mayo? 11:23
6 A. No, I don't know who this person is, and from my
7 recollection --
8 258 Q. From your recollection, okay. And could I ask you, did
9 you commence the discussion with witness A, the one
10 that's referred to, in the house after you received the 11:24
11 2019 message, who commenced that conversation?
12 A. I did.
13 259 Q. You did. And why did you commence that conversation?
14 A. We were in the sitting room and I was getting strange
15 messages and I brought it up in conversation. 11:24
16 260 Q. You brought it up in conversation. And these are the
17 strange messages, are they, somebody, the two pages,
18 8th and 9th June, and 9th June, and then the one on
19 22nd January 2020, they are the strange messages, are
20 they? 11:24
21 A. Yes.
22 261 Q. No other messages?
23 A. No.
24 262 Q. And the last one was:
25
26 "Any room vacant?"
27
28 That was the one in 2020, isn't that correct?
29 A. Yes.

1 263 Q. And can I put it to you that witness B was simply -- at
2 the start of that, the 8th, he says:

3

4 "Sorry for disturbance, sorry I texted wrong Shane."

5

6 And you asked:

7

8 "Who is this?"

9

10 And then he gave short little texts which led to it
11 being kind of one sentence more or less, isn't that
12 correct?

11:25

13 A. That's correct.

14 264 Q. Basically there is one sentence:

15

16 "Hi Shane, bring the key."

17

18 And then he immediately says:

19

20 "Sorry I wrong Shane."

11:25

21

22 And then you say:

23

24 "Who is this?"

25

26 And then in the space of a minute:

27

28 "I am Witness B sorry, I have your number from past,
29 sorry for disturbance."

1 That's the second sentence. And then:
2
3 "I don't know, I see your face, maybe it remind me to
4 be... are you doctor?"
5
6 And you went:
7
8 "Yep."
9
10 "That may be, me too, where you work?"
11
12 You said:
13
14 "ED."
15
16 And then he says:
17
18 "Work in ED, I work in meds maybe, I recently work in
19 Tallaght. Do you work in Tallaght or Naas?"
20
21 And then he says:
22
23 "The next day I just check you on Instagram, I think I
24 know you from you Castlebar where you work nowadays."
25
26 So, that's basically, if we count that up, the first
27 one is about:
28
29 "Hi Shane, bring the key, sorry wrong Shane."

11:25

1 That's one sentence. Then the next line is the 21:47.
2 Then the third one 21:48. And then the fourth one:
3
4 "That may be, me too, where you works?"
5
6 And then the last one on that day:
7
8 "Where you works? Maybe, I recently work in Tallaght."
9
10 So six sentence basically. wouldn't that be fair to 11:26
11 say?
12 A. I don't think there is any sentence there, it's a
13 rambling of different words and letters, it's strange
14 typing and grammar and punctuation, and I thought it
15 was strange. 11:26
16 265 Q. So you don't think it makes sense, the sentencing, when
17 you put the words together that it comes to one, what I
18 would submit is an obvious statement. You work in ED,
19 I work in meds, maybe, I recently work in Tallaght, do
20 you work in Tallaght or Naas? You don't think that 11:26
21 makes sense?
22 A. No, I don't think any of the messages make sense.
23 266 Q. You don't think any of the messages make sense. And
24 can I ask you, in respect of the messages, did you
25 report them to any authorities such as the guards? 11:27
26 A. No.
27 267 Q. No. So, you didn't report it to the guards?
28 A. No.
29 268 Q. And had you been aware when you were in Mayo of any

1 issue with witness B during your time in Mayo?

2 A. I didn't know witness B, so no.

3 269 Q. Okay. So, when did you become aware of this issue with
4 witness B?

5 A. I had some conversations with witness A who told me 11:27
6 some facts of an issue that she was having, and that's
7 all. I don't recall anything else about witness B.

8 270 Q. So, she brought it up with you?

9 A. I brought up the messages. And at some point
10 subsequent to that, I learned that she was having 11:28
11 issues with another -- with witness B.

12 271 Q. So, before, she hadn't brought it up with you by 8th
13 June 2019 or 9th June 2019, is that your evidence?

14 A. I don't think so, no.

15 272 Q. You don't think so. And then when did you bring it to 11:28
16 her attention these messages from 8th June and 9th June
17 2019?

18 A. Sometime after receiving the messages, I can't tell you
19 the exact date.

20 273 Q. But why did you bring it up then sometime afterwards? 11:28

21 A. Again, the messages -- we were in the house, the
22 messages were strange and I brought it up in
23 conversation in the evening some time.

24 274 Q. Well, would it be a year later, would it be two
25 years later? How did it come about you bringing it up? 11:28

26 A. No, it would have been within the first few months of
27 living in the house.

28 275 Q. I'm sorry, I missed the end of the sentence, my
29 apologies?

1 A. It would have been within the first few months of
2 living in the house.

3 276 Q. Of living in the house. Were you contacted by An Garda
4 Síochána at any stage?

5 A. No. 11:29

6 277 Q. And could I ask you, when were you contacted by the CEO
7 of the Medical Council?

8 A. I don't know.

9 278 Q. You don't know. And your witness statement, the typed
10 one, did you type that up? 11:29

11 A. Yes.

12 279 Q. You typed it up, okay?

13 A. Actually, no, sorry, I typed up a statement and the
14 solicitors put the bullet, a number of bullet points
15 numbers on the same words, and then I signed it. 11:29

16 280 Q. Okay. So what we are told is your witness statement
17 has bits added to it, isn't that correct?

18 A. Not --

19 MR. McDOWELL: That question should be clarified.

20 A. A number of bullet points were added, I think, before I 11:30
21 signed it, then I read it and signed it.

22 281 Q. And was that via a Zoom, was there a Zoom with you or a
23 meeting with you?

24 A. There was a phone call to the solicitors, yeah.

25 282 Q. A phone call. Call or calls plural? 11:30

26 A. I think I had maybe two calls, maybe, I think it was
27 definitely two call, yeah.

28 283 Q. Okay, well, we will get the original notes and memos of
29 those calls.

1 A. There might have been one phone call --
2 284 Q. There might have been one.
3 A. -- e-mails, but I can't remember if it was one or two.
4 285 Q. And you confirmed in your witness statement that after
5 that last text of January 2020 there had been no 11:31
6 further contact with that phone number, isn't that
7 correct?
8 A. Correct.
9 MS. McNALLY: Thank you very much, Dr. Russell, I am
10 cognisant of the time constraint you are under there, 11:31
11 so thank you.
12
13 DR. RUSSELL WAS RE-EXAMINED BY MR. McDOWELL AS FOLLOWS:
14
15 286 Q. MR. McDOWELL: Dr. Russell, it is Hugh McDowell here, a 11:31
16 barrister for the Chief Executive of the Medical
17 Council. I just want to ask you about one thing, just
18 to clarify one piece of your evidence.
19
20 So, you received the first batch of messages on 8th and 11:31
21 9th June 2019, isn't that right?
22 A. Correct.
23 287 Q. Then, you may or may not be aware of this, but then the
24 next thing that occurs is that Witness A made a
25 complaint to the Medical Council about witness B on 11:32
26 26th June 2019, that's a few weeks later?
27 A. Okay.
28 288 Q. Then in October I think of that year, in a response
29 that witness B provided to the complaint, your name was

1 mentioned?

2 A. Okay.

3 289 Q. You remember we discussed that on a previous occasion?

4 A. I do.

5 290 Q. Yes. And then January of 2020, you received another 11:32

6 message from, I think, from witness B, and that's the

7 third page in the exhibits. Do you remember that?

8 A. Yes.

9 291 Q. So, are you able to clarify whether you brought -- at

10 what stage you brought these message, or any of these 11:32

11 messages to the attention of witness A, can you recall?

12 A. I am not too clear on the date it occurred, but it

13 would have been the first two months of living

14 together. I don't have -- I can't remember exactly

15 when. I remember it happening in the sitting room, but 11:32

16 I don't remember what date it was, but it was in the

17 early stages of us living together.

18 MR. McDOWELL: Very good. Thank you, Dr. Russell, I

19 don't have any other questions for you, but the

20 Committee members might have questions for you. 11:33

21 DR. RUSSELL: Thanks.

22 CHAIRPERSON: Thank you, Mr. McDowell. Committee

23 colleagues, any questions?

24 DR. DAVIN-POWER: No questions.

25 DR. DEVINS: No questions. 11:33

26 CHAIRPERSON: Dr. Russell, thank you very much from us

27 sincerely for making yourself available again today, we

28 very much appreciate your time. And my apologies for

29 any inconvenience caused in getting you out of your bed

1 at an unearthly hour, but best of luck in surgery, take
2 care and thank you.

3 DR. RUSSELL: Thanks a lot.

4
5 THE WITNESS WITHDREW

11:33

6
7 MR. McDOWELL: Thank you, Chair. The next witness then
8 is Dr. Tom Lee.

9 CHAIRPERSON: Dr. Lee is appearing?

10 MR. McDOWELL: He is appearing online.

11:33

11 MS. McNALLY: If I see may, Chair, in the booklet of
12 statements that we were given I only have what appears
13 to be a second statement of Mr. Lee at page 365 of
14 that, because he refers:

15
16 "I make this statement supplemental...", he says:

17
18 "I make this supplemental statement to my statement
19 provided to the Preliminary Proceedings on 21st August
20 '19."

11:35

21
22 Just if we could grab that. And is Dr. Lee -- is he
23 going to appear on screen?

24 MR. McDOWELL: Yes.

25 DR. LEE: I have got a problem with my video here, I am
26 really sorry, I can try and use my laptop, but I can
27 see you and I can hear you, I am really sorry about
28 this.

29 MS. McNALLY: I'm glad to know somebody else is as good

1 at IT as I am.

2 DR. LEE: I can try and get it working on my laptop by
3 using hotspot on my phone?

4 CHAIRPERSON: We are in your hands, Ms. McNally.

5 MS. McNALLY: Perhaps it is better if we can see. 11:35

6 DR. LEE: Of course, I will just try and see what I can
7 do.

8 MS. McNALLY: Okay. Does the Committee want to rise
9 for five minutes while we...

10 CHAIRPERSON: We will just give Dr. Lee a few minutes. 11:36
11 Can I just ask about his statements, have they been
12 admitted now into --

13 MR. McDOWELL: Well, so Dr. Lee has given
14 evidence-in-chief, so that's the evidence that is being
15 tendered on behalf of the Chief Executive. Obviously 11:36
16 Ms. McNally is entitled to cross-examine him on those
17 statements, and we can provide copies of those to you.

18 CHAIRPERSON: No, the question, I suppose, was more for
19 Ms. McNally, do you wish to have --

20 MS. McNALLY: Well, no, I haven't relied on 11:36
21 Dr. Cullen's statement, because you didn't have it --

22 MR. McDOWELL: Dr. Lee.

23 MS. McNALLY: No, I haven't got to Dr. Lee at all yet.
24 And Dr. Russell, I simply stuck with what was in the
25 transcripts, because -- 11:36

26 CHAIRPERSON: Well, my question was simply, do you wish
27 the Committee to see Dr. Lee's statement?

28 MS. McNALLY: No. At this juncture, no. Thank you.

29 MR. McDOWELL: Chair, could we just mention, perhaps

1 due to an error on our side or maybe just a breakdown
2 in communication, we handed in copies of Dr. Cullen's
3 witness statement to you, but I think in fact
4 Ms. McNally would prefer now you didn't see those and
5 we are happy to take them back. 11:37

6 CHAIRPERSON: Okay.

7 MR. McGUINNESS: Chairman, I just want to advise the
8 Committee that --

9 MR. McDOWELL: On second thoughts, I relied on the
10 witness statement, it having been handed in in relation 11:38
11 to having seen Witness B in Tallaght. So, in those
12 circumstances perhaps they should stay in.

13
14 LEGAL ADVICE BY MR. McGUINNESS:

15
16 MR. McGUINNESS: well, I was just going to remind the
17 Committee that they had been given the statement for
18 the purpose of the examination and the re-examination,
19 where counsel for the CEO drew attention to paragraphs
20 13 and 19 of the statement. And also they are appended 11:38
21 to the statements, the text messages in respect of
22 which Ms. McNally was cross-examining.

23
24 So, it may be better in my submission, Chairman, and my
25 advice to the Committee, if the Committee get a clear 11:38
26 answer from each of the parties as to whether they are
27 objecting or not to the Committee retaining the
28 statements or not, or whether they want to be
29 confined to the issues upon which the re-examination

1 took place.

2 CHAIRPERSON: So, just to say, Dr. Lee, if you just
3 bear with us one second, we are just dealing with a
4 matter here. So, Mr. McDowell.

5
6 SUBMISSION BY MR. McDOWELL:

7
8 MR. McDOWELL: So, I have no objection to you having
9 the statements.

10 CHAIRPERSON: And Ms. McNally?

11:39

11
12 SUBMISSION BY MS. McNALLY:

13
14 MS. McNALLY: I would prefer if you would just stick to
15 the portions that were relied on, the pages that were
16 attached to Mr. Russell's statement, for example, where
17 the texts, that's why they were easier to access where
18 I had obviously taken a note of the wrong reference and
19 couldn't find it. And just the two paragraphs from
20 Dr. Cullen's statement, because I didn't rely, and I
21 didn't realise that you had it or it had been uploaded,
22 so...

11:39

23 CHAIRPERSON: We were just given it as she was giving
24 evidence here.

25 MS. McNALLY: Oh right, okay. So just those bits, but
26 they will be in the transcript, which I presume
27 everybody obtains a copy of.

11:39

28 CHAIRPERSON: So, we don't need to concern ourselves
29 with any other aspects of Dr. Cullen's?

1 MS. McNALLY: No.

2 MR. McDOWELL: Very good.

3 CHAIRPERSON: Thank you. So, Dr. Lee, thank you very
4 much for making yourself available again for
5 cross-examination. My name is Paul Harkin and I am
6 chairing this Inquiry Committee.

11:40

7
8 The Committee has ruled that the Complainant in this
9 matter is being anonymised as witness A, and the
10 Registrant has been anonymised as witness B. So, I
11 would be grateful if you could try to refer to them in
12 those terms. We all make slips in evidence, so any
13 error will be corrected in the transcript. But if you
14 could do your best to refer to them as witness A, the
15 Complainant, and witness B, the Registrant.

11:40

11:40

16
17 I will hand you over to Ms. McNally, who is counsel for
18 witness B.

1 DR. TOM LEE WAS CROSS-EXAMINED BY MS. McNALLY AS
2 FOLLOWS:

3
4 DR. LEE: Can I just say, I am not spotting off a 4G on
5 my phone because the hospital is like a lead bunker, so 11:40
6 I hope you can hear me okay. I will try and speak
7 slowly.

8 CHAIRPERSON: You are coming through very clearly, so
9 thank you very much for your efforts to connect. Thank
10 you.

11 292 Q. MS. McNALLY: Thank you, Dr. Lee, my name is Maura
12 McNally and I am just going to ask you a few questions
13 arising out of your evidence on Day 2.

14
15 On page 91 of that evidence you were being asked 11:41
16 questions, and you said:

17
18 "So, this is eight years ago, so I am obviously very
19 heavily reliant on the notes."

20
21 Could I ask you what notes are you referring to when
22 you referred in your direct evidence to notes?

23 A. Yeah, so this pertains to a meeting that myself and
24 Annette Kelly had with the, I am not sure what I call
25 the gentleman, is he Witness A or Witness B? 11:41

26 293 Q. Witness B?

27 A. Witness B. So, Witness B, we had a meeting with
28 Witness B, I suppose, back in 2016. And there was
29 notes taken on that by Annette Kelly, Medical Manpower

1 Manager, so I was relying on those notes.

2 294 Q. And I am afraid we don't have a copy of those notes.

3 Do you have a copy of those notes?

4 A. I don't have to hand I'm afraid.

5 MR. McDOWELL: They are in the Core Book. Tab 51 is 11:42

6 what I think you are referring to, the minutes of the

7 meeting.

8 295 Q. MS. McNALLY: No, no, no, I am not looking for minutes

9 now, I am looking for notes. I am asking about the

10 notes, because I am going to come to the minute that I 11:42

11 know there was objection raised previously.

12

13 If I move on then to the following page in an answer to

14 a question:

15

16 "Do you have any memory of Witness A making any

17 complaint or raising any issue about B?"

18

19 Answer:

20

21 "So again I am reliant on the notes because eight years

22 is a long time, but I have made -- I made a submission

23 obviously five years ago."

24

25 So, I am just curious, what is that submission that you 11:42

26 are referring to there in addition to the notes?

27 A. So, I have got two documents here, one is a statement

28 of mine, that was from -- I was due to sign or I

29 probably did sign, it is Medical Council headed paper.

1 And the other document I have is "Strictly private and
2 confidential 21st August 2019". They are the only two
3 documents I have at hand at the moment. So, I am not
4 sure which document you are talking about.

5 296 Q. Okay. Let me just try and figure out what that one is, 11:43
6 21st August 2019. Just bear with me now. That's one
7 page of a letter, is it, the one of 21st August 2019?
8 Sorry, it is two pages, it goes on to the following
9 page?

10 A. That's correct, and I have also recently countersigned 11:44
11 it, or signed it on 1st March 2023, the one that I have
12 here.

13 297 Q. Okay. So, you signed it on 1st March 2023. And the
14 other one is August 2019. And just in respect of the
15 notes, if I could just go to the notes, is that one 11:44
16 page of a note?

17 A. If you can read out a few lines of it I will be able to
18 tell which note I have.

19 298 Q. Okay, it starts off, there is a handwritten piece at
20 the top, the top left-hand corner "NCHD". Then PO 11:44
21 number. And then:
22
23 "Record of meeting with B, Dr. Lee and Annette Kelly on
24 Friday, 15th April 2016."
25 11:44

26 A. That must be the meeting, yeah, that must be the record
27 of the meeting with Annette Kelly, myself and the
28 gentleman, is the gentleman witness B, is it?

29 299 Q. He is B?

1 A. The subject of the Inquiry? Yeah.
2 MS. McNALLY: So it's a note --
3 CHAIRPERSON: That's correct. Yes, the subject of the
4 Inquiry is Witness B, yes.
5 A. Yeah, okay. 11:45
6 300 Q. MS. McNALLY: So, it is a note, not notes, is that it?
7 A. It could be just a note, I mean I don't know how long
8 it is. I didn't compile it, it would have been
9 compiled by Annette Kelly, Medical Manpower Manager,
10 who is still in post. 11:45
11 301 Q. Okay. So, I am just going to read it out there:
12
13 "The purpose of the meeting was because of texts B had
14 been sending to A, which she felt were inappropriate in
15 nature. He had been saying he was lonely and wanted 11:45
16 some company and wanted to be her friend. She brought
17 it...", singular, "...it to Dr. Lee's attention and
18 subsequently mine, but H was on leave and he was only
19 back to work today. Dr. Lee and myself...", I am
20 presuming that means Ms. Kelly from Manpower, Medical 11:45
21 Manpower, "...highlighted how inappropriate it was for
22 him to be texting anyone about this when it wasn't
23 reciprocated. We advised him that the intern in
24 question did not wish to pursue this any further in a
25 formal manner, but had highlighted it for our 11:46
26 attention. He confirmed he would not send any further
27 texts and was apologetic for this occurring in the
28 first instance and said he would like to apologise to
29 her. I advised him that I would check with A if she

1 wanted to meet with him regarding this apology and let
2 him know.

3
4 "I subsequently rang A on Friday, 15th April, and she
5 said she would think about this over the weekend and 11:46
6 let me know on Monday. We asked him was everything
7 okay with him and would be benefit from speaking with
8 Employee Support, which is a confidential counselling
9 service for the HSE. He asked that I give him the
10 contact number of same. E-mailed him on Friday 15th, 11:46
11 at approximately 6:30pm. He discussed his study leave,
12 annual leave request with Dr. Lee, and the meeting
13 concluded."

14
15 And that was signed Annette Kelly, Medical Manpower 11:46
16 Manager. Is that the note?

17 A. That's correct.

18 302 Q. Okay. And then -- could I ask you in that note where
19 does it say "stop texting" or where does it say "stop
20 contacting"? 11:47

21 A. I don't have it in front of me, so... but I don't
22 recall hearing what -- actually you will have to read
23 out the section, wherever it was pertaining to the
24 action point, I don't have it in front of me.

25 303 Q. And where does it say that you requested on 15th April 11:47
26 2016, requested that he desist? where does it say that
27 in that note?

28 A. Again I don't have it in front of me, so I am just
29 trying to remember what you read out.

1 304 Q. okay. well, that's the note, and that's the note which
2 appears to be the premise for what I would call the
3 charges that appear against witness B. And just, do
4 you know in respect of meetings with witness B, who, if
5 I can put it this way, in a position of authority had 11:48
6 meetings with him to your knowledge other than yourself
7 and Ms. Annette Kelly of Medical Manpower -- sorry, the
8 Medical Manpower Manager?
9 A. I think it would have been the two of us. I am not
10 aware of any other -- Annette is the -- she is the top 11:48
11 of the tree, she is the senior manager in Medical
12 Manpower.
13 305 Q. okay. So, in that note I don't see the word requested
14 Mr. B, witness B on 15th April 2016 not to contact or
15 approach her. I don't see that in the note? 11:49
16 A. okay.
17 306 Q. okay. So... then in your evidence on page 93, it says,
18 if I go about seven lines down or so, and I know you
19 don't have the benefit of it in front of you, it says:
20
21 "So, I think some three years passed before the issue
22 was raised again when Witness A had made contact with
23 Annette Kelly who made contact with myself, and that
24 was in May 2019 when we had a phone call, myself and
25 Annette and Witness A." 11:49
26
27 So...
28 A. That's correct.
29 307 Q. So, she raised it by telephone call by contacting

1 Annette Kelly, who I presume then contacted you is what
2 you are saying there in 2019, is that correct?

3 A. Yes, we were in the office together, and if I recall
4 correctly, albeit it is, I suppose, around six years, I
5 have a recollection of a conversation on speakerphone 11:50
6 in Annette's office with the three of us.

7 308 Q. And on the previous page, in fairness you say at line
8 9:
9

10 "So, again I am reliant on the notes because eight 11:50
11 years is a long time, but I have made, I made
12 submission obviously five years ago, which at that time
13 was only three years later, so my memory may have been
14 fresher then, so a very hazy memory of some issues
15 being relayed to me." 11:50
16

17 would that be fair to say, a hazy memory?

18 A. Em, hazy memory of what in particular?

19 309 Q. A hazy memory of some issue, singular, of some issue
20 being related to me about inappropriate contacts by 11:51
21 phone is to the best of my knowledge is what was
22 presented to me.

23 A. That's a fair reflection.

24 310 Q. Okay. Just in respect of going back, and I know it is
25 2016, witness A, do you remember anything that she 11:51
26 showed to you back in 2016, in April of 2016?

27 A. No.

28 MS. McNALLY: Thank you very much, Mr. Lee, thank you.
29 DR. LEE: You're welcome.

1 MR. McDOWELL: I have no questions, Dr. Lee.

2 DR. LEE: Okay, thank you very much.

3 CHAIRPERSON: I will just ask my Committee colleagues
4 if they have any questions for the witness.

5 MS. DEVINS: No, thank you.

11:52

6 DR. DAVIN-POWER: No questions.

7
8 QUESTIONING BY THE COMMITTEE:

9
10 CHAIRPERSON: I am trying to formulate a question
11 myself, Dr. Lee. As I understand the evidence, witness
12 A contacted Ms. Kelly three years after she had left
13 the hospital. Would that have stood out as being
14 unusual that an intern may wish to make a retrospective
15 complaint?

11:52

16 A. Sorry, there was just a bit of background noise, is it
17 unusual that somebody would come back to us three years
18 after the fact about an issue?

19 CHAIRPERSON: Yeah.

20 A. I can't ever remember it happening before or since in
21 terms of a kind of a retrospective action, something
22 like three years later, it is the only time I can ever
23 recollect this happening.

11:52

24 CHAIRPERSON: But it didn't at the time stand out to
25 you as particularly noteworthy, did it? Or did it?

11:52

26 A. Maybe an uncommon occurrence, there are often
27 interpersonal issues between NCHDs on teams, and we
28 would often have, not often, but we would, you know, on
29 occasion have meetings like this with them just to

1 tease things out.

2 CHAIRPERSON: Okay, thank you very much. Just to ask
3 if either counsel has any follow-up on that? No, okay.
4 Dr. Lee, I just want to thank you for making yourself
5 available again today, it has been very helpful and I 11:53
6 appreciate you making yourself available here today.

7 DR. LEE: And I am very grateful to you for
8 facilitating my remote testimony, because it is
9 difficult being out in Co. Mayo, it's a long way from
10 Dublin, so I am very grateful. 11:53

11 CHAIRPERSON: I understand. We appreciate your support
12 at this Inquiry, so thank you. Take care.

13
14 THE WITNESS WITHDREW

15
16 MS. McNALLY: I was going to add, you have had enough
17 trips to Croke Park to know how to get to Dublin.
18 Sorry, Dr. Lee, I thought you were gone.

19 DR. LEE:... Cork is a great place, we are going to win
20 the hurling this year. 11:53

21
22 THE WITNESS WITHDREW

23
24 MR. McDOWELL: So Chair, the only other witness I have
25 today then is Dr. Flynn, and I propose to take him 11:54
26 next. I wonder could we take a short break before
27 then.

28 CHAIRPERSON: I think it would be a great idea to keep
29 us all fresh, maybe take a 15-minute break and then we

1 can hear from Dr. Flynn. Thank you.

2 I should also say, I will give you back the witness
3 statements so that we don't risk any contamination. We
4 will have the context from the transcript. Thank you.

5 11:54

6 THE HEARING ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

7
8 MR. McDOWELL: So, Chair, I had jumped the gun earlier
9 by saying that Dr. Flynn was our only remaining
10 witness, because Ms. Kelly has not yet given evidence, 12:17
11 and she is available to give her evidence remotely at
12 1pm. So, I am in the Committee's hands as to how you
13 proceed, but the Committee could decide to take an
14 early lunch and resume at 1 o'clock, but, as I said, I
15 am in the Committee's hands. 12:17

16 CHAIRPERSON: I think that seems reasonable.

17 Ms. McNally, any views?

18 MS. McNALLY: Well, leaving aside the fact that I could
19 skip a meal or two, it wouldn't do me any harm, but
20 anyway if it is lunch then it's lunch, so be it. 12:17

21 CHAIRPERSON: Sorry, I should have spotted earlier, I
22 was confused when you said we would resume evidence on
23 Thursday, I was doing mental gymnastics because I was
24 thinking, what's wrong with Wednesday, so I didn't spot
25 your Ms. Kelly. I have another commitment on 12:18
26 Wednesday, Medical Council commitment, that's why I was
27 confused.

28 MR. McDOWELL: Yes, but I had forgotten, because
29 Ms. Kelly was actually lined up to give evidence in

1 October, and then that didn't happen. But sorry, more
2 broadly I think the running order is that this Inquiry
3 is scheduled to sit today, Thursday and Friday.

4 CHAIRPERSON: That's correct. So, I am sorry for any
5 confusion. So we are going to hear from Ms. Kelly --

12:18

6 MR. McDOWELL: Ms. Kelly at 1pm and Dr. Flynn
7 thereafter.

8 DR. DAVIN-POWER: Can we not hear Dr. Flynn now?

9 MR. McDOWELL: The only issue is that he might not
10 finish by 1 o'clock, he is a slightly longer witness.

12:18

11 CHAIRPERSON: You have Ms. Kelly scheduled for
12 1 o'clock.

13 MR. McDOWELL: Yes, she is on a lunch break, so...

14 CHAIRPERSON: Yes, so we will do that, we will take our
15 lunch now and resume at 1 o'clock. Thank you very
16 much.

12:18

17 MR. McDOWELL: Much appreciated.

18
19 THE HEARING ADJOURNED FOR LUNCH

1 THE HEARING CONTINUED AFTER LUNCH AS FOLLOWS:

2
3 CHAIRPERSON: So good afternoon, we are ready to
4 resume, Mr. McDowell, if you want to call your next
5 witness. 13:04

6 MR. McDOWELL: Yes, so I think that Ms. Kelly should be
7 online.

8
9 (Ms. Annette Kelly affirmed)

10 13:04
11 CHAIRPERSON: Good afternoon, Ms. Kelly, you are very
12 welcome to this Inquiry. My name is Paul Harkin, I am
13 chairing this Fitness to Practise Inquiry, I am not a
14 medical practitioner. Other members of the Committee
15 here today include Ms. Mary Devins, who is also not a 13:05
16 medical practitioner, and Dr. Mary Davin-Power, who is
17 a medical practitioner. And the fourth person here
18 with the Committee is our legal assessor, Mr. Diarmaid
19 McGuinness, senior counsel.

20
21 So once again, thank you for your attendance today.
22 This Committee has ruled that the two principals in
23 this case be anonymised, so we are referring to the
24 Complainant as Witness A and the Registrant as Witness
25 B. So, we would appreciate if you could try to in your 13:05
26 answers refer to them as Witness A and Witness B. We
27 all make mistakes, so if there is any errors we will
28 correct that, but in public session I would appreciate
29 if you could do your best to refer to them as Witness

1 A, the Complainant, and Witness B, the Registrant, who
2 is facing these allegations.

3 MS. KELLY: Can I just clarify, Witness A is the NCHD?

4 CHAIRPERSON: Sorry?

5 MS. KELLY: Witness A is the subject of this complaint? 13:06

6 MS. McNALLY: No, the other way round.

7 CHAIRPERSON: I didn't hear that, but I am told that
8 the Registrant in this case for whom the complaint has
9 been made against is Witness B. The individual who
10 happens to be a doctor also who made the complaint is 13:06
11 Witness A. Does that make sense?

12 MS. KELLY: Yeah, that's fine, I just wanted to clarify
13 that.

14 CHAIRPERSON: I am sure both counsels will put you
15 straight anyway better than I. So, I will hand you 13:06
16 over to Mr. McDowell, who is counsel for the CEO, and
17 thank you again for your attendance.

1 MS. ANNETTE KELLY, HAVING AFFIRMED, WAS DIRECTLY
2 EXAMINED BY MR. McDOWELL AS FOLLOWS:

3
4 311 Q. MR. McDOWELL: Good afternoon, Ms. Kelly, I am the
5 barrister appearing for the Chief Executive of the
6 Medical Council. I am going to ask you some questions,
7 and the audio line from your end is slightly faint, so
8 if you could deliver your answers as clearly and loudly
9 as possible I think that would be very helpful.

13:06

10
11 So, you're a Medical Manpower Manager at Mayo
12 University Hospital, is that right?

13 A. That's correct.

14 312 Q. And for how long have you held that position?

15 A. Since about 2006, I started out acting in the position
16 initially for a couple of years, and since 2006 really,
17 but temporary for the first few years, and then since
18 2010 I am permanent.

13:07

19 313 Q. And that's human resources function, is that right?

20 A. It is, HR functions for all the NCHDs and consultants.

13:07

21 314 Q. Yes. And do you recall an issue arising in 2016
22 between witness A and witness B?

23 A. Yes, it was brought to my attention. Witness A had
24 brought it to her consultant's attention first, and
25 then subsequently to me, and then we organised to meet
26 with witness B on his return from leave.

13:07

27 315 Q. Yes. And can you describe in outline terms prior to
28 the meeting, what was the issue arising as you
29 understood it?

1 A. The issue that I am aware of is that there was
2 inappropriate texts being sent to witness A from
3 witness B, in that, I didn't actually see the text
4 messages, but I understand that witness B was saying
5 that he wanted some company, but as I say, I haven't 13:08
6 actually seen the text messages, but we did organise to
7 meet with witness B on their return from leave to
8 discuss the issue.

9 316 Q. Yes. And the -- you have appended -- you have provided
10 a witness statement, and appended to that witness 13:08
11 statement is a minute of a meeting that took place on
12 16th April 2016. Do you have that document before you?

13 A. I do, I have it here.

14 317 Q. Yes, and can you confirm that you can --
15 MS. McNALLY: Sorry, that's not quite what it says. 13:09

16 318 Q. MR. McDOWELL: I am happy to clarify, it isn't a minute
17 of a meeting, it is a record of a meeting?

18 A. A record of a meeting, yes.

19 MS. McNALLY: There is an issue about dates which I
20 will be coming to. 13:09

21 A. I have provided the 15th April 2016.

22 MR. McDOWELL: Yes, so perhaps just --

23 MS. McNALLY: My colleague said 16th, there is an issue
24 about that -- I will come to it anyway, it is something
25 that I'm sure can be easily clarified. 13:09

26 319 Q. MR. McDOWELL: Very good. Well, then could you just
27 tell the Committee about that document please?

28 A. So on Friday, 15th April 2016, and I hope I haven't
29 mentioned the date wrong, but that's the date I have,

1 we -- Witness B, Dr. B, the medical registrar,
2 Dr. Lee who was the consultant geriatrician and who was
3 the consultant for Dr. B at the time, we met with him.
4

5 The purpose of the meeting was because of a text that 13:09
6 had been sent, he had been sending to the medical
7 intern who was witness A which she felt were
8 inappropriate in nature --

9 320 Q. Just to cut you off, Ms. Kelly, I am sorry to interrupt
10 you, the Committee have seen this document and have 13:10
11 read it before, so I don't need you to read it out, and
12 I am not asking you to do that. But I wonder could you
13 give the Committee without reference, I suppose, to
14 these notes necessarily, could you give the Committee
15 your recollection of what occurred at that meeting in 13:10
16 April 2016?

17 A. Okay, so when we met with him, we just outlined to
18 him -- we reiterated the reason we were looking to
19 speak with him. We highlighted to him that it was
20 inappropriate to be sending text messages to an intern. 13:10
21 And we did advise that the intern in question didn't
22 want to pursue it as a formal matter, but that she did
23 want to bring it to Dr. Lee's and my attention for
24 future reference. He had said he was apologetic for
25 sending the messages and we told him not to do that in 13:10
26 the future.

27
28 I did say I would check -- he wanted to apologise to
29 her, I did say I would check with witness A over the

1 weekend to see if she wanted to meet with him to accept
2 his apology, and she subsequently came back to me and
3 said no, she did not want to meet with him.

4
5 we did ask him was okay in himself and we did offer him 13:11
6 Employee Support, and I gave him the details of the
7 Employee Support. He was saying -- he had said to her
8 he was feeling lonely, so I gave him the details of the
9 Employee Support and the HSE as well.

10 321 Q. Yes. So, was any formal disciplinary step taken 13:11
11 against witness B arising from this?

12 A. No.

13 322 Q. And I think that witness A stopped working in Mayo
14 University Hospital in June or July of 2016?

15 A. 2016, yes, she was six months here, the first three 13:11
16 months was with Dr. Lee and then she moved to Prof.
17 O'Malley's team for the second three months of her
18 rotation.

19 323 Q. And did any issue between witness A and witness B come
20 to your attention again after the meeting of April '16? 13:11

21 A. No, nothing came to my attention after that.

22 324 Q. Yes. And then did anything further arise in 2019?

23 A. In 2019, I did receive a phone call from witness A on
24 21st May, and she said that -- she did ring me to say
25 that he had started texting her again and that she 13:12
26 wanted details from the minutes of the meeting that we
27 had back on the 16th. So I read them out to her, I
28 have no recollection of actually e-mailing them to her,
29 but I did read out exactly to her what we had discussed

1 on 15th April 2016.

2 Dr. Lee was present as well in the office with me until
3 we rang on 21st May 2019, and she confirmed that she
4 didn't want to meet him or anything. I just read out
5 the minutes of the meeting that I had a record of since 13:12
6 2016 to her. She did say that she had gone to the
7 guards at that stage.

8 325 Q. Yes. And just going back to 2016 for a moment, was
9 there -- following the issue arising in April of '16,
10 was any arrangement put in place with regards to 13:13
11 Witness A's working conditions?

12 A. Yes, I had said to Dr. Lee, because the medical rota
13 was commenced, so I did make sure that she wasn't on
14 call, and I do have copies of the call rota here to
15 make sure that she was not on call with the registrar.
16 MR. McDOWELL: Very good. Thank you very much,
17 Ms. Kelly, you might answer any questions that
18 Ms. McNally has.

19
20 MS. KELLY WAS CROSS-EXAMINED BY MS. McNALLY AS FOLLOWS:

21
22 326 Q. MS. McNALLY: Good morning, Ms. Kelly, how are you, or
23 good afternoon as it is now, sorry to be taking up your
24 lunch time.

25
26 So, I have here the note, and I suppose the only issue
27 is you signed a statement when this was being
28 investigated by the CEO, and I have that statement, if
29 my colleague could make sure a copy is available. I

1 have it at page 355 of the book of...

2 MR. McDOWELL: Do you want this statement in?

3 MS. McNALLY: This statement in, yes, please.

4 MR. McDOWELL: We will have to arrange to get copies of
5 it, if you could just bear with us. 13:14

6 327 Q. MS. McNALLY: I will keep going while this is being
7 furnished to the Committee, but it is signed on 9th
8 March 2023. And it refers, and the only reason I am
9 referencing it, and the reason I mentioned about the
10 question that my colleague was asking you about the 13:14
11 date of the meeting, in your sworn statement, the one
12 that's -- not sworn, the signed statement by you on 9th
13 March 2023, you say the meeting was on 16th April 2023
14 [sic], whilst the note that we have is for 15th April
15 2023 [sic]. I am just wondering is there -- 13:14
16 MR. McDOWELL: 2016.

17 A. Unless --

18 MS. McNALLY: Sorry, the record of the meeting --
19 sorry, my colleague has interrupted, I am not sure it
20 is an objection, but the question -- 13:14

21 MR. McDOWELL: You said 2023, I am just saying it is
22 2016.

23 328 Q. MS. McNALLY: Sorry, I thought you meant the 16th
24 April. Record of meeting with Dr. B, with Dr. Lee,
25 Ms. A, no, yourself on 15th April 2016, whilst your 13:15
26 sworn statement as part of the investigation says 16th
27 April. I am not sure much turns on it other than if
28 you could clarify which is the correct date of that
29 meeting.

1 A. A Friday, so unless you go back on the calendar, unless
2 it was transcribed incorrectly, because it was sent to
3 me by the solicitors to sign, so I may not have just
4 seen that, but it was definitely the Friday, because I
5 typed in the Friday, so apologies, I didn't mean to
6 mislead anyone. 13:15

7 329 Q. Not at all, it was just to clarify, it was just at
8 paragraph 5 it says you refer to the minutes of the
9 meeting of 16th April, paragraph 9. His day back, the
10 16th April. And then on the next page it says again 13:15
11 16th April at paragraph 10. And I just wanted to make
12 sure that we had the correct date, that we are all
13 working off the correct hymn sheet --

14 CHAIRPERSON: If it would help the parties, 15th April
15 2016 was a Friday. 13:16

16 A. Friday 15th was the Friday, it was definitely the
17 Friday, apologies if the incorrect date was put in in
18 the statement.

19 330 Q. MS. McNALLY: No, that just clarifies that in case
20 anything turned on it, it was just a date error, but
21 it's in your statement which is the sworn evidence.
22

23 And then the note, I am just going to go through that
24 quickly, I read it out earlier today, but I will read
25 it out again: 13:16
26

27 "Purpose of meeting was because of texts Mr. B had been
28 sending to his medical intern, Witness A, which she
29 felt were inappropriate in nature. He had been saying

1 he was lonely and wanted some company and wanted to be
2 her friend. She brought it to Dr. Lee's attention and
3 subsequently mine. But Dr. B was on leave and he was
4 only back to work today. Dr. Lee and myself
5 highlighted how inappropriate it was for him to be 13:16
6 texting anyone about this when it wasn't reciprocated.
7 We advised him that the intern in question did not wish
8 to pursue this any further in a formal manner, but had
9 highlighted it for our attention."

10
11 And then:

12
13 "He confirmed he would not send any further texts and
14 was apologetic for this occurring in the first instance
15 and said he would like to apologise to her. I advised 13:17
16 him that I would check with Witness A if she wanted to
17 meet with him regarding this apology and let him know.
18 I subsequently rang Witness A on Friday 15th April and
19 she said she would think about this over the weekend
20 and let me know on Monday. We asked him was everything 13:17
21 okay with him and would he benefit from speaking with
22 Employee Support, which is a confidential counselling
23 service for the HSE. He asked that I give him the
24 contact number for same. E-mailed to him on Friday,
25 15th at approximately 6:30pm. He discussed his study 13:17
26 yes, leave annual leave request with Dr. Lee and the
27 meeting concluded."

28
29 And that was signed by yourself, Annette Kelly, Medical

1 Manpower Manager. So, is that an accurate note of the
2 meeting that was held on 15th April with Mr. B, Witness
3 B?

4 A. I would have done that up after the meeting, so it is
5 as clear as I can remember.

13:18

6 331 Q. Okay. And then if I could just ask you, based upon the
7 Notice of Inquiry, and I am just going to have to grab
8 that here again, I keep losing pages, too many
9 exhibits, and just bear with me.

10
11 So, the charges that are being proffered, if I can call
12 them that against witness B at numbers 1 to 7, they
13 refer to requests by one or more members of staff
14 and/or the Medical Manpower Manager, that would you,
15 the Medical Manpower Manager --

13:19

16 A. Yes, correct.

17 332 Q. -- at Mayo Hospital. So, could I ask you where in the
18 note does it say that you requested him to stop what is
19 being alleged? Where does it say you request? Or do
20 you have the note in front of you? Do you have the
21 note?

13:19

22 A. I have the note, I said he and myself highlighted how
23 inappropriate it was and we asked -- because they
24 weren't reciprocated, he said to us he would stop
25 texting her.

13:19

26 333 Q. As I said to you, where is the word request in your
27 note, and where does it say cannot do that in the
28 future, because that's the bit that you added today in
29 answer to a question from my colleague? Have we

1 lost... no, you are still there?

2 A. I am here, but my camera seems to be gone, I don't

3 know, for some reason, I don't know. Sorry, hold on

4 now.

5 334 Q. You are back, but you are frozen -- oh, you are gone? 13:19

6 A. There is something wrong with my connection, I'm sorry,

7 can you hear me? Hello?

8 335 Q. Yes, we can --

9 CHAIRPERSON: Yes, we can hear you, yes.

10 A. There is something wrong with my PC here sorry, I don't 13:20

11 know what it is.

12 CHAIRPERSON: You are back, I can see you now.

13 A. It is switching off.

14 CHAIRPERSON: It is switching off.

15 A. It is switching on and off, I don't know why it is 13:20

16 switching on and off, I am not doing it.

17 CHAIRPERSON: Yes, I appreciate that you are not, I

18 suspect it may be to do with the broadband signal and

19 it may be trying to conserve the connection via your

20 sound. So might I suggest we just take a few minutes 13:20

21 just to allow you to perhaps re --

22 MS. McNALLY: I am happy to proceed with just sound if

23 you are happy to proceed with just sound.

24 CHAIRPERSON: That would be very helpful then if you

25 are, Ms. McNally. Ms. McNally is quite content to 13:20

26 continue with just your audio, so I don't know can you

27 see us?

28 A. I can see you, yes.

29 CHAIRPERSON: Okay, well, we have had the benefit of

1 the seeing you already, so we won't take offence to the
2 camera being switched off and we will let Ms. McNally
3 continue with her questions, thank you.

4 336 Q. MS. McNALLY: Thank you. Sorry, Ms. Kelly, it is the
5 IT, it is much easier in person, isn't it? 13:21

6 A. I know.

7 337 Q. In the note there, there is no mention of the word
8 "request", isn't that correct?

9 A. No, it is not in my note, but, as I said, that was the
10 purpose of the meeting was because of the text 13:21
11 messages.

12 338 Q. But there is no record of it at all in that note. And
13 nor is there a record in it of any statement along the
14 lines of you can't do that in the future, isn't that
15 correct? Isn't that fair to say? 13:21

16 A. That's fair to say, but no nothing was brought to my
17 attention subsequent after that meeting to say there
18 were further texts.

19 339 Q. Okay, but there is nothing in that note that says and
20 records that you said to him, you cannot do that in the 13:21
21 future, isn't that correct?

22 A. That's correct, but it would have been -- it would have
23 been inferred in our conversation --

24 340 Q. No, no, I am just asking about the note, because the
25 note is what premises this Notice of Inquiry that we 13:22
26 have here in front us. And I am just asking you as
27 well just to confirm that the word request doesn't
28 appear in your note of the meeting, isn't that correct?

29 A. That's correct, yes.

1 341 Q. Okay. And then there was no contact from Witness A to
2 you until she telephoned you, I gather, some time in
3 2019?
4 A. Yes, it was May -- 20th May 2019.
5 342 Q. Okay. And can I ask, did the guards contact you at any 13:22
6 stage?
7 A. No.
8 343 Q. Okay. And did witness B contact you?
9 A. No, not about this, no.
10 344 Q. Okay. And have you had any contact with witness B 13:23
11 about this since he -- I gather he left Mayo in 2016?
12 A. He did, yes.
13 345 Q. And about this has there been any contact from him
14 about this issue since then?
15 A. Not -- not about this issue, but he had sent some other 13:23
16 e-mail just in relation about Dr. Lee, but not in
17 relation to this, not to the best of my knowledge, I
18 haven't seen anything.
19 346 Q. Okay. And at the time that this was initially brought
20 to your attention, did you see the alleged texts? 13:23
21 A. No, I didn't see the text messages.
22 347 Q. And did you see the alleged list of phone calls?
23 A. No.
24 348 Q. Phone log I think it is called?
25 A. No, I didn't see them. 13:24
26 349 Q. And we can't now because that phone apparently is gone.
27 were you aware of that?
28 A. No.
29 350 Q. No.

1 MS. McNALLY: Thank you very much, Ms. Kelly.

2 MS. KELLY: Thank you.

3 MR. McDOWELL: I have no further questions for you
4 Ms. Kelly, thank you. The Committee members may have
5 some questions for you. 13:24

6 CHAIRPERSON: So I will invite my Committee colleagues
7 if they have any questions for the witness.

8 DR. DAVIN-POWER: No, thank you.

9 DR. DEVINS: No thanks.

10 13:24
11 QUESTIONING BY THE COMMITTEE:
12

13 CHAIRPERSON: Just one point, given that we are keen to
14 clarify dates; in response to a question there,
15 Ms. Kelly, I think you said 20th May 2019 was a
16 follow-up call from witness A? 13:24

17 A. Yes, she rang me, I have written down she rang me on
18 20th May, and then Dr. Lee and myself rang her back on
19 21st May.

20 CHAIRPERSON: Okay, that clarifies it, so thank you
21 very much for that. 13:25

22 A. Thank you.

23 CHAIRPERSON: Thank you very much for your attendance
24 today. I hope we haven't inconvenienced you, and you
25 may now disconnect. So, thank you again. 13:25

26 MS. KELLY: Thank you so much, bye now.

27
28 THE WITNESS WITHDREW
29

1 MR. McDOWELL: Thank you, Chair and Committee members,
2 so I am now, unless the Committee directs otherwise, I
3 am now going to call Dr. Nick Flynn.
4 CHAIRPERSON: Good afternoon, Dr. Flynn, it is lovely
5 to see you in person and not on the screen. 13:26
6 DR. FLYNN: Yes, it's a change.
7 CHAIRPERSON: I think you have been here for the
8 last -- for this morning, and you have been online
9 previously.
10 DR. FLYNN: So I was online for Day 1 and 2, and I have 13:26
11 read transcripts of Days 3, 4 and 5.
12 CHAIRPERSON: So I will dispense with my introductions,
13 but you would have heard me giving advise to the
14 witnesses that we will try to refer to witness A, the
15 Complainant, and witness B, the Registrant, against 13:26
16 whom the complaints have been levelled.
17
18 Just to thank you for your time here today and for the
19 previous days and I will hand you over to Mr. McDowell
20 who will take you through your evidence. So, thanks 13:26
21 again.
22
23
24
25
26
27
28
29

1 DR. NICK FLYNN, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MR. McDOWELL AS FOLLOWS:

3
4 351 Q. MR. McDOWELL: Good afternoon, Dr. Flynn. I wonder
5 could you begin by telling the Committee about your 13:27
6 background and experience please?

7 A. I am a GP in Cork. I did my undergraduate medical
8 training in UCC. Graduated in 1997. I then did my
9 postgraduate vocational training with the Irish College
10 of General Practitioners in the Cork Training Scheme, 13:27
11 graduating in 2003. I have been a GP partner in my
12 practice basically since then, maybe a couple of years
13 later. I am a GP trainer with the Irish College of
14 General Practitioners. I have held some senior
15 leadership positions within the ICGP from an 13:27
16 educational point of view. And I am GP lead with the
17 local HSE Community Health Network. And that's a high
18 level summary really, thank you.

19 352 Q. And I think you said there, Dr. Flynn, that you are a
20 trainer with the Irish College of General 13:28
21 Practitioners, is that right?

22 A. That's correct, yes, and I have chaired the national
23 coordinating Committee for GP training for a number of
24 years.

25 353 Q. And could you just tell the Committee a little bit 13:28
26 about what is involved in that position?

27 A. So, I suppose there is two stems to it; the GP training
28 model is a mentorship model, and GP training in Ireland
29 is four years, so the first two years are hospital

1 based rotations and the second three years are spent in
2 a practice with a GP registrar. And there is, I
3 suppose, a one-on-one relationship with the registrar,
4 there is weekly teaching sessions. And there is, I
5 suppose, guide them from supervised practice to
6 independent practice and helping them on their journey.
7 And then there is also, I suppose, in conjunction with
8 the college a quality assurance process within that.

13:28

10 There is also a teaching commitment to the first and
11 second years. So I would do a session with them once a
12 year, and we would have two, I suppose, first second
13 years would come into the practice, kind of observing
14 practice for one week each in their first and second
15 year.

13:28

13:29

16
17 And as I say part of that journey for me was I became
18 involved with the National Coordinating Committee for
19 GP training, which as training and college changed that
20 Committee is now defunct, but I was a member of that
21 Committee for four or five years, and I chaired it for
22 the final three, so...

13:29

23 354 Q. Yes. Thank you, Dr. Flynn. So Dr. Flynn, you were
24 retained as an expert witness on behalf of the Chief
25 Executive of the Medical Council, isn't that right?

13:29

26 A. That's correct.

27 355 Q. And you in that connection prepared a report dated 24th
28 March 2023, isn't that so?

29 A. That's correct.

1 356 Q. And Ms. O'Sullivan is going to hand a copy of your
2 report to the Committee members now, they haven't seen
3 it before. So perhaps that needs to be assigned an
4 exhibit number, Chair?

5 CHAIRPERSON: You have put me on the spot here, I am 13:30
6 calling this Exhibit 3 from Day 6, but I will
7 resequence my numbers when I get through all the
8 transcript, but thank you.

9 MR. McDOWELL: So --

10

11 SUBMISSION BY MS. McNALLY:

12

13 MS. McNALLY: I just wonder, Chair, if it couldn't be
14 opened yet, I just have an issue with this report. It
15 may be simply clarified because there have been so many 13:30
16 previous lawyers dealing with this, but the Garda
17 investigative file, that section of it, it refers to a
18 letter received from An Garda Síochána, telephone
19 attendance.

20

21 I don't mind you looking at that page of the report, it
22 is the documentation, or the material upon which
23 Dr. Flynn would appear to have grounded to some degree
24 his conclusions. So it is -- in my internal booklet it
25 is attached, it is 482, I don't know what page it would 13:31
26 be... let me see how many pages, eight pages in there
27 is like an indices, and on that it says "Garda
28 Investigative File..." --

29 CHAIRPERSON: Into?

1 MS. McNALLY: Into his report, so I don't mind you
2 looking at that to assist what it is I am looking for,
3 because we don't have it, neither myself nor Mr. Khan,
4 and I am not sure it has been opened, thus far in any
5 evidence to the tribunal. But letter received from An 13:31
6 Garda Síochána dated 21st August 2019. Telephone
7 attendance with Garda station dated 12th September
8 2019. Telephone attendance with Garda Kevin McPartlan
9 dated 15th October 2019. This wasn't put to Garda
10 McPartlan from my reading of the transcript. Telephone 13:32
11 attendance with Ms. Marie McLoughlin dated 6th December
12 2019. Telephone attendance with Ms. Marie McLoughlin
13 dated 10th January 2020. E-mail from Garda McPartlan
14 dated 16th February 2020. Telephone attendance with
15 Garda Kevin McPartlan dated 3rd March 2020. E-mail 13:32
16 from Garda Kevin McPartlan dated 12th May 2020. E-mail
17 from Garda Kevin McPartlan dated 18th June 2020.
18 Attempted telephone call with Galway Garda Station 20th
19 August 2020. Telephone call with Galway Garda Station
20 20th August 2020. Telephone call with Galway Garda 13:32
21 Station 21st August 2020. E-mail from Garda Kevin
22 McPartlan dated 4th August 2020. Telephone call with
23 Galway Garda Station 20/11/2020. Telephone call with
24 Galway Garda Station 3 rd December 2020. E-mail from
25 Garda Kevin McPartlan dated 6th December 2020. Letter 13:32
26 received from An Garda Síochána dated 25th January
27 2021. Letter received from Garda Dee O'Flanagan dated
28 2nd February 2021. Telephone call with Galway Garda
29 Station 5th May '21. E-mail from Galway Gardaí dated

1 31st May 2021. E-mail from Galway Gardaí dated 8th
2 June 2021. E-mail from Suzanne O'Kennedy of the Chief
3 State Solicitor's Office dated 17th September 2021.
4 Telephone attendance with the said Ms. Suzanne
5 O'Kennedy of Chief State Solicitor's Office dated 18th 13:33
6 September 2021. E-mail from Ms. Suzanne O'Kennedy of
7 Chief State Solicitor's Office dated 13th September
8 2021. E-mail from Ms. Suzanne O'Kennedy of Chief State
9 Solicitor's Office dated 22nd October 2021. Exhibit 1,
10 exhibits charged for screenshots, I am not sure if 13:33
11 that's the same exhibits that we have, but I don't have
12 those, that documentation. It is quite a bit of
13 documentation.

14
15 And I don't recall reading, I am open to correction 13:34
16 because I wasn't here, but I do not recall reading in
17 the transcripts that these e-mails, for example, with
18 Garda Kevin McPartlan, e-mail, for example, of 24th
19 August was that put, 6th December 2020. If the opinion
20 is going to be based upon the evidence that's adduced, 13:34
21 it should be evidence that's available to both sides
22 otherwise it is not, I would submit, a fair and proper
23 report, in that it doesn't cover that everybody has
24 everything, and that everyone was in a position to put
25 whatever information the doctor has obtained outside of 13:34
26 what has been heard here.

27 CHAIRPERSON: Okay. So, the first thing is to thank
28 Dr. Flynn for articulating very clearly the basis on
29 which he prepared his report, so it is very helpful to

1 have that list of documents.

2
3 I will invite Mr. McDowell, is there anything you would
4 like to say in response, but as I understand it you
5 haven't received those documents?

13:35

6 MS. McNALLY: No.

7
8 SUBMISSION BY MR. McDOWELL:

9
10 MR. McDOWELL: So, Chair, the documents in question
11 were contained in a brief of documents that was before
12 the Medical Council's Preliminary Proceedings
13 Committee, the PPC. And the PPC brief, as that
14 collection of documents is known, has been provided
15 previously to all of witness B's solicitors, I think
16 including his present solicitors, but I can
17 double-check that.

13:35

18
19 And in fairness Ms. McNally obviously wasn't here for
20 any of that, so I can understand why she might not be
21 familiar with those documents, but they have all been
22 provided to witness B's legal representatives before,
23 and they are not in the Core Book. I think when you
24 look at them there is actually very little substance to
25 them, it is phone tag going back and forth and updates
26 and so on. So... but I suppose if the complaint is
27 that she hasn't seen them, her client has received them
28 and we can send them again if needs be.

13:35

29 CHAIRPERSON: Thank you for that, Mr. McDowell.

1 MR. McDOWELL: Sorry, they were sent on 8th November
2 2024 to Ms. McNally's solicitor.

3 CHAIRPERSON: Do you need to take some time,
4 Ms. McNally, just to clarify.

5 MS. McNALLY: No, why weren't these e-mails put to the 13:36
6 investigating guards when they were called to give
7 evidence? They should have been put. They should be
8 attached to a statement, it should have been led in
9 evidence.

10 CHAIRPERSON: Can I just take it one step at a time? 13:36
11 MS. McNALLY: Sorry.

12 CHAIRPERSON: Can we just confirm that you have
13 received the documents?

14 MS. McNALLY: I don't have them.

15 CHAIRPERSON: So, do you wish an adjournment to take 13:36
16 time to look at those documents to see their relevance,
17 because you're objecting to their relevance?

18 MS. McNALLY: I am, but the problem now is Garda
19 McPartlan is going to have to be called back and
20 various other guards so that -- it should have been 13:36
21 attached to his statement and it should have been put
22 to him.

23 MR. McDOWELL: Just in ease of everyone, I think before
24 the complaint is made, I do think it would be helpful
25 if Ms. McNally saw the documents. I would hope that 13:36
26 whatever objection she might have could fall away if
27 she actually saw them, but I think if we were to take
28 things in their logical order, the first is her and her
29 solicitor should see them. And then if she still has a

1 complaint to make at that stage, she can make the
2 complaint.

3 CHAIRPERSON: Yes, I am happy to rule that we do that,
4 we will give you ten or 15 minutes to familiarise
5 yourself with the contents. 13:37

6 MS. McNALLY: Much obliged.

7 CHAIRPERSON: And if you have an objection still, we
8 will hear that objection.

9 MS. McNALLY: I am much obliged.

10 CHAIRPERSON: So we will just adjourn for ten or 15 13:37
11 minutes. And my apologies, Dr. Flynn, but we want to
12 do this fairly to both sides.

13
14 THE HEARING ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

15
16 CHAIRPERSON: So, Ms. McNally, can I ask for an update 13:43
17 please?

18 MS. McNALLY: I have speed read the folder, and I have
19 gone through the salient points taking instructions
20 with my client, so I am happy to plough on. 13:53

21 CHAIRPERSON: Great, thank you very much.

22
23 DR. FLYNN CONTINUED TO BE DIRECTLY EXAMINED BY MR.
24 McDOWELL AS FOLLOWS:

25
26 357 Q. MR. McDOWELL: So, Dr. Flynn, as I was saying, you
27 furnished a report to the Medical Council, to the CEO
28 of the Medical Council of 24th March 2023, isn't that
29 right?

1 A. That's correct.

2 358 Q. And that's the document that the Committee has before
3 it now. And as Ms. McNally pointed out, in that report
4 you set out at length the documents that were provided
5 to you as part of your instructions, isn't that right? 13:53

6 A. That's correct.

7 359 Q. And there was a considerable volume of material before
8 you, isn't that so?

9 A. Correct.

10 360 Q. And that included in particular witness statements 13:53
11 which were furnished by the individuals who have
12 ultimately given evidence on behalf of the CEO, isn't
13 that correct?

14 A. That's correct.

15 361 Q. Yes. And as is ordinarily the case in professional 13:54
16 regulatory matters such as this, you have provided your
17 opinion on the assumption that the facts alleged by the
18 Chief Executive are found to be proven by the
19 Committee, isn't that so?

20 A. That is the instruction I was given, correct. 13:54

21 362 Q. Yes. So, you have not engaged in any adjudication as
22 to whether the allegations are in fact true, you have
23 simply presumed that they are true and provided your
24 opinion on those grounds?

25 A. I read the full brief, but I provided the opinion based 13:54
26 on that premise.

27 363 Q. Yes. So, Dr. Flynn, you will be aware then that in the
28 Notice of Inquiry there are eight allegations made
29 against witness B. And going back to the distinction

1 that I had used earlier in this Inquiry, limb A is
2 Allegation 1 to 7, which concerns contact between
3 Witness B and Witness A. And then limb B is founded on
4 Allegation 8, and that concerns CPD, isn't that right?
5 A. That's correct. 13:55
6 364 Q. So... I am sorry, in your report then on internal
7 pagination 12, you set out your understanding of the
8 background of matters at (iii), isn't that so?
9 A. That is correct.
10 365 Q. And that is in essence a summary of the facts as you 13:55
11 were instructed that they were, isn't that so?
12 A. A high level summary, correct.
13 366 Q. Yes. Then at (iv) you have set out a discussion on
14 issues arising in relation to the allegations, and you
15 draw attention to certain provisions of the Medical 13:55
16 Council's Guide to Professional Conduct and Ethics
17 Registered Medical Practitioners?
18 A. That's correct.
19 367 Q. And those provisions concern both limb A, which relate
20 to Witness B and Witness A, and the second limb, if you 13:55
21 like, which concerns CPD, isn't that so?
22 A. That's correct, yes.
23 368 Q. Then on page 16 at (v) you set out the eight
24 allegations that are to be found in the Notice of
25 Inquiry, and the fact that those, moving on to pages 18 13:56
26 and 19, the fact that those allegations are made on the
27 grounds of poor professional performance and
28 professional misconduct, isn't that right?
29 A. That's correct.

1 369 Q. Yes. Then you deal with each of the allegations in
2 turn in your report, isn't that so?

3 A. That's correct.

4 370 Q. Yes. So, if we could deal with Allegation 1, which is
5 that:

13:56

6

7 "On one or more occasions between the period...",
8 sorry, I am now on page 19 of your report, "...That on
9 one or more occasions during the period between in or
10 around June '16 and in or around July '16, that:

13:56

11

12 (i) Witness B attempted to make contact and/or
13 contacted and/or attempted to approach and/or
14 approached Witness A, in circumstances where he knew or
15 ought to have known that this was inappropriate and was 13:56
16 not in connection with his employment; and/or

17

18 (ii) This was unwanted and/or uninvited and/or that on
19 or around 15th April 2016 he had been requested by one
20 or more members of staff and/or the Medical Manpower 13:56
21 Manager at Mayo University Hospital not to contact
22 anyone and/or to approach Witness A."

23

24 A. That's correct.

25 371 Q. So, when you provided your opinion in relation to that 13:57
26 allegation, I take it that you had regard to what
27 witness A had said in her witness statement?

28 A. That is correct.

29 372 Q. Yes. And do you have a copy of witness A's witness

1 statement to hand?

2 A. I do. And conscious as I am that the Committee doesn't
3 have this, and I can provide a copy of it to the
4 Committee if required, but it may be that that won't be
5 necessary in circumstances that will hopefully emerge 13:57
6 shortly.

7

8 So, I am just going to read to you what witness A said
9 about what occurred in and around June and July 2016,
10 and this is at page 6 of her witness statement, it is a 13:57
11 single paragraph.

12 MS. McNALLY: which page are you on?

13 MR. McDOWELL: So, I am on Witness A's witness
14 statement, paragraph 21.

15 MS. McNALLY: which tab? 13:58

16 MR. McDOWELL: Sorry, Book of witness Statements, tab
17 1.

18 MS. McNALLY: Just bear with me... of exhibits?

19 A. I wonder do I have a different version or a different
20 edit of the witness statements. 13:58

21 MR. McDOWELL: Book of witness Statements, tab 2.

22 MS. McNALLY: I don't have that.

23 MR. McDOWELL: You have the witness statements?

24 MS. McNALLY: This is A, witness A?

25 MR. McDOWELL: witness A, yes. So, her signed witness 13:59
26 statement is at tab 2.

27 MS. McNALLY: And was this put to her.

28 MR. McDOWELL: well, this is her evidence, so...

29 MS. McNALLY: was it put to her?

1 MR. McDOWELL: No, it was his instructions.

2 MS. McNALLY: That wasn't put to her.

3 MR. McDOWELL: If you want to just deal with what she
4 says in evidence.

5 MS. McNALLY: Sorry, I am trying to stick with the 13:59
6 rules of evidence here. Apparently the de facto itself
7 witness statement wasn't put to her. I don't have to
8 recall anybody. One should -- if one is going to rely
9 upon the witness statement, one should put the witness
10 statement to her. 13:59

11
12 If you have a transcript of what her direct evidence
13 was, that's a separate issue. But if a statement is
14 going to be relied upon to be handed in, it should be
15 put to her. 13:59

16 MR. McDOWELL: well, all I am seeking -- I am seeking
17 to show the Committee what it was that Dr. Flynn based
18 his opinion, as written in his report on, and that was
19 the witness statement of witness A.

20
21 Ultimately witness A simply gave her evidence viva
22 voce, so I am happy only to rely on what she said in
23 her viva voce evidence and for Dr. Flynn then to opine
24 on that, if that's the course of action the Committee
25 want me to take. I am entirely in the Committee's 14:00
26 hands.

27 MS. McNALLY: I'm sorry, the witness statement should
28 have been put to her, and it wasn't put to her. I
29 don't want to have to recall her and have the witness

1 statement put to her. I mean how many days -- it
2 should have been put to her, particularly if there is a
3 divergence in any form of wording in it between what
4 she has given in direct evidence versus her witness
5 statement to the CEO.

14:00

6 MR. McDOWELL: I would just remind Ms. McNally that
7 Witness B was represented by Mr. Colleran, who
8 conducted a cross-examination of Witness A. If there
9 was any inconsistency that he wanted to exploit, that
10 was his option. But I don't understand how it is my
11 job to -- I actually don't understand the objection to
12 be honest. The whole purpose of the witness statement
13 is to give my Friend notice of what a witness is going
14 to say in their evidence in chief. That was satisfied,
15 Witness A gave her evidence-in-chief. I am happy to
16 rely only on the evidence-in-chief if that's what I am
17 being asked to do. But I don't actually understand the
18 suggestion that I should have put a witnesses own
19 witness statement to them. I mean I don't understand
20 what the purpose of that would have been, and I don't
21 understand why the objection is being taken.

14:00

14:01

14:01

22 MS. McNALLY: To now try and put in a created document
23 in evidence when it was not actually led, it is very
24 simple, all you had to do is say, is this your
25 statement, yes or no? And then ask that it be admitted
26 into evidence. That hasn't happened. It is a very
27 simple issue, but it is one that could have serious
28 ramifications in respect of the manner and method of
29 how this has been run. It should have been put to her

14:01

1 so that you can accept it in as evidence.

2
3 Her evidence that is before the Committee, because her
4 statement wasn't given to the Committee, is simply what
5 she said in the transcribed evidence on the day. 14:01

6
7 I am sorry if my colleague doesn't understand this, but
8 it should have been put, I am open to correction from
9 your legal assessor and from the Committee.

10 CHAIRPERSON: well, we are happy to take -- can I just 14:02
11 ask one of you to turn off your microphone for the
12 moment please. I am happy to take advice from
13 Mr. McGuinness on this matter. But I just want to
14 clarify one thing, because again we haven't had the
15 benefit of witness A's statement as a Committee. Have 14:02
16 you received witness A's statement, I just want to
17 clarify that first of all.

18 MS. McNALLY: Yes, I have it.

19 CHAIRPERSON: And I understand your objection is,
20 Dr. Flynn relied on witness A's statement to prepare 14:02
21 his report, and I presume one of you will ask Dr. Flynn
22 had he heard anything in his evidence that he has heard
23 that contradicts the information which he received.

24 MS. McNALLY: That in addition to, it is a procedural
25 issue as well. 14:02

26 CHAIRPERSON: I understand, and I am going to take
27 advice from Mr. McGuinness, but I just want to
28 establish that point first, that your objection is that
29 Dr. Flynn's report relies on a statement from witness

1 B.

2
3 I know that if neither of you ask Dr. Flynn the
4 question, I will be asking him, have you heard anything
5 in the course of this Inquiry so far that changes your 14:03
6 opinion?

7
8 So if neither of you do that, I will be doing that, but
9 I will invite now Mr. McGuinness, who is much more
10 expert in these matters than I to offer advice to the 14:03
11 Committee. And also just to say, I think Mr. McDowell
12 has very fairly said that he is willing to rely on the
13 witness statements, as recorded on transcript in his
14 questions, but I think your objection is more
15 fundamental, which is Dr. Flynn's report is based on a 14:03
16 witness statement.

17 MS. McNALLY: And it may be coloured by what is in a
18 statement that wasn't de facto the evidence that was
19 adduced.

20 CHAIRPERSON: I just wanted to establish -- 14:03

21 MS. McNALLY: Sorry, I keep forgetting to press that
22 button.

23 CHAIRPERSON: That's fine.

24
25 LEGAL ADVICE BY MR. MCGUINNESS:

26
27 MR. MCGUINNESS: Thank you, Chairman. The witness
28 currently in the course of giving evidence is an expert
29 witness, whose qualifications have not, at least not to

1 date been challenged in that regard.

2
3 As an expert witness, it is obviously both customary
4 and necessary for an expert witness to be furnished
5 with materials for him to consider, and on foot of 14:04
6 which he will found his opinion.

7
8 It is also of course common for the expert witness to
9 have regard to the actual evidence given before a
10 Committee or a tribunal or a court. 14:04

11
12 And in my advice to the Committee, the Committee is
13 entitled to hear from the expert witness what material
14 he had regard to and/or, if necessary, what weight, if
15 any, he gave to it, or as to whether and, if so, in 14:04
16 what way his opinion is in any way varied or changeable
17 dependent upon his having regard to the evidence as
18 actually given.

19
20 Accordingly, Chairman, in my advice to the Committee, 14:04
21 the Committee is entitled to hear evidence of what
22 Dr. Flynn considered.

23
24 Insofar as the controversy relates to Dr. A, Witness A,
25 and what evidence she gave, Witness A gave evidence and 14:05
26 was cross-examined by counsel, albeit different counsel
27 on behalf of the Registrant, Witness B.

28
29 Every opportunity was, in my advice to the Committee,

1 given to the Registrant at that stage to raise issues,
2 if any, with any inconsistencies between her statement
3 and/or her evidence, or any inconsistencies between her
4 evidence and her statement to Garda McPartlan.

5
6 It is appropriate to remind the Committee that the
7 Fitness to Practise Committee heard sworn evidence from
8 Garda McPartlan as to the making of and the content of
9 her statement to him on the occasion when she gave
10 evidence of her complaints against the Registrant, 14:06
11 Witness B, on that occasion.

12
13 It is not a matter, in my advice to the Committee, that
14 the Committee should make any assumption or presumption
15 as to what material Dr. Flynn took into account, 14:06
16 whether any of it is inconsistent with what is now
17 alleged to be the state of the evidence before the
18 Committee and/or the extent to which he may have
19 altered his opinion. All of these matters, which are
20 threefold, can be considered by the Committee either in 14:06
21 the course of examination or cross-examination, and
22 they are as follows:

23
24 The material available to him and the extent to which
25 he had regard to it. 14:06

26
27 Secondly, the evidence of the extent of witness A's
28 complaints.

29 And thirdly, the extent to which there is or may be any

1 alleged difference between that account of her evidence
2 and anything said by her, either in a statement that
3 has been admitted and put into evidence or not. And it
4 is a matter for the course of Dr. Flynn's evidence as
5 to whether he has any modification or a different view 14:07
6 or different weight to attach to any part of the
7 evidence which he has heard and any part of the
8 evidence upon which he formulated his opinion.

9
10 Should any necessity arise, or should any issue arise, 14:07
11 the Committee is free to take whatever course it wishes
12 at that point if time, if necessary, having heard
13 submissions from the parties in that regard.

14 CHAIRPERSON: Thank you, Mr. McGuinness. Mr. McDowell,
15 do you have any comments on Mr. McGuinness' advice? 14:08
16

17 SUBMISSION BY MR. McDOWELL:
18

19 MR. McDOWELL: No, I agree with it. And I think in my
20 mind I now have a way of approaching the issue which 14:08
21 might just avoid, which might just go around this
22 controversy, so maybe could we just see how we go, it
23 may be that Ms. McNally won't object to the way I
24 approach it now?

25 CHAIRPERSON: Before you do that, I just want to get 14:08
26 Ms. McNally's comments on...
27

28
29 SUBMISSION BY MS. McNALLY:

1
2 MS. McNALLY: with all due respect to my learned
3 colleague, I disagree with the advice. The point is
4 that this is now being led as evidence, but it hasn't
5 been proven, so therefore it is not evidence.

14:08

6
7 what is the evidence before you is what she said in her
8 transcript. And the transcript, unless I am mistaken,
9 if I have the correct dates, was Day 2, just bear with
10 me again, as I say I wasn't here on the days. So, Day
11 1, I have lost my book, the first day my understanding
12 was April as well, from my notes. And the second day
13 was 18th April, but this report is predating that. So
14 this report is entirely based upon a statement that has
15 not been proven as having been generated or approved by
16 Complainant A.

14:08

14:09

17 CHAIRPERSON: No, I do understand your objection, so
18 thank you for that. Mr. McDowell is suggesting he may
19 have an avenue around this.

20 MR. McDOWELL: Yes.

14:09

21 CHAIRPERSON: Can I ask what...?

22
23 SUBMISSION BY MR. McDOWELL:

24
25 MR. McDOWELL: Just so, I suppose, everybody is clear;
26 the witness statement is not evidence, but it is
27 relevant because it is the material on which Dr. Flynn
28 based his opinion. But when it comes to deciding
29 whether the allegations are proven as to fact, the only

14:09

1 thing in my respectful submission you should have
2 regard to is what witness A actually said, and the
3 content of her witness statement don't bear on whether
4 the allegations are proven as to fact.

5
6 But what I am going to do is approach the matter by
7 reference to witness A's evidence as given on Day 1 of
8 the Inquiry for the time being, and that might be
9 sufficient, so let's just maybe see how we go.

10
11 DR. FLYNN CONTINUED TO BE DIRECTLY EXAMINED BY MR.
12 McDOWELL AS FOLLOWS:

13
14 373 Q. MR. McDOWELL: So Dr. Flynn, you gave an opinion in
15 relation to Allegation 1 based on materials given to 14:10
16 you, which included witness A's witness statement,
17 isn't that right?

18 A. That's correct.

19 374 Q. And I am not going to open the witness statement to you
20 now, but I think it suffices to say that in the witness 14:10
21 statement witness A gave an account of what happened in
22 June and July between her and witness B, and I am going
23 to say no more about that for the time being?

24 A. Sorry, could you repeat that please?

25 375 Q. Sorry, in her witness statement she gave an account of 14:10
26 what she said occurred between her and witness B in
27 June and July of 2016?

28 A. Okay.

29 376 Q. But I am not going to open up that witness statement to

1 you, instead I am just going to show you what she said
2 in her oral evidence about that?

3 A. Okay.

4 377 Q. But on the basis of what was said in the witness
5 statement, you concluded in your report that witness B 14:10
6 was guilty of professional misconduct under both limbs
7 of the test?

8 A. On Allegation 1, correct.

9 378 Q. On Allegation 1. So now I am going to read to you what
10 Witness A said in her oral evidence, and that's Day 1, 14:11
11 page 133. So towards the top of page 133 at line 7 --
12 MS. McNALLY: I am sorry, you will have to... I can't
13 find, I had it earlier today, I don't know where my
14 transcript for Day 1 is gone, I may have left it in the
15 room. I am sorry about this. I had it marked. If you 14:11
16 could just give me two minutes and I will see if it is
17 in the room.

18 CHAIRPERSON: Take your time.

19

20 SHORT PAUSE IN THE HEARING

21

22 MS. McNALLY: Apologies, but I can't seem to find it
23 now. Okay plough on, sorry.

24 CHAIRPERSON: I have an electronic version, so there is
25 an electronic version of the transcript available, 14:12
26 would that be...

27 MS. McNALLY: I am old fashioned, everything has to be
28 paper and marked. I have it. The problem is it says
29 on the back Core Book and on the front transcript, so

1 my apologies.

2 CHAIRPERSON: No need to apologise.

3 379 Q. MR. McDOWELL: So, on page 133 of this transcript,
4 Dr. Flynn, I am asking Witness A questions. And to
5 orientate you, we have just dealt with the meeting of
6 15th April 2016 and the minute of that. And then at
7 line 16, I say:

8

9 "In any event I think you said that you understood that
10 the output of the meeting was that Witness B was to
11 leave you alone?

12 A: Yeah.

13 Q: Yes.

14 A: Yeah.

15 Q: Sorry, I interrupted your narrative, so if you want
16 to then go back to what you were describing?

17 A: So I had under assumption thought that he understood
18 to leave me alone and, you know, I wasn't receiving any
19 more messages at that point, so I thought that things
20 were kind of resolved. But then towards the end of the
21 rotation in June/July I kept, like, there was one
22 instance where I was on the ward on a computer and he
23 ended up standing in front of the computer behind the
24 desk on the corridor and he said, do you want to go for
25 tea? And I looked around and there was nobody else
26 around. And I was quite startled. And he kind of -- I
27 said, no. And then he goes, why? And I said, there is
28 no point. Just because I was so startled, but I think
29 there might even have been a text message, I am not

1 sure, but, you know, he was kind of -- he seemed to
2 want to meet up with me before I left. But then I was
3 under the impression that when I left that it was done
4 and there was no further -- it wasn't going to happen
5 again."

6
7 I think by way of commentary, I think witness A was
8 talking about leaving, she means leaving Mayo
9 University Hospital at the end of her rotation.

10
11 And then on page 134, moving down to line 13, question
12 21:

13
14 "Yes. And do you think that, or did you understand
15 that the purpose of the invitation for tea was to
16 discuss work related matters?

17 A: No, because we weren't involved in looking after the
18 same patients, and there were plenty of other people on
19 my team that he would have known, like, my registrar
20 and him, or the SHOs that he could have talked to that
21 were more senior than me. I felt like it was something
22 to do with the previous messages that he had sent.

23 Q: Yes. And had you given him any indication, or is
24 there anything you can think of that might have give
25 him an indication that you wanted to speak for him or
26 to go for tea with him?

27 A: No."

28
29 And that's all I want to open to you from that.

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So, on the basis of that evidence, are you satisfied to stand over your conclusion that Allegation 1 amounts to professional misconduct, Dr. Flynn?

A. On the basis of that transcript alone, no. 14:15

380 Q. You are not?

A. No.

381 Q. And do you want to explain why that is?

A. Well... so my opinion on the evidence that has been read is that it is not in keeping with the advice given at the meeting. 14:16

However, it was in public, on the ward, he shouldn't have asked it, but I don't think it would reach the -- witness A declined and there was no persistence in this single episode. So as a single episode, although it would have been an error of judgment for the doctor to do it, in my opinion that single episode would not reach the threshold to be regarded as professional misconduct. 14:16

382 Q. Yes. Thank you. So then, and then -- so that's your opinion in relation to that allegation taken individually, is that right?

A. That's correct.

383 Q. Yes. So, then Allegation 2 is that, and I am now on page 21 of your report: 14:17

"Notwithstanding one or more requests made by one or more members of staff and/or the Medical Manpower

1 Manager in the hospital on or around 15th April 2016
2 not to contact and/or approach Witness A, on one or
3 more occasions during the period between in or around
4 31st March 2017 and in or around 1st April 2017, you
5 sent one or more text messages and/or WhatsApp messages 14:17
6 and/or made one or more phone calls to Witness A, in
7 circumstances where you knew or ought to have known
8 that this was inappropriate and/or unwanted."
9

10 So, just looking at that evidence, could I ask you to 14:17
11 look at the Core Book if you have that before you. And
12 if I could ask you to go to tab 47?

13 A. It seems to just go -- sorry, I beg your pardon.

14 384 Q. It may be in the second volume?

15 MS. McNALLY: Book 2. 14:18

16 A. Okay.

17 385 Q. MR. McDOWELL: So again I want to -- so, you see that
18 allegation deals with firstly a phone call and second
19 of all text messages?

20 A. Yes. 14:18

21 386 Q. You see that. So I want to just deal with things in
22 sequence as witness A explained them. So, if I could
23 ask you to go back to Day 1, page 139 of the
24 transcript. Do you see at line 8 of page 139, so this
25 is witness A's description of the events of 31st March 14:19
26 2017, and she says:

27
28 "So then I was on the beach in Strandhill, roughly
29 around lunchtime the next day, and I was waiting for a

1 friend for a coffee. And I was on the phone to a
2 different friend when I got a phone call from an
3 unknown number, so I swapped over to the unknown number
4 and I said, hello. And I got this really faint voice
5 back saying, hello. And it was really low. And then I
6 said, you know, hello. And they said, hello. And I
7 was like, who is this? And I wasn't quite sure if I
8 had -- like, I think I asked it once or twice, but then
9 I think I heard Witness B. Like, it was so low, and it
10 was almost like he didn't even get to the end of the
11 word, it was like so whispered.

12
13 "So then I just had a shudder, and it all kind of made
14 sense then and I just said, I don't know I had a
15 reaction and I just said, this is the wrong number.
16 And he was like, no, it's not.

17
18 "So I hung up the phone absolutely terrified...".
19

20 Do you see that?

14:20

21 A. Yes.

22 387 Q. That was witness A's evidence in relation to the phone
23 call. And now then, again moving in sequence, I want
24 to deal with some text messages. So, if you could go
25 to tab 47 of the Core Book. So you see that this is a
26 text message from an English number which witness A
27 said she received on 31st March, and it says:

14:20

28
29 "Unblock me, I just want to talk, if okay with you let

1 me call, or at least reply on What up or Instagram,
2 please, please, H."

3
4 "Please can you unblock so at least I can talk,
5 please."

6
7 "Can you not please for God's sake meet me for five
8 minutes, please."

9
10 So, you see those messages?

14:21

11 A. I do, yes.

12 388 Q. And then if I could ask you to go forward to page 95,
13 if you have the same pagination as I do. Sorry, maybe
14 page 352 of 463?

15 A. Correct, yeah.

14:21

16 389 Q. So these are whatsApps that witness A says she received
17 from another number on the morning of 1st April 2017,
18 and they say:

19
20 "Witness A, when you want you text for stupid reason
21 and start giving stupid patient details. And when I
22 say truth on text you complain of me and make me item.
23 When you want you block me, then yourself unblock. You
24 gawk hourly when you want and when I approach you says
25 you don't see a point. Refuse to come for coffee and
26 then running behind me with watery eyes whole last day.
27 I can't understand you. I wait six months that maybe
28 you will realise ego and revenge ruin everything.
29 "Please don't give me pain and to yourself. I will be

14:21

1 waiting for you at 8pm tonight at Brasserie on the
2 Corner, seafood restaurant, at 25 Eglinton Street,
3 Galway. You can either come alone or with your friend,
4 but please do come as a friend, colleague or
5 whatsoever. Thanks and please unblock mine UK number
6 and Uk What'sup."
7
8 And then you see his first name. And then the same
9 text is sent again. Do you see that?
10 A. Mm-hmm. 14:22
11 390 Q. And then if I could just ask you to go back to finish
12 things off in terms of the chronology, if you go back
13 to page 351, witness A says that she wrote back to the
14 English number saying:
15
16 "You have already been told not to contact me. Do not
17 contact me again. I have spoken to police about this
18 and if you continue to contact me I will have to take
19 further action..." --
20 14:22
21 A. Sorry, where are you reading that from?
22 391 Q. Page 351 of the Core Book, this one?
23 A. 351 yeah, I see that, yeah.
24 392 Q. And you see that message in green?
25 A. Correct. 14:23
26 393 Q. So, had you seen those text messages when you compiled
27 your report?
28 A. I had.
29 394 Q. Yes. And in your report you say that Allegation 2

1 amounts to poor professional performance under --
2 sorry, professional misconduct under both limbs of that
3 term. Does that remain your view?
4 A. That remains my view, sir, yes.
5 395 Q. And could you explain to the Committee why that is your 14:23
6 view?
7 A. Again, the phone call and the text messages demonstrate
8 a serious error of judgment on behalf of the doctor.
9 It is unprofessional behaviour and conduct, and it in
10 my opinion is clearly not in keeping with the relevant 14:23
11 guide from the Guide to Ethics and Conduct from the
12 Irish Medical Council.
13
14 I suppose it might be helpful to Allegation 2, this is
15 persistent and more premeditated. It is not in the 14:23
16 course of, you know, his work where he may have been
17 passing by and had an impulsive action, this is, as I
18 say, premeditated and thought out.
19
20 The language used also, I thought was unprofessional: 14:24
21
22 "You text me for stupid reason and giving stupid
23 patient details."
24
25 well, you know, we are doctors and professionals and 14:24
26 our patient's details are not stupid in any way, shape
27 or form, you know.
28 Again the language used and the persistence of the
29 messaging is why I felt that this met the threshold to

1 be considered professional misconduct.

2 396 Q. Yes. And you are aware that in order to meet the
3 threshold of professional misconduct, the conduct in
4 question must be sufficiently serious?

5 A. That's correct. 14:24

6 397 Q. You are aware of that threshold requirement?

7 A. Yes.

8 398 Q. And do you regard the conduct in this instance as being
9 sufficiently serious to meet that threshold?

10 A. I do. 14:24

11 399 Q. Yes. Then if I could ask you then to move on to
12 Allegation 3, which is at page 122, and again the
13 preamble to all of these allegations is the same, so I
14 am not going to read that out to you again. But it is
15 that: 14:25

16

17 "Having been asked not to do so that on one or occasion
18 during the period between in or around 7th July 2017
19 and in or around 20th May 2019, you sent one or more
20 text messages and/or WhatsApp messages and made one or 14:25
21 more phone calls to Witness A, in circumstances where
22 you knew or ought to have known that it was
23 inappropriate and/or unwanted."

24

25 Do you recall that? So, I am just going to bring you 14:25
26 through the communications in question, Dr. Flynn. So
27 going back to the Core Book, if you could go to page
28 349. So you see on page -- sorry, I should say,
29 Dr. Flynn, this applies to all of the allegations, when

you see these text messages from different phone numbers, for the purpose of the exercise you assumed that it is witness B who is sending all of these texts, isn't that right?

A. That is correct. Sorry, I can't find that, is there a tab?

400 Q. Page 349, tab 48.

A. Sorry, I have it, thank you.

401 Q. Yes. So you see that this is a message which Witness A
says she got on 12th June 2018, and it says:

"Galway lady at work."

Do you see that?

A. I do, sir, yes. 14:26

402 Q. Yes. And then if you go forward to the next tab, tab 49, page 339, you will see that this is a screenshot witness A says of a call she got on a private number on 18th May 20:19. And then you will see that -- do you see that the time for that call is 4:33, 16:33?

A. Correct.

403 Q. Then over the page you see a WhatsApp message from a +1347 number, and I will just read out what those messages say. So the sender, who we say is Witness B, says:

"Still same still same no change voice bit better!!! It doesn't cost to reply..."

1 "Wanna meet you."

2
3 witness A replies saying:

4
5 "Who is this?"

6
7 Response:

8
9 "Does it matter. Where are u nowadays. Wanna meet
10 today. I don't bite "

11
12 witness A says:

13
14 "Who is this?"

15
16 "Guess, Witness A grow up. I will wait for your reply,
17 let me know. I am in Galway if you want to meet till
18 tomorrow. See u bye."

19
20 Question:

21
22 "Is this H?"

23
24 And then a response three emojis with a halo and a
25 smiley face:

26
27 "Will talk you later."

28 Do you see that?

29 A. I do, sir, yes.

1 404 Q. Then do you see on 18th May, sorry on the next page,
2 18th May 20:19, there is another missed call from a
3 private number at 19:38?
4 A. Yes, sir.
5 405 Q. Then do you see over the page on 19th May there are two 14:27
6 missed calls from a private number at 19:09 and 19:10?
7 A. Yes, sir.
8 406 Q. Then do you see over the page there are text messages
9 on 19th May 2019 between 18:40 and 18:44, and the text
10 messages read: 14:28
11
12 "Ok how many u will block. I am not H..., okay correct
13 spelling is...", a different spelling, "...btw do u
14 have any sister if u don't give line I will flirt with
15 her happy."
16
17 "Do u really hate me???"
18
19 "I don't believe."
20
21 "Can we meet in Roisin Dubh."
22
23 "One last time."
24
25 Then you will see on 19th May 2019 a missed call from a 14:28
26 private number.
27
28 And then you see on the next page, page 346, there is
29 another text from an 089 phone number:

1
2
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29

"Witness A I am sorry I don't know when I heart you so much that u start hating me so much I just don't want to lose my good colleague... Anyhow your choice I am in Roisin Dubh and leaving now and will come tomorrow here at 7 to 10. If you get time just think about coming. Take care yourself."

Do you see that?

A. I do, sir, yes.

14:29

407 Q. And then over the page you see a text message the next day, which is a web link to Roisin Dubh, and it says:

"Don't miss it, I will be waiting."

A. Yes, sir.

408 Q. And then on the next page you will see, this is page 348, on the same date from the same phone number, this time a whatsapp, it says:

"Witness A, u will come sure!!! Plzz just for few minutes."

"Plzzz Witness A do come. I am there plz confirm."

Do you see all that?

A. I see all that.

409 Q. So, again operating on the assumption that those messages and calls were indeed from witness A [sic],

1 what is your view of them with regard to professional
2 misconduct?
3 CHAIRPERSON: Witness B.
4 MR. McDOWELL: Excuse me?
5 CHAIRPERSON: The calls were from witness B. 14:29
6 MR. McDOWELL: Witness B, excuse me, yes.
7 A. So, it is my opinion that these text messages and calls
8 represent a serious failing and meet the threshold with
9 regard to professional misconduct with regards to
10 Allegation 3 under limb 1 and limb 2 of the definition 14:30
11 of professional misconduct.
12 410 Q. And why is that, Dr. Flynn?
13 A. They are persistent -- these particular messages even
14 without the context of the HR meeting at work, they are
15 persistent and menacing, clearly unwanted and 14:30
16 unprofessional. You know this is now how colleagues
17 communicate with each other, it is not, you know, the
18 standard of communication we expect between colleagues,
19 senior colleagues to junior colleagues. And you know,
20 like, it is menacing in my opinion: 14:30
21
22 "Ok how many u will block. I am not H..., okay correct
23 spelling is...", a different spelling, "...btw do u
24 have any sister if u don't give line I will flirt with
25 her happy."
26
27 "Do u really hate me???"
28 This is communication which I would expect witness A
29 would find frightening, and certainly in my opinion

1 unprofessional and meets the threshold to be regarded
2 as professional misconduct.

3 411 Q. Yes. And can I ask you this, Dr. Flynn, if the
4 Committee were to decide that they were not satisfied
5 that the private number phone calls were from witness 14:31
6 B, but that they were satisfied that the text messages
7 were from witness B, would that change your view?

8 A. No, my view would have been the same on the text
9 messages.

10 412 Q. Yes. Then going back to your report, Dr. Flynn, 14:31
11 Allegation 4 is quite similar to Allegation 3, so I am
12 looking at pages 23 and 24 of your report. And you
13 will see that the allegations here are that witness B
14 sought to meet with witness A in or around 18th May to
15 20th May 2019, do you see that? 14:32

16 A. I do, sir, yes.

17 413 Q. And in making that allegation against witness B, the
18 Chief Executive relies on the same factual material
19 that we have just looked at. You understand that?

20 A. I do, sir, yes. 14:32

21 414 Q. So, can you give your opinion on that allegation?

22 A. Again, it is my opinion that that is a serious error of
23 judgment, it is a serious failing, and it meets the
24 threshold to be regarded as professional misconduct by
25 limb 1 and limb 2 of the definition. 14:32

26 415 Q. Yes. And could you explain why that is so?

27 A. Because -- well, number one, witness A clearly does not
28 want to meet with witness B. And two, that has been
29 explained to witness A at the HR meeting. And I

1 suppose three, it is again persistent, you know, I am
2 coming, I am going to be there, I am here, there is
3 no -- there is nothing from witness A that would give
4 witness B the expectation that she is going to be
5 there, but the messages persist in my opinion in a 14:33
6 menacing manner and certainly in an unprofessional
7 manner. And it meets the threshold, therefore, in my
8 opinion to be regarded as professional misconduct.

9 416 Q. Thank you. So then Dr. Flynn, when you move on to
10 Allegation 5 in your report then, you see that this 14:33
11 allegation relates to contact between, alleged contact
12 between witness B and witness A in the period between
13 21st May 2019 and 19th July 2020. So, I am just
14 looking towards the top of page 25 of your report?

15 A. Correct, yeah. 14:33

16 417 Q. And just to draw to your attention that the preamble of
17 this allegation is slightly different, because now in
18 addition to what occurred at the meeting on 15th April
19 2016, reference is now also made to what the Gardaí
20 said to witness B on 20th May 2019. Do you see that? 14:34
21 You understand that?

22 A. I do, sir, yes.

23 418 Q. Just so that you understand; shortly after what
24 happened in May 2019, witness A then made a complaint
25 to the Medical Council against witness B, and that 14:34
26 complaint is the subject of this Inquiry. You
27 understand that?

28 A. I do, sir, yes.

29 419 Q. So then the time period in question for this allegation

1 is 21st May 2019 to 19th July 2020?

2 A. 21st May?

3 420 Q. The 21st May to 19th July 2020. And I would like you
4 to look at tab 50 of the Core Book please. So, these
5 are further messages which we say were sent by Witness
6 B to Witness A on 16th July and the 17th to 19th July
7 2020. The messages read as follows:

8

9 "Witness A, please don't block, contact me or allow me
10 to contact you. Please don't involve Gardaí. I beg
11 you, I will do whatever you say, I am missing you very
12 badly. Please talk to me. I can't do anything. Just
13 give me one chance. I will die without you."

14

15 "Don't be so cruel, just talk to me, I am in serious
16 stress, I need your support."

17

18 "I love you."

19

20 "I will die without you, don't do that."

21

22 "Simply reactivate your Instagram profile and I will
23 myself correct everything. You don't have to do
24 anything. I am not asking you for any romance, but at
25 least as a human you can give me this favour. If you
26 do want me to try for you, just don't block me. You
27 have enough proof to get me locked. It is up to you
28 what you want. I try to live without you and I fail.
29 I don't know about you, I can't live without you in

1 Ireland, so if you don't reply I will leave your
2 country. God bless you."

3
4 "I haven't seen for a while, upload your recent pics
5 and either add me or make it public. Let's go to Spain
6 and get Corona. Please forgive me. Any right is
7 always right. Big please. Where is any...".

8
9 Then on 17th July:

10
11 "You are ruining my life, please do communicate, I want
12 to sort out complaint what you want."

13
14 And then a full stop on 19th July 2020, do you see
15 that?

14:36

16 A. I do, sir, yes.

17 421 Q. So again you assumed for the purpose of your report
18 that these messages were sent by witness B to witness
19 A, is that right?

20 A. That's correct.

14:36

21 422 Q. And could you give the Committee your view as to
22 whether this amounts to professional misconduct?

23 A. It is my opinion that this is professional misconduct,
24 yes, that's correct.

25 423 Q. And could you explain to the Committee why that is your
26 conclusion?

14:36

27 A. Again these are persistent premeditated messages, they
28 seem to be escalating slightly in the content asking
29 for pictures, asking for access to her private social

1 media, you know, I suppose leveraging his own emotional
2 wellbeing into Dr. A replying, almost a blackmail type
3 scenario. And again it is a serious error of judgment
4 from Witness B. It is unprofessional communication,
5 and in my opinion it is professional misconduct with
6 regards to the relevant guides of the Medical Council's
7 guide to professional conduct.

14:37

8 424 Q. Yes. Then Dr. Flynn, Allegation 6 concerns
9 communications sent by Witness B to Dr. Clare Cullen
10 for the purpose of trying to establish contact with
11 Witness A. You are familiar with that?

14:37

12 A. I am, sir, yes.

13 425 Q. And you set out that allegation at page 26 of your
14 report?

15 A. Correct.

14:37

16 426 Q. So, I would like for you to look please at the Core
17 Book at tab 47. So, we looked at these messages a few
18 moments ago, these are messages which we say were sent
19 by Witness B, sorry by Witness B to Witness A on 31st
20 March and 1st April 2017.

14:38

21
22 But I wonder could you look at page 356 please. So,
23 what you are going to see now, what you are looking at
24 now is an exchange of WhatsApps between Witness B and
25 Clare Cullen, who is a former colleague and friend of
26 Witness A.

14:38

27 And in these messages, Witness B, these are sent on 1st
28 April, and Witness B says:

1 "Hi Clare, sorry to disturb you, if you kindly help me
2 in one regard, I did send stupid message to your friend
3 [Witness A] and she is very annoyed. Would you please
4 call her and if possible pass on my apologies. I never
5 meant to offend her but I don't know why always this
6 happen. Please I would highly appreciate if you do
7 this and please keep it up to you. Thanks, H."

8
9 And then on the next page he follows up:

10
11 "I am H from Castlebar if you remember. Can I call you
12 for a moment?"

13
14 Dr. Cullen says:

15
16 "No."

17
18 Then witness B says:

19
20 "Okay, will you please do this. I didn't say anything
21 stupid, I just asked her if she would like to come with
22 her friend for dinner but I don't know why she take
23 everything negative. Tell her I am not contacting her,
24 take it easy."

25
26 And her response is:

27 "H, I am not involved in this, don't message me
28 either."

1 So, just before I ask you for your opinion on those
2 messages, I take it that you have assumed for the
3 purpose of giving your opinion that the purpose of
4 those messages was to establish contact with witness A?

5 A. That is correct.

14:39

6 427 Q. And could you give your opinion then as to whether
7 these messages amounted to professional misconduct on
8 witness B's part?

9 A. It is my opinion that these messages do amount to
10 professional misconduct on behalf of witness B.

14:39

11 428 Q. Yes, and why is that?

12 A. Again, it is a premeditated attempt to contact witness
13 A through a third party. It shows very poor insight
14 into his behaviour to date. The fact that he has been
15 asked by HR, at this point I think the Gardaí as well,
16 not to send those messages. And also it is clear that
17 witness A does not want to receive the messages.

14:40

18 429 Q. Yes. Thank you. Then I wonder could you -- finally,
19 in terms of the first limb of the case I am going to
20 ask you to look at the statement of Dr. Shane Russell,
21 or the exhibits to his statement.

14:40

22
23 So, the first two pages are messages sent by, or an
24 exchange of messages between witness B and Dr. Russell
25 on 8th June and 9th June 2019. And just to orientate
26 you again, Dr. Russell and witness A were/are
27 colleagues and friends, and in and around the time of
28 this exchange of messages had either just commenced
29 living together or just about to commence living

14:41

1 together.

2
3 So on the CEO's case, Witness B says:

4
5 "Hi Shane, bring the key. Sorry I text the wrong
6 Shane."

7
8 Then Dr. Russell writes back saying:

9
10 "Who is this?"

11
12 He writes back saying:

13
14 "I am Witness B sorry, I have your number from the
15 past, sorry for disturbance."

16
17 Dr. Russell says:

18
19 "From when?"

20
21 And the response is:

22
23 "I don't know, if I see your face maybe it remind me.
24 TC bye. Are you doctor?"

25
26 Dr. Russell says:

27 "Yup."

28
29 And then witness B says:

1
2 "That may be, me too, where you work."
3

4 Then Dr. Russell says:
5

6 "ED."
7

8 And then witness B says:
9

10 "You works in ED, I works in meds. Maybe I recently
11 work in Tallaght. Do you work in Tallaght or Naas?"
12

13 And then on the next day on 9th June, witness B says:
14

15 "I just check you on Instagram, I think I know you from
16 Castlebar. Where do you work nowadays? I remember you
17 were preparing for exam that time."
18

19 And there is no response from Dr. Russell to that.
20

21 Then over the page you see on 22nd January 2020 that
22 witness B wrote to Dr. Russell saying:
23

24 "Hi Shane, how are you? Everything all right. I am in
25 Ireland, any room vacant."
26

14:42

27 Do you see those messages?

28 A. I do, sir, yes.

29 430 Q. So under Allegation 7 the CEO's case is that the

1 purpose of those messages from Witness B to Dr. Russell
2 was to establish contact with Witness A, in
3 circumstances where Witness B knew or ought to have
4 known that it was inappropriate or unwanted. So, could
5 you give the Committee your opinion as to whether that 14:42
6 amounts to professional misconduct?

7 A. I think if the Committee was to find that as fact, that
8 that would amount to professional misconduct.

9 431 Q. Yes. And could you explain to the Committee why that
10 is so? 14:43

11 A. Again it would be an effort by Witness B to make
12 contact or to move into Witness A's personal network,
13 in circumstances where he has been advised that this
14 should not happen and where it is clear that Witness A
15 does not want this. It is unprofessional behaviour and 14:43
16 in my opinion would be professional misconduct by the
17 relevant guide 21.1, I think, of the guide to ethics
18 and conduct for doctors.

19 432 Q. Yes. So, before I move on to the CPD allegations,
20 Dr. Flynn, your opinion is that each of Allegations 2 14:43
21 to 7 in the Notice of Inquiry individually amount to
22 professional misconduct, is that right?

23 A. That's correct.

24 433 Q. And in your report you set out the two definitions of
25 professional misconduct, so limb 1 is conduct which 14:43
26 doctors of experience, competence and good repute would
27 consider disgraceful or dishonourable. And limb 2 is,
28 conduct connected with his profession in which he has
29 seriously fallen short by commission of the standards

1 of conduct expected amongst doctors?

2 A. That is correct.

3 434 Q. And in respect of each of the Allegations 2 to 7, you
4 found that each limb is satisfied, is that right?

5 A. In my opinion that is correct. 14:44

6 435 Q. Going back then to -- sorry, I should also say in
7 respect of each of the Allegations 1 to 7 you were
8 asked to consider whether those allegations amounted to
9 poor professional performance, and you decided that
10 they did not amount to poor professional performance? 14:44

11 A. That is correct.

12 436 Q. So I won't say anything further about that. In
13 relation to Allegation 1, you gave your opinion to the
14 Committee that that does not amount to poor
15 professional performance individually. 14:44

16

17 when looked at in combination with Allegations 2 to 7,
18 or when Allegations 1 to 7 are looked at cumulatively,
19 do you think that Allegation 1 amounts to professional
20 misconduct? 14:44

21 A. No.

22 437 Q. No. Okay. So then -- so that's the first limb of the
23 case dealt with, Dr. Flynn. I then want to look at the
24 second limb of the case. So, Allegation 8 is that:

25

26 "Witness B, being a registered medical practitioner
27 during the period between in or around January 2017 and
28 in or around July 2020, failed to comply...", sorry, I
29 think that the wording of the allegation is actually

1 slightly different in your report from how it appears
2 in the Notice of Inquiry, so I will just read out what
3 the Notice of Inquiry says, if that's okay?

4 A. Okay.

5 438 Q. So it is that:

6
7 "He failed to comply with the Medical Council's
8 professional competence requirements in respect of the
9 following professional competence periods, and in doing
10 so contravened Section 94 (1) and/or (2) of the Medical 14:45
11 Practitioners Act 2007 and/or Rule 1 and/or Rule 2
12 and/or Rule 4 and/or Rule 5 of the Rules for the
13 Maintenance of Professional Competence, SI 171/2011."

14
15 And then five periods are set out, so those are the 14:45
16 periods of May '15 to April '16, May '16 to April '17,
17 May '17 to April '18, May '18 to April '19 and May '19
18 to April '20.

19
20 So before we look at the allegations, I wonder could 14:46
21 you give the Committee an idea as to why -- what the
22 purpose is of CPD and why it is important?

23 A. So, it is a process by which doctors are required to
24 complete continuing education in their relevant
25 speciality. Each doctor is required to spend 50 hours 14:46
26 a year on CPD, or to meet that requirement. It is
27 important because it is important that doctors be
28 up-to-date, medicine changes all the time. It also has
29 a requirement for a doctor to do an audit, an audit is

1 obviously an important quality assurance and
2 improvement tool.

3
4 There is a breakdown of the CPD hours that doctors are
5 required to do, there would be 20 internal points, 14:47
6 which generally doctors would normally find reasonably
7 easy to acquire because it is team meetings and, you
8 know, the end of the ward round meeting would counter,
9 you know, case reviews or journal clubs that would take
10 place. 14:47

11
12 And then there is 20 external points which would come
13 from normally educational bodies who would run meetings
14 and they would apply for external points. There is a
15 certain quality standard in being awarded the points, 14:47
16 so that would be 20 and 20.

17
18 And then there is I think five points for personal
19 reading. And there is one for compulsory audit as
20 well. So, like, it is an important tool to keep 14:47
21 doctors up-to-date, to reassure the public that your
22 doctors are up-to-date.

23
24 And there is a requirement for the doctors to log that,
25 and there are 20,000 doctors practising in Ireland. I 14:47
26 think it is important to, I suppose, reflect the fact
27 that it is part of your professional responsibility,
28 one to do the education, but number two, to log it.
29 You know 20,000 practitioners is a significant number

1 of practitioners in the country, and we have an
2 obligation, as I say, number one, to do the CPD, but
3 number two, to make sure it is logged correctly.

4 439 Q. Thank you, Dr. Flynn. And in broad terms the
5 obligations that you have just outlined there that fall 14:48
6 on medical practitioners are reflected in the rules
7 that are contained in SI 171/2011, isn't that right?

8 A. That's correct, yes.

9 440 Q. And I am going to open that SI to you in due course,
10 but I don't intend to do that with this witness. So, 14:48
11 the Committee has already heard evidence from witnesses
12 connected with the RCSI and the College of Physicians
13 in relation to Witness B's CPD registration. And in
14 broad terms the evidence that the Committee has heard
15 is that for the purpose of CPD, it is a requirement 14:49
16 that a medical practitioner be associated with or
17 registered with an accreditation body or a registration
18 body. Are you familiar with that?

19 A. That's correct, yes.

20 441 Q. And the evidence was that through those accreditation 14:49
21 bodies, the registered medical practitioner provides
22 evidence of their compliance with CPD obligations,
23 isn't that so?

24 A. That's correct.

25 442 Q. And is it correct to say that the requirements for CPD 14:49
26 are not only that the CPD is done, but that it is
27 proven to be done, isn't that so?

28 A. Yeah, that's what I was trying to explain. And I think
29 it is important, because there are 20,000

1 practitioners, that that onus remains with the
2 practitioners to log it professionally.

3 443 Q. Yes. So, the allegation at Allegation 8 is that in
4 respect of five consecutive years, that witness B did
5 not comply with the CPD requirements because he did not 14:49
6 produce evidence that he had done the requisite number
7 of CPD hours during those periods?

8 A. That's correct.

9 444 Q. Do you understand that?

10 A. Yes. 14:50

11 445 Q. So, if the Committee finds that to be true, what is
12 your view of that as regards poor professional
13 performance?

14 A. So, it would be my opinion if they found, if the
15 Committee was to find that as fact that that be would 14:50
16 be a serious failing, and that that serious failing
17 would meet the threshold to be regarded individually as
18 poor professional performance, you know, being a
19 failure to meet the standard of competence in knowledge
20 and skill or application of knowledge and skill 14:50
21 required of a practising doctor.

22 446 Q. And that's a definition you have taken from the 2007
23 Act I take it?

24 A. That's correct, yes.

25 447 Q. And then in relation to professional misconduct, what 14:50
26 is your view of this allegation?

27 A. Because the doctor logged only one hour in that time,
28 or one point, it is my opinion that that is conduct
29 that would meet the threshold to be regarded as

1 professional misconduct, because it is my opinion that
2 it is a serious failing that would meet the definition
3 of professional misconduct, as defined by limb 1. So,
4 it is my opinion that doctors of experience, competence
5 and good reputation would consider it disgraceful and 14:51
6 dishonourable that you would not log any hours of CPD
7 over that period.

8
9 And it is also my further opinion with regards to that
10 Allegation 8 that it is a serious failing, and it does 14:51
11 amount to professional misconduct by limb 2 of the
12 definition, that is, it is in my opinion conduct
13 connected with his profession in which he has seriously
14 fallen short by omission of the standards of conduct
15 expected among doctors, because there was no CPD for 14:51
16 the time period.

17
18 I think that you know was there -- it is the fact that
19 there is none. You know, if there was some, I think
20 that we would be remaining with poor professional 14:52
21 performance. But the fact that there is none in my
22 opinion, it does meet the threshold, because this is an
23 implement to ensure standards. And it is why doctors
24 remain a trusted profession within the -- within
25 Ireland. And it is important that the tools that are 14:52
26 is there to ensure that trust is maintained or
27 respected by the profession. So, that is why I think
28 that this means professional misconduct as well as poor
29 professional performance.

1 448 Q. Thank you, Dr. Flynn. And can I ask you this, if the
2 Committee were to conclude that it was satisfied that
3 witness B had not fulfilled his CPD requirements for
4 the periods '18, '19 and '20, but didn't reach that
5 conclusion in relation to the periods '16 and '17. So 14:53
6 in other words, if they were only satisfied that the
7 case was proven in respect of three of the five periods
8 alleged, would that change your view?
9 A. My opinion would be the same.
10 449 Q. Yes. 14:53
11 A. And can I just -- can I add something? I think it is
12 relevant that in the period May '19 to April '20, there
13 was one external point logged which shows that, like,
14 the doctor did know how to log it, You know, so, you
15 know, it wasn't as if there was a knowledge or a gap in 14:53
16 the process, there was a point logged and then there
17 was just nothing else after that.
18 MR. McDOWELL: Thank you, Dr. Flynn, you might answer
19 any questions Ms. McNally has for you.
20 14:53
21 DR. FLYNN WAS CROSS-EXAMINED BY MS. McNALLY AS FOLLOWS:
22
23 450 Q. MS. McNALLY: I take it that your findings are premised
24 upon the presumption that all of the matters stated by
25 witness A are factually correct? 14:54
26 A. So, the findings are based on the -- sorry, the report
27 and the opinion is really based on the instruction that
28 I was to take the facts, or the allegations as proven.
29 451 Q. To take the allegations as true?

1 A. As proven, yeah.

2 452 Q. Sorry, proven?

3 A. Proven, yeah.

4 453 Q. Proven, my apologies. So, obviously if unproven, or
5 not proven beyond reasonable doubt, then your findings 14:54
6 may be different?

7 A. That is correct.

8 454 Q. Okay. So, for example, if I go back to that tab 47,
9 which is the tab of the various screenshots?

10 A. In this? 14:55

11 455 Q. In the big book, Core Book 2.

12 A. Yes, miss.

13 456 Q. So for example, if that was proven not to be --

14 A. What exact page?

15 457 Q. Sorry, page 50, the very first one there? 14:55

16 A. Yes, miss.

17 458 Q. So the page there, it is from an English number?

18 A. Mm-hmm.

19 459 Q. And has that been proven to you that that belongs to
20 Mr. B, witness B? 14:55

21 A. Is it proven to me?

22 460 Q. Yeah.

23 A. No.

24 461 Q. And just in respect of page 2 of that, it says at the
25 very start of it there, an English no. 1950. We are 14:55
26 told by type underneath:
27 "Reply sent by A, 217, 1st April at 11:11. Instagram,
28 please."
29

1 And there is a spelling there of a name, H?

2 A. Mm-hmm.

3 462 Q. But we know that that is not the correct spelling of

4 his name, don't we?

5 A. Again, miss, if -- when you say it says it is not the 14:56

6 correct spelling, that would be correct, yes.

7 463 Q. Just even in respect of the Inquiry, the correct

8 spelling of his name I am presuming is correct?

9 A. Yeah.

10 464 Q. Whereas it is not correct in that text that we are 14:56

11 being told came from witness B, but the spelling there

12 of the name is incorrect, isn't that correct?

13 A. Yes, miss.

14 465 Q. And then on the following page, 252?

15 A. 352, miss. 14:56

16 466 Q. So, if you just compare 252, bear with me now?

17 A. Page 252, miss, is it?

18 467 Q. Yes, it's the next page. So underneath on mine, the

19 tab, it says, 352 of 463, have you got that?

20 A. Yes, miss, yeah. 14:57

21 468 Q. Just bear with me so I get the right tabs here. So,

22 that's a number that's not an Irish number, it is

23 253289-0459, isn't that correct?

24 A. That's correct, miss.

25 469 Q. And it is quite a long text, isn't that correct? 14:57

26 A. That is correct, miss.

27 470 Q. And then the spelling there is different to spelling

28 again on another page, which is tab 49?

29 A. What spelling, miss, sorry, exactly?

1 471 Q. Witness A's name?
2 A. Correct, miss, yeah.
3 472 Q. So you see there on the top of that page 252, it is
4 spelt in a particular way?
5 A. I do, miss, yeah. 14:57
6 473 Q. And then yet on another page at page 341 --
7 A. 341, miss?
8 474 Q. Yeah, at tab 49, it would be what you might call the
9 correct spelling, or at least I am open to correction
10 on which is the correct spelling, but it is spelt 14:58
11 differently there in the middle of it, "or grow up"?
12 A. Yes, miss, I see that.
13 475 Q. So, there is no continuity there of spelling, isn't
14 that correct, for example?
15 A. That seems to be the case, miss, yes. 14:58
16 MR. McDOWELL: I wonder could I just object formally to
17 these questions. I mean, Ms. McNally is undoubtedly
18 entitled to challenge the CEO's factual evidence. And
19 for example, she is entitled to try and make the case
20 to you that her client did not send these text 14:58
21 messages, and I have no issue with her making that case
22 if she wants to make that case. But I am not sure how
23 this witness could ever have admissible evidence to
24 give on those questions, and I am not sure it is his
25 function to sit here and have spelling inconsistencies 14:58
26 pointed out to him. He is here to give his expert view
27 as to whether or not the facts, as alleged, constitute
28 professional misconduct. And if the starting premise,
29 which Ms. McNally wishes to advance, is that the facts,

1 as proven -- sorry, as alleged are not correct, well
2 then really this witness's function falls away to a
3 large degree.
4

5 So, I just -- obviously Ms. McNally is entitled to make 14:59
6 the argument, but I just think that this is actually
7 not the correct mechanism or forum for that argument to
8 be made. And really her cross-examination should be
9 focused on the opinion that he gave on the assumption
10 that the facts were proven rather than an effort to 14:59
11 persuade you or persuade him that the CEO's case isn't
12 strong.

13 MS. McNALLY: I just realised I didn't have that red
14 button on at all, or green button when I was
15 questioning --

16 CHAIRPERSON: I will have to get Mr. McDowell to --

17 MR. McDOWELL: Sorry.

18 CHAIRPERSON: It's unfortunate it can only be two at
19 any one time.
20

21 SUBMISSION BY MS. McNALLY:
22

23 MS. McNALLY: Sorry. In respect of this, my
24 understanding is I am entitled to put this and I need
25 to put this because this witness has given his 14:59
26 professional opinion based upon information that was
27 provided to him and surely he noticed these issues in
28 the documentation when you were going through it and I
29 will be coming to that, as to whether he noticed it or

1 not.

2 CHAIRPERSON: Okay, I will invite Mr. McGuinness if
3 there is anything he would like to tell us that we
4 should take into -- clearly you have a different view.
5 My understanding is that --

15:00

6 MS. McNALLY: It is leading up to questions that I will
7 further be putting -- sorry, it is leading up to
8 questions I will further be putting to this witness,
9 but they are all building up to my questioning of what
10 he has found at the end of the day.

15:00

11 CHAIRPERSON: I will invite Mr. McGuinness' wise
12 counsel.

13
14 LEGAL ADVICE BY MR. McGUINNESS:

15
16 MR. McGUINNESS: Chairman, thank you. Obviously a
17 witness being cross-examined when they are an expert
18 witness, the cross-examiner is entitle to explore the
19 basis on which the opinion has been formed and is
20 entitled to, as it were, raise issues which might or
21 could or possibly tend to undermine either the validity
22 of the opinion or the basis upon which it has been
23 reached.

15:00

24
25 If that is understood to be the purpose of the
26 cross-examination, my advice to the Committee is that
27 that cross-examination is permissible.

15:01

28
29 However, it is impermissible to cross-examine in an

1 attempt to prove that what is being put forward as the
2 basis of the invalidity is the truth of what occurred.
3 The truth of what occurred is yet to be determined in
4 terms of its accuracy depending upon the evidence that
5 the Committee may hear.

15:01

6
7 So in my submission and my advice to the Committee is
8 that Ms. McNally is entitled to put matters which tend
9 to or she believes have the capacity to impugn his
10 methodology or the validity of his opinion, but it
11 doesn't make the facts asserted in the question true as
12 to their content.

15:01

13 CHAIRPERSON: Thank you, Mr. McGuinness. Ms. McNally,
14 any objections to that advice?

15 MS. McNALLY: No, no, none whatsoever.

15:02

16 CHAIRPERSON: And, Mr. McDowell.

17 MR. McDOWELL: Not for the time being, Chairman, no,
18 thank you.

19 CHAIRPERSON: So you may continue, Ms. McNally.

20
21 DR. FLYNN CONTINUED TO BE CROSS-EXAMINATION BY MS.
22 McNALLY AS FOLLOWS:

23
24 476 Q. MS. McNALLY: I am much obliged. Just I'll jump
25 straight to the point because I am going to go through
26 the other ones with you as well, in your evidence and
27 your findings you refer to the persistence of these
28 communiques, isn't that correct?

15:02

29 A. That is correct, yes.

1 477 Q. But the persistence would only arise if it is proven
2 beyond reasonable doubt that the provenance of all of
3 this communication is witness B, isn't that correct?
4 A. Sorry, can you explain provenance to me please?
5 478 Q. The start of it all, the catalyst, the person who 15:02
6 created it.
7 A. The sender.
8 479 Q. Yes.
9 A. Yes, that's correct.
10 480 Q. That's the reason I am pointing out these 15:02
11 inconsistencies. So if there is an inconsistency
12 and/or if it is proven, or not proven but if it is not
13 proven beyond reasonable doubt that they came from
14 witness B, then that persistence falls away, doesn't
15 it? 15:03
16 A. That would be correct, miss, if that's true.
17 481 Q. And similarly so regarding your use of the word
18 "menacing", that too would fall away, isn't that
19 correct?
20 A. In relation to the individual messages, miss, yes. 15:03
21 482 Q. Individually or cumulatively, isn't that right?
22 A. Correct. Do you want me to comment on the spelling on
23 the text?
24 483 Q. No, no, I think the Committee have my point, which is
25 where I was coming to. 15:03
26 A. But I haven't had a chance to reply to your point
27 though if that was okay, miss.
28 484 Q. well, no.
29 A. No?

1 485 Q. I am going to keep questioning.
2 CHAIRPERSON: It's your cross-examination so --
3 486 Q. MS. McNALLY: No, I am going to keep questioning you, I
4 am not done yet.
5 A. Okay. 15:03
6 487 Q. And then at the tab 48 for example in the big book.
7 A. Yes, miss.
8 488 Q. That's an 086 4174381 number and again there is no,
9 nothing on that document that suggested it came from
10 Witness B, isn't that correct? 15:04
11 A. That's correct, miss.
12 489 Q. And similarly so on the following page, which is tab
13 49, no caller ID, isn't that correct?
14 A. That's correct, miss.
15 490 Q. And then the interpretation that has been put on texts, 15:04
16 communicates that Mr. -- sorry that Dr. Russell
17 received, I will just find the exact, bear with me now.
18 So these are communicates of the 8th June 2019 and on
19 the following day, 9th June, isn't that correct, the
20 first two pages? 15:05
21 A. That's correct, yes, miss.
22 491 Q. And again the suggestion that this is somehow
23 endeavouring, these ones, endeavouring to make contact
24 with Witness A. It is:
25
26 "Hi Shane, bring the key. Sorry I text the wrong
27 Shane.
28
29 "Who is this?"

1 And then the next three lines when read together:
2
3 "I am H sorry, I have your number from the past, sorry
4 for disturbance."
5
6 And then question:
7
8 "From where?"
9
10 and that's at 21:48. And then at 21:48: 15:06
11
12 "I don't know, if I see your face maybe it remind me.
13 to bye. Are you doctor?"
14
15 21:49, all in the space of a minute. And then "yup" is 15:06
16 the answer and then witness B -- sorry, the text:
17
18 "That may be, me too, where you works."
19
20 "ED."
21
22 "You works in ED, I works in meds. Maybe I recently
23 work in Tallaght. Do you work in Tallaght or Naas?"
24
25 And then there is nothing in there mentioning witness 15:06
26 A?
27 A. That is correct. However, I suppose if I might address
28 the Committee, so I can't help the Committee with the
29 factual evidence that's being -- I'm being

1 cross-examined on. I prepared my opinion based upon
2 the facts being proven and I would submit that it's the
3 Committee's role to decide on the facts. I can't say
4 that any more than you can say listening to the
5 evidence. So I'm happy to offer an opinion if that is 15:07
6 what the Committee instructs me to do but my opinion is
7 based on the facts being proven and my opinion will
8 remain unchanged the facts being proven; if the facts
9 are not proven, of course there's interpretation of it
10 and the opinion changes. Is that reasonable, that 15:07
11 opinion?

12 492 Q. Thank you for that. My point to you is if it was in
13 around 22nd January 2020 you sent one or more texts or
14 WhatsApp messages to Dr. Russell for the purpose of
15 finding out if there was a room available, if that was 15:07
16 the query that was put to you in the Inquiry, what do
17 you think your answer would be?

18 A. I think that, I think that is out of context of --

19 493 Q. That wasn't what I asked you, I just asked you a simple
20 question. 15:08

21 A. But my reply is that what you're putting to me is out
22 of the context.

23 494 Q. Why is it out of context?

24 A. Because it's not as if Dr. Russell is unknown to
25 Witness A. Dr. Russell is known to Witness A. So I 15:08
26 can answer a hypothetical question that you're putting
27 to me but the context is that Dr. Russell and Witness A
28 were housemates at the time.

29 495 Q. You see all this is conjecture and speculation, your

1 findings.

2 A. No --

3 496 Q. Based upon --

4 A. Sorry --

5 497 Q. well, sorry, let me just finish the question. 15:08

6 A. No, with respect can I --

7 498 Q. well, let me just finish the question.

8 A. No, but you didn't ask a question, you made a

9 statement.

10 499 Q. No --

11 A. You made a statement that my findings were based on

12 conjecture, which is --

13 500 Q. Let me finish.

14 A. I would like to --

15 501 Q. If you just let me finish.

16 A. Okay.

17 502 Q. Based on the conjecture and presumption that is

18 presented by the CEO that the provenance of all of this

19 is in fact witness B, they have given you a

20 particularly skewed version of events that has given 15:08

21 rise to the answers that you have given here, the

22 findings.

23 A. So my findings, and again I would repeat, are based on

24 the allegations being proven. So I will not pretend to

25 be a telecommunications expert. My expertise is in 15:09

26 healthcare and it's I would say up to the process of

27 the Committee to decide on the facts. If I can be

28 helpful towards deciding on the facts, I would like to

29 do so.

1 503 Q. That wasn't what I was putting to you.
2 A. Put it to me again and I will answer the question, I
3 don't mean to avoid your question.
4 504 Q. Pardon?
5 A. I said I don't mean to avoid your question.
6 505 Q. No, no, no, I am not for a moment suggesting you are.
7 A. If you rephrase it, I would be happy --
8 506 Q. But my point is your answer is only as good as the
9 information that's fed to you, isn't that correct?
10 It's going to be premised upon that information, isn't 15:09
11 that correct?
12 A. I suppose that's true about all decisions, all
13 opinions.
14 507 Q. But it is not the full story.
15 A. You are saying that it is not the full story. 15:09
16 508 Q. Well, the person who is going to decide if this is the
17 full story or not is the Committee. But all you have
18 been given is to believe and accept 110% that all of
19 this, the provenance of all of this, without
20 challenging it yourself, that that is not your role, 15:10
21 that all of this is 110% correct.
22 A. So --
23 509 Q. But if it is the other way round.
24 A. We are talking around in circles now. I have explained
25 and stated a number of times that my opinion is based 15:10
26 on the allegations being proven and if they are not
27 proven, well then of course the opinion is not the
28 same. Is that reasonable?
29 CHAIRPERSON: One point I'd just like to kind of

1 clarify that came up in your recent exchange, so just
2 in that exchange there, Dr. Flynn had said that there
3 was a context to this text message to Dr. Russell and
4 you said that witness A and Dr. Russell were
5 housemates.

15:11

6 A. Or soon to be housemates.

7 CHAIRPERSON: Or soon to be housemates, at which point
8 you were interrupted by Ms. McNally who said this was
9 conjecture. So just for the avoidance of any doubt, as
10 I understand it we have had evidence from witness A and 15:11
11 from Dr. Russell that they were intending to be
12 housemates.

13 MS. McNALLY: What I meant was the whole presentation
14 to him of here is a box read it and give it your
15 answer. That's the conjecture.

15:11

16 CHAIRPERSON: I just think it's important in an
17 exchange that you interrupted --

18 MS. McNALLY: Oh sorry.

19 CHAIRPERSON: -- Dr. Flynn at the point where he said
20 that they were housemates and that's not in dispute i 15:11
21 don't think, is it?

22 MS. McNALLY: No, no, it is not disputed, no.

23 CHAIRPERSON: I just wanted to get that clarified.

24 MS. McNALLY: Sorry, not disputed at all.

25 CHAIRPERSON: Thank you.

15:11

26 510 Q. MS. McNALLY: But I am trying to get to you can only
27 arrive at the conclusion that there was a nexus between
28 Dr. Russell and witness A because you were told there
29 was, isn't that correct?

1 A. Well, that's the evidence.

2 511 Q. Yeah, but it is a particular -- it allows for a
3 particular view then of those texts that if read in
4 another way are simply texts that are saying is there a
5 room available kind of thing, isn't that it? And I am 15:12
6 paraphrasing when I say that.

7 A. That's your opinion.

8 512 Q. My opinion. You have only been presented with the
9 evidence here at the Inquiry itself from the CEO
10 witnesses thus far? 15:12

11 A. That's correct, yeah, witnesses that have either been
12 in person or online or read the transcripts of all of
13 the witnesses to date.

14 513 Q. Okay, and you had a Notice of -- you have the Notice of
15 Inquiry itself? 15:12

16 A. I'm sure.

17 514 Q. I call it the charges. So it wasn't your role to look
18 to the wording in that and seek to amend it in any way,
19 you just simply went with the wording that's in that
20 Inquiry? 15:13

21 A. Well, is that a question for the CEO, the process by
22 which they --

23 515 Q. No, no, I am asking you this is what was given to you,
24 this Notice of Inquiry, and you don't in any way amend
25 it afterwards or anything like that or have any issue 15:13
26 with them and their wording in it when it is presented
27 to you or by the time you give your opinion at the end?

28 A. Perhaps the CEO might help if that's okay from my
29 memory because it can be that a report is produced and

1 the Notice is either amended or is produced subsequent
2 to the report. I think in this case I got a Draft
3 Notice of Inquiry for the Fitness to Practise
4 Committee, I don't think there was anything for PPC on
5 my behalf. 15:14

6 516 Q. Okay.

7 A. But to be fair, miss, I can't remember the exact
8 process by which that occurred.

9 517 Q. Okay. Just bear with me, I'm sorry. And you had the
10 transcripts you said of the evidence as well? 15:15

11 A. Not, not up to here, miss, but I have them.

12 518 Q. Oh you have them since.

13 A. I've been provided with them, yes.

14 519 Q. Okay. So that report as you say was dated...?

15 A. My report, miss, is it? 15:16

16 520 Q. Yes.

17 A. My report is dated 24/3/2023.

18 521 Q. For example on page 143 of the transcript for Day 2,
19 which is the evidence of the --

20 A. I don't have that. 15:16

21 522 Q. -- complainant, I mean you have had all the
22 transcripts?

23 A. I beg your pardon, sorry, they are here, I beg your
24 pardon. Day 2 miss?

25 523 Q. Just for example there on page -- 15:16

26 A. On what page?

27 524 Q. Page 143, it's when witness A was being asked about
28 those communications.

29 A. What line, miss?

1 525 Q. Pager 143, and in her own words, the words that jumped
2 out at me there, she herself says:
3
4 "I can't say for certain",
5
6 twice in her evidence she said that. But it is there
7 on page 143.
8 A. What line, miss?
9 526 Q. And that was on line 7. So the question was:
10
11 "Yes, okay, and you made a comment about the word
12 "personnel" that appeared in the advertisement",
13
14 these are these "I am a Galway lady", it is those texts
15 or communiques that's being referenced. 15:17
16
17 "And you made an observation about the phone number
18 used in the advertisement."
19
20 A. Are you reading the evidence, because I can't follow 15:17
21 it?
22 527 Q. Yes, sorry, it's on the previous -- I am reading the
23 question and then I am coming to the answer, my
24 apologies. So page 142 it starts and then the answer
25 is on page 143. 15:17
26
27 "Q. Yes, okay, and you made a comment about the word
28 "personnel" that appeared in the advertisement and you
29 made an observation about the phone number used in the

1 advertisement. These two things aside, how do you
2 connect that advertisement with Witness B?

3
4 "A. I just don't know of anyone else who would try and,
5 you know, damage my reputation and, you know, like,
6 obviously I had absolutely no interest in this sort of
7 business or behaviour and I don't know anyone who would
8 try and pretend that I did other than someone who was
9 already accusing me of, you know, pretty outrageous
10 things before and the only person I know who is doing
11 that is Witness B. But I can't say for certain."

12
13 Did you take that kind of evidence into consideration
14 before this afternoon from witness A?

15 MR. McDOWELL: Before the witness answers that
16 question, could I be heard in relation to that if you
17 don't mind, Chair. So what witness A was addressing
18 there were what I referred to as the Viva Street
19 advertisements. So these are the advertisements that
20 appeared on what seemed to be an escort website or
21 something of that nature and the Committee has heard
22 evidence about that before. But ultimately that didn't
23 form part of the allegation and respectfully I don't
24 think Ms. McNally is correct to say that the evidence
25 that witness A was giving there connects to the text
26 messages saying "Galway lady at work". I think those
27 are two distinct aspects of the case. So I just want
28 to draw that to the Committee's attention because
29 Dr. Flynn didn't actually consider any allegations

15:18

15:19

15:19

1 connected to Viva Street because there are no
2 allegations connected to Viva Street.

3 CHAIRPERSON: Thank you.

4 MS. McNALLY: He's been reading the transcript. So my
5 question to him is about the transcript. 15:19

6 528 Q. So considering evidence of that nature, did you take
7 that into consideration in advance of today for example
8 or are you just, the opinion is just entirely accepting
9 of everything that is presented to you by the CEO and
10 you're simply asked to do that without any stress 15:19
11 testing by you?

12 A. So again the instruction -- can I answer that in two
13 bits? To repeat then, the instruction I was given was
14 to give an opinion on the allegations as proven. That
15 was the instruction I was given and that's the written 15:20
16 instruction in my letter of instruction. So that's the
17 first thing. And then the second I suppose limb to --
18 just ask me the question again, miss, sorry, so I'm
19 unclear.

20 529 Q. Well, it was whether or not you had given any 15:20
21 consideration to evidence of that nature having read it
22 in the transcripts in advance of today.

23 CHAIRPERSON: Just before you answer that just to say
24 as I understand there is no allegations, as
25 Mr. McDowell has said, about that specific point that 15:20
26 was presented in the evidence here. Dr. Flynn has
27 written and submitted his report I think he said in....

28 A. '23.

29 CHAIRPERSON: '23. So maybe the question is there, are

1 there -- evidence he heard during the course of this
2 Inquiry but clearly he has written the report before,
3 he has based his opinion written on --
4 MS. McNALLY: Yes.
5 CHAIRPERSON: Based on the report.
6 MS. McNALLY: But I've asked him had he given any
7 consideration to the evidence he's heard in the Inquiry
8 and in the transcripts in advance of today.
9 CHAIRPERSON: And you specifically directed him to
10 that. 15:21
11 MS. McNALLY: Just that as an example.
12 CHAIRPERSON: So maybe just to frame the question that
13 but just bear in mind the fact that that's not one of
14 the allegations against --
15 530 Q. MS. McNALLY: well, I'm actually going to just jump to 15:21
16 the next question; you were requested to prepare an
17 independent report?
18 A. That's correct, yeah.
19 531 Q. Independent for whom?
20 A. So the opinion is independent on the allegations being 15:21
21 proven. If they are not proven, the opinion --
22 532 Q. well, it's not independent if you're doing it for one
23 side. It's not exactly an expert report if it's simply
24 setting forth view of one side. Experts in ordinary
25 hearings -- 15:21
26 A. So the expert view here is in relation to the conduct
27 if it's proven. I'm not an expert in
28 telecommunications, I'm not an expert in reasonably
29 complicated evidence but I am an expert in medical

1 practitioners' conduct.

2 533 Q. Being given before there has been any finding and
3 allegedly an independent report but not independent in
4 the usual format of an expert report would be in
5 litigation as such. 15:22

6 A. In answering your question, my attendance at Day 1 and
7 Day 2 and my reading of the transcripts didn't change
8 my opinion. That was the question you asked. So my
9 opinion wasn't changed by the evidence that I heard.

10 534 Q. So when it says independent report, it is not an 15:22
11 independent report, it's a report --

12 A. It is independent, it is independent.

13 535 Q. But it's not. Have you given medical evidence in
14 court?

15 A. Yes. 15:22

16 536 Q. Okay, and who is your duty to in respect of that?

17 A. The Court.

18 537 Q. The Court.

19 A. The Court.

20 538 Q. And you give it in respect of all of the evidence 15:22
21 available to you, medical evidence available to you in
22 respect of reports, isn't that correct?

23 A. That's correct.

24 539 Q. But in this instance it's not an independent report
25 because you're just accepting -- 15:23

26 A. No.

27 540 Q. -- verbatim what has been said to you by the person
28 giving the instruction.

29 A. The opinion is if the allegations are proven, do they

1 meet the threshold to be regarded as either poor
2 professional performance or professional misconduct.

3 541 Q. Surely the time for this report should be after there's
4 any finding?

5 A. Well, that's a procedural matter for the CEO and 15:23
6 yourself.

7 542 Q. It just goes to show you the one way it's been skewered
8 and skewed, not skewered.

9 A. So can I just ask the Committee that if that's a slur
10 on my reputation as an expert, I would like it to be 15:23
11 withdrawn.

12 543 Q. No, no --

13 CHAIRPERSON: I didn't take it a slur but I understand
14 you might be sensitive to the way it was phrased. So i
15 don't think it was intended to be -- 15:23

16 MS. McNALLY: No, absolutely not. No issue. My point
17 is with the CEO and the way it's been presented.

18 CHAIRPERSON: So I think Dr. Flynn has been clear to us
19 that the basis of --

20 MS. McNALLY: And if necessary, if Dr. Flynn feels in 15:23
21 any way I was disparaging of him as an expert witness
22 in the course of one being an expert witness, no, but
23 in respect of this report prepared for the CEO where I
24 will have objections ultimately to it being incredibly
25 one-sided because of the way it's been presented by the 15:24
26 CEO. But that's a different thing. But you
27 personally, no, and please accept my apology if you did
28 interpret anything I was saying --

29 A. No, I accept that it wasn't.

1 544 Q. -- as being disparaging of you. My apologies, sorry.
2 CHAIRPERSON: Mr. McDowell, any matter you want to
3 redirect on?
4 MR. McDOWELL: I don't think I have any questions in
5 redirect but I think that if it is going to be 15:24
6 suggested to you at a later stage that -- so I
7 understand obviously Ms. McNally is going to take issue
8 with the factual allegations and that's her entitlement
9 but if it is going it suggested later on that there was
10 something wrong with the instructions given to the 15:24
11 witness, to the expert and that his report or his view
12 would therefore be impugned, I think that that problem
13 should be identified now in cross-examination so that
14 we are all clear about it. I don't think it is
15 satisfactory that you are left with the impression that 15:25
16 the CEO has done something wrong in the way he has
17 instructed the expert but that that problem or that
18 wrongness is not identified now.
19 MS. McNALLY: I don't think I can be any clearer.
20 MR. McDOWELL: well, if the wrongness is simply that 15:25
21 the facts are proven --
22 MS. McNALLY: It's been skewed. This shouldn't be
23 presented now, it should be presented later after you
24 have made a finding of fact if those facts are borne
25 out. It's done for one particular reason -- sorry, not 15:25
26 by you, doctor. It's been done for one particular
27 reason, to blacken and to taint. It should not be
28 happening at this juncture of the proceedings.
29 MR. McDOWELL: If the objection is at that sort of

1 level of principle, then that's fine and I have no
2 questions for Dr. Flynn.

3
4 QUESTIONING BY THE COMMITTEE:

5
6 545 Q. MS. DEVINS: Dr. Flynn, may I ask you just one question
7 in relation to Allegation 8 and the CPD points?

8 A. Yes, miss.

9 MS. DEVINS: Did I understand you to say that in one
10 year, namely '19 to '20, one CPD point was given or
11 obtained, is that correct?

12 A. That's correct, miss.

13 MS. DEVINS: And did I also understand you to say that
14 represents ten hours?

15 A. No, one hour.

16 MS. DEVINS: One hour, and how would that arrive?

17 A. The doctor would complete an hour and would --

18 MS. DEVINS: An hour of what though?

19 A. It was external points. So you would get a certificate
20 for that. So external -- so you've got internal CPD
21 which is by its nature internal in the practice, it can
22 be case reviews, practice meetings, project improvement
23 in the local team or unit. And then you've got
24 external CPD which is generally done by educational
25 bodies and they apply for external accreditation, for
26 external points and they produce -- you normally get a
27 certificate to validate that you have that -- normally
28 you always get a certificate to validate that you have
29 attended at that external CPD. So that the doctor had

1 one such hour of external CPD and logged it in that
2 year.

3 MS. DEVINS: Have you ever seen one hour?

4 A. well, they generally come in slots of an hour but for
5 an external it does tend to be more but it could be one 15:27
6 hour. Like, You know, there would be, like, commonly
7 lunchtime online external CPD hours and you'd get a
8 certificate for one hour or in the evenings perhaps.
9 But generally they could be Saturdays and Sundays where
10 you get maybe five hours, six hours for one event. 15:27

11 MS. DEVINS: Great, thank you very much.

12 CHAIRPERSON: So, I will ask my Committee colleagues,
13 do we have any other questions for Dr. Flynn?

14 DR. DAVIN-POWER: I have one question please,
15 Dr. Flynn. With regard to, and I am back to the CPD 15:27
16 again, it is an obligation for doctors to undertake CPD
17 in order to remain a registered medical practitioner.

18
19 when you apply online to renew your medical
20 registration with the Medical Council, is there a 15:28
21 declaration as you go through your application to say
22 that you undertake to do the requisite CPD?

23 A. Yes, there is. I think the wording of the declaration
24 may have changed in the course of the years that we are
25 looking at here. It was initially that you would 15:28
26 declare that you were registered with the CPD body, but
27 that you weren't self-declaring that you had the
28 requirement complete. It has now changed that you
29 would declare that you have the satisfactory completion

1 of CPD.

2 DR. DAVIN-POWER: Right, thank you.

3 A. Thank you.

4 CHAIRPERSON: Dr. Flynn, this is out of an abundance of
5 caution; I think you said several times that your 15:28
6 report is based on the presumption that the facts has
7 been proven, and if they are proven then you opine
8 whether they are professional misconduct or poor
9 professional performance?

10 A. That is correct. 15:28

11 CHAIRPERSON: Ms. McNally referred to two things; for
12 the avoidance of any confusion she talked about an
13 independent report and highlighted that it might be
14 premature to have an expert report opining that
15 position until such time as the facts have been proven 15:29
16 or not. I think that's the thrust of your argument?

17 MS. McNALLY: Yes, Chair.

18 CHAIRPERSON: So first, to be clear, it is no criticism
19 of you and your work, but can I just ask again; during
20 the course of this Inquiry, having listened and 15:29
21 watched, or having read transcripts, is there any
22 matter that has come to your attention that would cause
23 you to change your opinion based on...

24 A. Well, clearly I changed my opinion on Allegation 1 --

25 CHAIRPERSON: Yes.

26 A. -- and I think that shows a reflective expert who was
27 open to change their mind, which is the privilege of
28 the expert in my understanding. And other than that,
29 no, there is nothing that would change my mind.

1 CHAIRPERSON: That's very helpful, thank you very much.
2 And I very much appreciate your report and the clarity
3 of it. Is there any matter that arises?

4 MR. McDOWELL: No. Thank you, Dr. Flynn.

5 MS. McNALLY: No, thank you.

15:30

6 CHAIRPERSON: Thank you very much for your time, I know
7 we have inconvenience you a lot with various days, but
8 it is very much appreciated that you made yourself
9 available. Take care.

10 DR. FLYNN: Thanks, Committee.

15:30

11
12 THE WITNESS WITHDREW

13
14 MR. McDOWELL: So Chair, that's the Chief Executive's
15 case.

15:30

16 CHAIRPERSON: Thank you very much. Does any matter
17 arise before we conclude?

18 MS. McNALLY: Just to advise, I am hoping to have a
19 consultation now with my client where we hope to be
20 able to identify by name witnesses that we hope to be
21 calling Thursday and Friday or whatever days they are
22 available.

15:30

23
24 One I gather, I don't have their names, I haven't had
25 an opportunity to take down names and addresses, one I
26 gather would be remote and one in person, and I will
27 get the identities and I will share them obviously with
28 Mr. McDowell and whoever then needs the information, I
29 am not sure do I give it to you or the secretariat or

15:30

1 something.

2 CHAIRPERSON: Two matters I want to address: One, the
3 planned resumption on Thursday, are we assuming a
4 10 o'clock start, is that acceptable to the parties?

5 MS. McNALLY: whatever suits.

15:31

6 MR. McDOWELL: Yes.

7 CHAIRPERSON: And the second thing, I just want to
8 invite Mr. McGuinness to give us some advice as well
9 just before we conclude.

10
11 LEGAL ADVICE BY MR. MCGUINNESS:

12
13 MR. MCGUINNESS: Thank you, Chairperson. In the
14 context where the Committee is now adjourning to the
15 next stage of the proceedings, and in the context where 15:31
16 the Chief Executive and his counsel have confirmed that
17 that is their evidence in the case, subject to possible
18 issues of rebuttal if evidence is called, I want to
19 formally advise the Committee that at this stage they
20 ought to not deliberate on any fact and issue in the 15:31
21 Inquiry and to entirely reserve judgment until they
22 have heard whatever evidence, if any, may be proffered
23 on behalf of the Registrant, because obviously it would
24 be wholly inappropriate to give any consideration of
25 any sort to reaching any conclusion or discussing the 15:32
26 basis upon which any conclusion might be brought.

27 Thank you.

28 CHAIRPERSON: Thank you very much. So, I think if
29 there is no other matters then we will adjourn for the

1 evening and we will see you at 10 o'clock on Thursday.
2 So, thank you for your time today.
3

4 THE HEARING WAS ADJOURNED TO 10AM, THURSDAY, 13TH
5 FEBRUARY 2025
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'15 [2] - 11:29, 147:16 '16 [9] - 12:3, 12:4, 89:20, 90:9, 110:10, 147:16, 152:5 '17 [3] - 147:16, 147:17, 152:5 '18 [3] - 147:17, 152:4 '19 [6] - 68:20, 147:17, 152:4, 152:12, 175:10 '20 [4] - 147:18, 152:4, 152:12, 175:10 '21 [1] - 103:29 '23 [2] - 170:28, 170:29 083 [1] - 29:1 086 [1] - 160:8 089 [1] - 133:29 0910.. [1] - 16:29 1 [31] - 82:14, 83:10, 83:12, 83:15, 94:12, 99:10, 104:9, 109:2, 110:4, 111:17, 119:11, 120:7, 120:15, 121:8, 121:9, 121:10, 121:14, 124:3, 125:23, 135:10, 136:25, 145:25, 146:7, 146:13, 146:18, 146:19, 147:10, 147:11, 151:3, 172:6, 177:24 10 [5] - 3:6, 92:11, 134:6, 179:4, 180:1 100 [1] - 4:4 101 [1] - 53:14 102 [1] - 4:6 105 [1] - 4:8 107 [1] - 4:11 10AM [1] - 180:4 10TH [1] - 6:2 10th [1] - 103:13 110% [2] - 164:18, 164:21 111 [3] - 10:19, 11:17, 26:14 112 [2] - 26:16, 27:5 113 [1] - 28:10 114 [1] - 28:28 115 [2] - 4:13, 29:27	116 [1] - 34:21 118 [2] - 4:15, 4:17 119 [1] - 4:19 11:11 [1] - 153:27 12 [1] - 109:7 120 [1] - 4:22 122 [1] - 130:12 12th [3] - 103:7, 103:16, 131:10 13 [4] - 43:21, 43:27, 70:20, 123:11 133 [3] - 121:11, 122:3 134 [1] - 123:11 1347 [1] - 131:23 139 [2] - 125:23, 125:24 13TH [1] - 180:4 13th [1] - 104:7 142 [1] - 168:24 143 [5] - 167:18, 167:27, 168:1, 168:7, 168:25 15 [2] - 107:4, 107:10 15-minute [1] - 81:29 152 [1] - 4:23 156 [1] - 4:25 157 [1] - 4:27 158 [1] - 4:30 15th [20] - 75:24, 77:4, 77:10, 77:25, 78:14, 87:21, 87:28, 90:1, 91:14, 91:25, 92:14, 92:16, 93:18, 93:25, 94:2, 103:9, 110:19, 122:6, 125:1, 137:18 16 [3] - 55:15, 109:23, 122:7 16.. [1] - 55:18 16:33 [1] - 131:20 16th [12] - 41:1, 87:12, 87:23, 89:27, 91:13, 91:23, 91:26, 92:9, 92:10, 92:11, 103:14, 138:6 171/2011 [2] - 147:13, 149:7 175 [1] - 4:31	179 [1] - 5:1 17th [3] - 104:3, 138:6, 139:9 18 [2] - 41:3, 109:25 18:38 [4] - 19:13, 33:14, 44:17, 44:29 18:39 [3] - 16:29, 44:22, 44:29 18:40 [2] - 44:29, 133:9 18:42 [1] - 44:29 18:44 [1] - 133:9 18:49 [1] - 44:29 18:50 [1] - 45:10 18th [7] - 103:17, 104:5, 119:13, 131:19, 133:1, 133:2, 136:14 19 [5] - 40:21, 41:3, 70:20, 109:26, 110:8 1950 [1] - 153:25 1997 [1] - 100:8 19:09 [1] - 133:6 19:10 [1] - 133:6 19:21 [1] - 18:2 19:38 [1] - 133:3 19:47 [1] - 59:19 19th [8] - 133:5, 133:9, 133:25, 137:13, 138:1, 138:3, 138:6, 139:14 1pm [2] - 82:12, 83:6 1st [15] - 17:13, 18:25, 19:12, 29:25, 33:13, 41:1, 43:11, 58:8, 75:11, 75:13, 125:4, 127:17, 140:20, 140:27, 153:27 2 [30] - 10:19, 11:18, 16:24, 53:14, 53:15, 55:20, 73:13, 99:10, 111:21, 111:26, 119:9, 124:25, 125:15, 128:29, 129:14, 135:10, 136:25, 145:20, 145:27, 146:3, 146:17, 147:10, 147:11, 151:11, 153:11, 153:24, 167:18,	167:24, 172:7 20 [4] - 148:5, 148:12, 148:16 20,000 [3] - 148:25, 148:29, 149:29 20/11/2020 [1] - 103:23 2003 [1] - 100:11 2006 [2] - 86:15, 86:16 2007 [4] - 6:6, 6:10, 147:11, 150:22 2010 [1] - 86:18 2015 [3] - 53:21, 58:2, 58:3 2016 [38] - 16:1, 16:11, 27:17, 27:18, 30:9, 30:11, 30:12, 33:9, 33:10, 33:17, 73:28, 75:24, 77:26, 78:14, 79:25, 79:26, 86:21, 87:12, 87:21, 87:28, 88:16, 89:14, 89:15, 90:1, 90:6, 90:8, 91:16, 91:22, 91:25, 92:15, 97:11, 110:19, 111:9, 120:27, 122:6, 125:1, 137:19 2017 [19] - 14:27, 17:7, 17:13, 18:25, 19:12, 27:16, 29:25, 30:10, 33:9, 33:13, 39:28, 43:11, 125:4, 125:26, 127:17, 130:18, 140:20, 146:27 2018 [3] - 35:14, 58:21, 131:10 2019 [38] - 35:14, 41:6, 54:5, 56:12, 58:21, 58:25, 59:19, 60:11, 64:13, 64:17, 66:21, 66:26, 75:6, 75:7, 75:14, 78:24, 79:2, 89:22, 89:23, 90:3, 97:3, 97:4, 98:15, 103:6, 103:8,	103:9, 103:12, 130:19, 133:9, 133:25, 136:15, 137:13, 137:20, 137:24, 138:1, 142:25, 160:18 2019" [1] - 75:2 2020 [28] - 54:5, 58:25, 59:20, 59:28, 60:19, 60:28, 66:5, 67:5, 103:13, 103:14, 103:15, 103:16, 103:17, 103:19, 103:20, 103:21, 103:22, 103:24, 103:25, 104:19, 137:13, 138:1, 138:3, 138:7, 139:14, 144:21, 146:28, 162:13 2021 [8] - 103:27, 103:28, 104:1, 104:2, 104:3, 104:6, 104:8, 104:9 2022 [1] - 58:9 2023 [11] - 41:1, 41:14, 75:11, 75:13, 91:8, 91:13, 91:15, 91:21, 101:28, 107:28 2024 [2] - 6:2, 106:2 2025 [1] - 180:5 20:19 [2] - 131:19, 133:2 20th [8] - 97:4, 98:15, 98:18, 103:18, 103:20, 130:19, 136:15, 137:20 21 [3] - 111:14, 123:12, 124:26 21.1 [1] - 145:17 217 [1] - 153:27 21:46 [1] - 56:26 21:47 [1] - 63:1 21:48 [3] - 63:2, 161:10 21:49 [2] - 57:16, 161:15 21st [13] - 68:19, 75:2, 75:6, 75:7, 89:24, 90:3, 98:19, 103:6, 103:21, 137:13, 138:1, 138:2, 138:3	22 [2] - 59:7, 59:14 22nd [6] - 59:19, 59:27, 60:19, 104:9, 144:21, 162:13 23 [1] - 136:12 233 [1] - 43:23 24 [1] - 136:12 24/3/2023 [1] - 167:17 24th [3] - 101:27, 104:18, 107:28 25 [2] - 128:2, 137:14 252 [4] - 154:14, 154:16, 154:17, 155:3 253289-0459 [1] - 154:23 25th [1] - 103:26 26 [1] - 140:13 26th [1] - 66:26 2nd [1] - 103:28 3 [6] - 99:11, 102:6, 103:24, 130:12, 135:10, 136:11 319 [2] - 10:13, 10:29 31st [5] - 104:1, 125:4, 125:25, 126:27, 140:19 326 [1] - 10:29 333 [1] - 53:13 339 [2] - 53:13, 131:17 341 [2] - 155:6, 155:7 346 [1] - 133:28 348 [1] - 134:18 349 [2] - 130:28, 131:7 351 [3] - 128:13, 128:22, 128:23 352 [3] - 127:14, 154:15, 154:19 35383172169 [1] - 17:1 355 [1] - 91:1 356 [3] - 16:25, 16:26, 140:22 357 [2] - 16:23, 16:26 365 [1] - 68:13 3rd [1] - 103:15 4 [4] - 54:25, 99:11, 136:11, 147:12
--	--	--	--	--	---

40 [1] - 3:7 4174381 [1] - 160:8 42 [1] - 3:9 421 [1] - 55:1 43 [1] - 3:12 45 [1] - 3:13 463 [3] - 16:23, 127:14, 154:19 47 [6] - 16:22, 16:24, 125:12, 126:25, 140:17, 153:8 48 [2] - 131:7, 160:6 482 [1] - 102:25 49 [4] - 131:17, 154:28, 155:8, 160:13 4:33 [1] - 131:20 4G [1] - 73:4 4th [1] - 103:22 5 [4] - 92:8, 99:11, 137:10, 147:12 50 [5] - 3:14, 52:1, 138:4, 147:25, 153:15 51 [1] - 74:5 53 [1] - 3:17 5th [1] - 103:29 6 [6] - 6:6, 11:19, 55:3, 102:6, 111:10, 140:8 63 [2] - 55:1 66 [1] - 3:18 6:30pm [2] - 77:11, 93:25 6th [3] - 103:11, 103:25, 104:19 7 [11] - 94:12, 109:2, 121:11, 134:6, 144:29, 145:21, 146:3, 146:7, 146:17, 146:18, 168:9 70 [1] - 3:20 71 [2] - 3:22, 3:24 73 [1] - 3:27 7th [1] - 130:18 8 [7] - 6:6, 109:4, 125:24, 146:24, 150:3, 151:10, 175:7 80 [1] - 3:28 86 [1] - 3:31 8pm [1] - 128:1 8th [12] - 55:28, 56:12, 59:18,	60:18, 61:2, 64:12, 64:16, 66:20, 104:1, 106:1, 142:25, 160:18 9 [2] - 79:8, 92:9 90 [1] - 3:32 900 [1] - 55:20 91 [1] - 73:15 93 [1] - 78:17 94 [1] - 147:10 95 [1] - 127:12 98 [1] - 4:1 9th [12] - 57:22, 59:19, 60:18, 64:13, 64:16, 66:21, 91:7, 91:12, 142:25, 144:13, 160:19 A's [16] - 15:16, 15:22, 26:17, 90:11, 110:29, 111:13, 114:15, 114:16, 114:20, 117:27, 120:7, 120:16, 125:25, 126:22, 145:12, 155:1 able [8] - 46:25, 47:8, 48:8, 49:25, 50:28, 67:9, 75:17, 178:20 absolutely [5] - 39:1, 45:8, 126:18, 169:6, 173:16 abundance [1] - 177:4 accept [5] - 89:1, 114:1, 164:18, 173:27, 173:29 acceptable [1] - 179:4 accepted [1] - 38:19 accepting [2] - 170:8, 172:25 access [8] - 34:6, 34:17, 34:28, 35:2, 43:10, 55:24, 71:17, 139:29 accommodatio n [1] - 59:13 accommodatio ns [1] - 59:1 accomplished [1] - 12:14 according [2] -	29:20, 33:11 accordingly [1] - 116:20 account [4] - 117:15, 118:1, 120:21, 120:25 accreditation [3] - 149:17, 149:20, 175:25 accuracy [2] - 22:24, 158:4 accurate [3] - 13:23, 17:22, 94:1 accusing [1] - 169:9 achieves [1] - 42:27 acquire [1] - 148:7 Act [5] - 6:6, 6:10, 6:11, 147:11, 150:23 acting [1] - 86:15 action [4] - 77:24, 80:21, 112:24, 129:17 action.. [1] - 128:19 actual [3] - 6:19, 18:18, 116:9 add [3] - 81:16, 139:5, 152:11 added [3] - 65:17, 65:20, 94:28 adding [1] - 21:23 addition [4] - 53:13, 74:26, 114:24, 137:18 address [2] - 161:27, 179:2 addresses [1] - 178:25 addressing [1] - 169:17 adduced [4] - 12:27, 16:25, 104:20, 115:19 adjourn [2] - 107:10, 179:29 ADJOURNED [4] - 82:6, 83:19, 107:14, 180:4 adjourning [1] - 179:14 adjournment [1] - 106:15	adjudication [1] - 108:21 admissible [1] - 155:23 admitted [3] - 69:12, 113:25, 118:3 advance [4] - 155:29, 170:7, 170:22, 171:8 advertisement [5] - 168:12, 168:18, 168:28, 169:1, 169:2 advertisement s [2] - 169:19 advice [20] - 7:14, 7:16, 7:18, 42:8, 42:19, 70:25, 114:12, 114:27, 115:10, 116:12, 116:20, 116:29, 117:13, 118:15, 119:3, 124:10, 157:26, 158:7, 158:14, 179:8 ADVICE [10] - 3:9, 3:20, 4:13, 4:27, 5:1, 42:10, 70:14, 115:25, 157:14, 179:11 advise [5] - 70:7, 88:21, 99:13, 178:18, 179:19 advised [7] - 26:18, 26:20, 76:23, 76:29, 93:7, 93:15, 145:13 affirmed [1] - 84:9 AFFIRMED [1] - 86:1 afforded [1] - 24:13 afraid [2] - 74:2, 74:4 AFTER [1] - 84:1 afternoon [7] - 84:3, 84:11, 86:4, 90:23, 99:4, 100:4, 169:14 afterwards [2] - 64:20, 166:25 ago [14] - 13:22, 17:16, 23:12, 23:24, 28:4, 30:17, 36:12, 36:17, 37:9,	73:18, 74:23, 79:12, 140:18 agree [3] - 48:22, 48:23, 118:19 agreed [1] - 8:10 agreeing [1] - 53:5 albeit [2] - 79:4, 116:26 Allegation [24] - 109:2, 109:4, 110:4, 120:15, 121:8, 121:9, 124:3, 124:25, 128:29, 129:14, 130:12, 135:10, 136:11, 137:10, 140:8, 144:29, 146:13, 146:19, 146:24, 150:3, 151:10, 175:7, 177:24 allegation [13] - 110:26, 124:22, 125:18, 136:17, 136:21, 137:11, 137:17, 137:29, 140:13, 146:29, 150:3, 150:26, 169:23 Allegations [5] - 145:20, 146:3, 146:7, 146:17, 146:18 allegations [29] - 6:7, 52:17, 85:2, 108:22, 108:28, 109:14, 109:24, 109:26, 110:1, 119:29, 120:4, 130:13, 130:29, 136:13, 145:19, 146:8, 147:20, 152:28, 152:29, 163:24, 164:26, 169:29, 170:2, 170:14, 170:24, 171:14, 171:20, 172:29, 174:8 alleged [12] - 16:18, 38:11, 94:19, 97:20, 97:22, 108:17, 117:17, 118:1, 137:11, 152:8, 155:27, 156:1 allegedly [3] - 16:14, 37:10, 172:3	alleges [1] - 21:7 allow [4] - 24:22, 50:13, 95:21, 138:9 allowed [5] - 13:27, 23:4, 24:1, 24:3, 24:13 allowing [1] - 24:19 allows [1] - 166:2 almost [2] - 126:10, 140:2 alone [5] - 21:13, 122:11, 128:18, 124:5, 128:3 altered [1] - 117:19 amend [2] - 166:18, 166:24 amended [2] - 6:22, 167:1 America [1] - 54:17 amount [6] - 142:9, 145:8, 145:21, 146:10, 146:14, 151:11 amounted [2] - 142:7, 146:8 amounts [5] - 124:3, 129:1, 139:22, 145:6, 146:19 amplify [1] - 42:16 AND [2] - 82:6, 107:14 Annette [13] - 73:24, 73:29, 75:23, 75:27, 76:9, 77:15, 78:7, 78:10, 78:23, 78:25, 79:1, 84:9, 93:29 ANNETTE [2] - 3:30, 86:1 Annette's [1] - 79:6 annoyed [2] - 19:24, 141:3 annual [2] - 77:12, 93:26 anonymised [10] - 6:15, 6:16, 9:5, 9:8, 52:15, 52:16, 52:17, 72:9, 72:10, 84:23 answer [29] -
--	--	---	---	---	--

13:8, 15:9, 21:18, 23:4, 24:1, 24:14, 24:16, 24:19, 24:20, 24:22, 27:5, 42:5, 45:17, 70:26, 74:13, 74:19, 90:17, 94:29, 152:18, 161:16, 162:17, 162:26, 164:2, 164:8, 165:15, 168:23, 168:24, 170:12, 170:23 answered [1] - 28:4 answering [2] - 34:13, 172:6 answers [4] - 84:26, 86:8, 163:21, 169:15 any... [1] - 139:7 Anyhow [1] - 134:4 anyway [4] - 53:10, 82:20, 85:15, 87:24 apart [1] - 12:12 apologetic [3] - 76:27, 88:24, 93:14 apologies [17] - 10:6, 11:4, 19:25, 30:16, 50:1, 53:6, 64:29, 67:28, 92:5, 92:17, 107:11, 121:22, 122:1, 141:4, 153:4, 168:24, 174:1 apologise [4] - 76:28, 88:28, 93:15, 122:2 apology [4] - 77:1, 89:2, 93:17, 173:27 appear [9] - 8:16, 19:18, 53:12, 58:15, 58:16, 68:23, 78:3, 96:28, 102:23 appearances [1] - 7:21 appeared [3] - 168:12, 168:28, 169:20 appearing [3] - 68:9, 68:10, 86:5 appended [5] -	43:14, 55:10, 70:20, 87:9, 87:10 application [3] - 44:3, 150:20, 176:21 applications [1] - 8:4 applies [1] - 130:29 apply [3] - 148:14, 175:25, 176:19 appreciate [9] - 19:27, 67:28, 81:6, 81:11, 84:25, 84:28, 95:17, 141:6, 178:2 appreciated [2] - 83:17, 178:8 approach [7] - 78:15, 110:13, 110:22, 118:24, 120:6, 125:2, 127:24 approached [1] - 110:14 approaching [1] - 118:20 appropriate [5] - 21:20, 22:3, 22:4, 22:5, 117:6 approved [1] - 119:15 approvement [1] - 175:22 April [46] - 17:13, 18:25, 19:13, 29:25, 33:14, 43:11, 75:24, 77:4, 77:25, 78:14, 79:26, 87:12, 87:21, 87:28, 88:16, 89:20, 90:1, 90:9, 91:13, 91:14, 91:24, 91:25, 91:27, 92:9, 92:10, 92:11, 92:14, 93:18, 94:2, 110:19, 119:12, 119:13, 122:6, 125:1, 125:4, 127:17, 137:18, 140:20, 140:28, 147:16, 147:17, 147:18, 152:12, 153:27	argument [3] - 156:6, 156:7, 177:16 arguments [1] - 7:11 arise [6] - 7:12, 89:22, 118:10, 159:1, 178:17 arises [2] - 51:14, 178:3 arising [8] - 14:17, 45:23, 73:13, 86:21, 86:28, 89:11, 90:9, 109:14 arrange [1] - 91:4 arrangement [1] - 90:10 arrive [2] - 165:27, 175:16 articulating [1] - 104:28 AS [19] - 6:1, 10:1, 40:9, 43:1, 45:20, 50:24, 53:1, 66:13, 73:1, 82:6, 84:1, 86:2, 90:20, 100:2, 107:14, 107:24, 120:12, 152:21, 158:22 ascertain [1] - 49:25 aside [2] - 82:18, 169:1 aspects [2] - 71:29, 169:27 asserted [1] - 158:11 assessor [6] - 7:5, 7:7, 7:9, 7:18, 84:18, 114:9 assigned [1] - 102:3 assist [3] - 7:10, 46:26, 103:2 assistance [2] - 11:5, 55:16 assisted [1] - 42:25 assisting [1] - 37:15 assists [1] - 48:11 associated [1] - 149:16 assumed [5] - 38:19, 38:23,	131:2, 139:17, 142:2 assuming [3] - 24:9, 33:18, 179:3 assumption [6] - 17:5, 108:17, 117:14, 122:17, 134:28, 156:9 assurance [2] - 101:8, 148:1 attach [2] - 58:18, 118:6 attached [5] - 58:15, 71:16, 102:25, 106:8, 106:21 attempt [2] - 142:12, 158:1 attempted [3] - 103:18, 110:12, 110:13 attendance [13] - 7:10, 52:9, 84:21, 85:17, 98:23, 102:19, 103:7, 103:8, 103:11, 103:12, 103:14, 104:4, 172:6 attended [2] - 7:26, 175:29 attention [20] - 40:17, 40:20, 64:16, 67:11, 70:19, 76:17, 76:26, 86:23, 86:24, 88:23, 89:20, 89:21, 93:2, 93:9, 96:17, 97:20, 109:15, 137:16, 169:28, 177:22 audio [2] - 86:7, 95:26 audit [3] - 147:29, 148:19 August [13] - 33:8, 33:17, 68:19, 75:2, 75:6, 75:7, 75:14, 103:6, 103:19, 103:20, 103:21, 103:22, 104:19 authorities [1] - 63:25 authority [1] - 78:5 available [25] - 9:3, 22:16, 22:17,	22:25, 22:26, 22:27, 50:18, 51:17, 52:13, 52:22, 67:27, 72:4, 81:5, 81:6, 82:11, 90:29, 104:21, 117:24, 121:25, 162:15, 166:5, 172:21, 178:9, 178:22 avenue [2] - 25:4, 119:19 avenues [2] - 32:5, 49:27 avoid [3] - 118:21, 164:3, 164:5 avoidance [2] - 165:9, 177:12 awarded [1] - 148:15 aware [10] - 13:27, 63:29, 64:3, 66:23, 78:10, 87:1, 97:27, 108:27, 130:2, 130:6 awful [1] - 48:23 B's [6] - 15:21, 26:8, 105:15, 105:22, 142:8, 149:13 background [4] - 25:18, 80:16, 100:6, 109:8 badly [1] - 138:12 barrister [3] - 7:24, 66:16, 86:5 based [27] - 17:9, 17:17, 21:25, 47:13, 94:6, 101:1, 104:20, 108:25, 112:17, 115:15, 119:14, 119:28, 120:15, 152:26, 152:27, 156:26, 162:1, 162:7, 163:3, 163:11, 163:17, 163:23, 164:25, 171:3, 171:5, 177:6, 177:23 basis [11] - 8:29, 42:22, 104:28, 121:4, 124:2, 124:5, 157:19, 157:22, 158:2, 173:19, 179:26	batch [1] - 66:20 BE [8] - 3:12, 4:11, 4:22, 4:30, 43:1, 107:23, 120:11, 158:21 be.. [3] - 62:4, 102:26, 121:26 beach [1] - 125:28 bear [16] - 39:21, 54:24, 54:27, 55:2, 71:3, 75:6, 91:5, 94:9, 111:18, 119:9, 120:3, 154:16, 154:21, 160:17, 167:9, 171:13 became [1] - 101:17 become [1] - 64:3 bed [1] - 67:29 BEEN [1] - 100:1 beg [4] - 125:13, 138:10, 167:23 begin [1] - 100:5 behalf [10] - 8:19, 33:25, 69:15, 101:24, 108:12, 116:27, 129:8, 142:10, 167:5, 179:23 behaviour [6] - 14:5, 16:14, 129:9, 142:14, 145:15, 169:7 behind [3] - 30:25, 122:23, 127:26 behold [1] - 36:16 believes [1] - 158:9 belongs [1] - 153:19 benefit [5] - 77:7, 78:19, 93:21, 95:29, 114:15 best [5] - 68:1, 72:14, 79:21, 84:29, 97:17 better [5] - 16:6, 69:5, 70:24, 85:15, 131:27 between [29] - 26:15, 26:22, 37:18, 42:19, 54:28, 58:2, 80:27, 86:22,
---	--	---	--	--	--

89:19, 109:2, 110:7, 110:9, 113:3, 117:2, 117:3, 118:1, 120:22, 120:26, 125:3, 130:18, 133:9, 135:18, 137:11, 137:12, 140:24, 142:24, 146:27, 165:27 beyond [3] - 153:5, 159:2, 159:13 big [3] - 139:7, 153:11, 160:6 bit [7] - 36:6, 54:9, 80:16, 94:28, 100:25, 104:12, 131:27 bite [1] - 132:10 bits [3] - 65:17, 71:25, 170:13 blacken [1] - 174:27 blackmail [1] - 140:2 blank [2] - 43:24, 43:25 bless [1] - 139:2 block [6] - 45:9, 127:23, 133:12, 135:22, 138:9, 138:26 blunt [1] - 22:7 bodies [3] - 148:13, 149:21, 175:25 body [3] - 149:17, 149:18, 176:26 book [5] - 55:7, 91:1, 119:11, 153:11, 160:6 Book [26] - 10:13, 10:15, 10:28, 16:24, 55:2, 55:3, 55:4, 55:5, 55:9, 55:13, 55:18, 55:20, 74:5, 105:23, 111:16, 111:21, 121:29, 125:11, 125:15, 126:25, 128:22, 130:27, 138:4, 140:17, 153:11 booklet [5] - 10:20, 10:27, 11:8, 68:11, 102:24	Booklets [1] - 54:29 borne [1] - 174:24 bottom [8] - 19:1, 19:10, 29:21, 33:12, 44:13, 44:27, 46:6, 47:27 box [1] - 165:14 Brasserie [1] - 128:1 break [4] - 8:24, 81:26, 81:29, 83:13 breakdown [2] - 70:1, 148:4 brief [4] - 7:6, 105:11, 105:13, 108:25 briefly [2] - 35:5, 35:8 BRIEFLY [2] - 82:6, 107:14 bring [12] - 13:27, 14:4, 14:8, 56:15, 61:16, 62:29, 64:15, 64:20, 88:23, 130:25, 143:5, 160:26 bringing [1] - 64:25 broad [2] - 149:4, 149:14 broadband [1] - 95:18 broadly [1] - 83:2 brought [15] - 60:15, 60:16, 64:8, 64:9, 64:12, 64:22, 67:9, 67:10, 76:16, 86:23, 86:24, 93:2, 96:16, 97:19, 179:26 btw [2] - 133:13, 135:23 building [1] - 157:9 bullet [5] - 47:1, 49:13, 65:14, 65:20 bullets [1] - 47:8 bunker [1] - 73:5 business [1] - 169:7 button [4] - 53:8, 115:22,	156:14 buzzer [1] - 10:7 BY [60] - 3:6, 3:7, 3:9, 3:13, 3:14, 3:17, 3:18, 3:20, 3:22, 3:24, 3:27, 3:28, 3:31, 3:32, 4:1, 4:4, 4:6, 4:8, 4:11, 4:13, 4:15, 4:17, 4:19, 4:22, 4:23, 4:25, 4:27, 4:30, 4:31, 5:1, 10:1, 40:9, 42:10, 45:20, 50:24, 53:1, 66:13, 70:14, 71:6, 71:12, 73:1, 80:8, 86:2, 90:20, 98:11, 100:2, 102:11, 105:8, 107:23, 115:25, 118:17, 118:29, 119:23, 120:11, 152:21, 156:21, 157:14, 158:21, 175:4, 179:11 bye [5] - 57:10, 98:26, 132:18, 143:24, 161:13 calendar [1] - 92:1 caller [1] - 160:13 calls.. [1] - 15:5 camera [2] - 95:2, 96:2 Canada [1] - 51:29 cannot [2] - 94:27, 96:20 capacity [1] - 158:9 caption [1] - 18:29 care [4] - 68:2, 81:12, 134:7, 178:9 carried [1] - 22:23 carry [1] - 24:3 carrying [4] - 18:12, 18:15, 22:18, 37:25 case [24] - 8:21, 8:25, 9:5, 84:23, 85:8, 92:19, 108:15, 142:19, 143:3, 144:29, 146:23, 146:24,	148:9, 152:7, 155:15, 155:19, 155:21, 155:22, 156:11, 167:2, 169:27, 175:22, 178:15, 179:17 Castlebar [8] - 20:3, 38:20, 57:25, 57:28, 58:1, 62:24, 141:11, 144:16 catalyst [1] - 159:5 caused [1] - 67:29 caution [1] - 177:5 CEO [29] - 11:7, 11:10, 11:14, 23:8, 23:13, 25:21, 33:28, 33:29, 34:5, 34:21, 50:1, 53:12, 65:6, 70:19, 85:16, 90:28, 107:27, 108:12, 113:5, 163:18, 166:9, 166:21, 166:28, 170:9, 173:5, 173:17, 173:23, 173:26, 174:16 CEO's [4] - 143:3, 144:29, 155:18, 156:11 certain [9] - 24:6, 27:2, 27:3, 28:8, 55:12, 109:15, 148:15, 168:4, 169:11 certainly [2] - 135:29, 137:6 certificate [4] - 175:19, 175:27, 175:28, 176:8 cetera [4] - 46:15, 46:18, 46:23, 59:4 Chair [16] - 8:10, 35:10, 50:7, 51:27, 68:7, 68:11, 69:29, 81:24, 82:8, 99:1, 102:4, 102:13, 105:10, 169:17, 177:17, 178:14 chaired [2] - 100:22, 101:21 chairing [4] - 6:27, 52:10, 72:6,	84:13 chairman [1] - 70:7 Chairman [6] - 42:12, 70:24, 115:27, 116:20, 157:16, 158:17 CHAIRPERSON N [148] - 6:4, 8:2, 8:8, 8:26, 8:28, 9:2, 9:14, 9:17, 11:5, 24:18, 40:24, 42:4, 42:7, 45:29, 46:10, 46:12, 46:25, 47:16, 47:23, 47:28, 48:15, 48:17, 48:20, 48:26, 49:5, 49:14, 49:19, 49:23, 49:29, 50:2, 50:4, 50:10, 50:13, 51:4, 51:8, 51:12, 51:16, 51:20, 52:6, 52:8, 55:15, 67:22, 67:26, 68:9, 69:4, 69:10, 69:18, 69:26, 70:6, 71:2, 71:10, 71:23, 71:28, 72:3, 73:8, 76:3, 80:3, 80:10, 80:19, 80:24, 81:2, 81:11, 81:28, 82:16, 82:21, 83:4, 83:11, 83:14, 84:3, 84:11, 85:4, 85:7, 85:14, 92:14, 95:9, 95:12, 95:14, 95:17, 95:24, 95:29, 98:6, 98:13, 98:20, 98:23, 99:4, 99:7, 99:12, 102:5, 102:29, 104:27, 105:29, 106:3, 106:10, 106:12, 106:15, 107:3, 107:7, 107:10, 107:16, 107:21, 114:10, 114:19, 114:26, 115:20, 115:23, 118:14, 118:25, 119:17, 119:21, 121:18, 121:24, 122:2, 135:3, 135:5, 156:16, 156:18, 157:2, 157:11,	158:13, 158:16, 158:19, 160:2, 164:29, 165:7, 165:16, 165:19, 165:23, 165:25, 170:3, 170:23, 170:29, 171:5, 171:9, 171:12, 173:13, 173:18, 174:2, 176:12, 177:4, 177:11, 177:18, 177:25, 178:1, 178:6, 178:16, 179:2, 179:7, 179:28 Chairperson [2] - 8:6, 179:13 challenge [1] - 155:18 challenged [1] - 116:1 challenging [1] - 164:20 chance [2] - 138:13, 159:26 change [10] - 9:9, 12:28, 99:6, 131:27, 136:7, 152:8, 172:7, 177:23, 177:27, 177:29 changeable [1] - 116:16 changed [5] - 101:19, 172:9, 176:24, 176:28, 177:24 changes [3] - 115:5, 147:28, 162:10 charged [1] - 104:10 charges [3] - 78:3, 94:11, 166:17 check [11] - 8:3, 22:15, 50:28, 57:24, 62:23, 76:29, 88:28, 88:29, 93:16, 105:17, 144:15 chief [4] - 69:14, 113:14, 113:15, 113:16 Chief [15] - 7:25, 8:19, 8:21, 66:16, 69:15, 86:5, 101:24, 104:2, 104:5, 104:7, 104:8, 108:18,
--	--	---	--	--	--

136:18, 178:14, 179:16 choice [1] - 134:4 Christmas [1] - 12:1 chronology [1] - 128:12 circles [1] - 164:24 circumstances [7] - 70:12, 110:14, 111:5, 125:7, 130:21, 145:3, 145:13 Clare [8] - 8:14, 9:1, 10:1, 11:1, 19:22, 140:9, 140:25, 141:1 CLARE [1] - 3:5 clarified [4] - 65:19, 87:25, 102:15, 165:23 clarifies [2] - 92:19, 98:20 clarify [16] - 42:15, 46:27, 47:2, 47:25, 66:18, 67:9, 85:3, 85:12, 87:16, 91:28, 92:7, 98:14, 106:4, 114:14, 114:17, 165:1 clarity [1] - 178:2 clear [12] - 21:27, 24:18, 24:21, 67:12, 70:25, 94:5, 119:25, 142:16, 145:14, 173:18, 174:14, 177:18 clearer [1] - 174:19 clearly [10] - 48:6, 73:8, 86:8, 104:28, 129:10, 135:15, 136:27, 157:4, 171:2, 177:24 client [5] - 48:11, 105:27, 107:20, 155:20, 178:19 close [1] - 38:24 closest [1] - 38:22 clubs [1] - 148:9 Co [1] - 81:9	coffee [2] - 126:1, 127:25 cognisant [1] - 66:10 colleague [12] - 21:28, 27:8, 35:24, 87:23, 90:29, 91:10, 91:19, 94:29, 114:7, 119:3, 128:4, 140:25 colleague.. [1] - 134:4 colleagues [10] - 50:4, 67:23, 80:3, 98:6, 135:16, 135:18, 135:19, 142:27, 176:12 collection [1] - 105:14 College [4] - 100:9, 100:13, 100:20, 149:12 college [3] - 53:20, 101:8, 101:19 Colleran [1] - 113:7 coloured [1] - 115:17 combination [1] - 146:17 coming [7] - 73:8, 87:20, 134:7, 137:2, 156:29, 159:25, 168:23 commence [3] - 60:9, 60:13, 142:29 commenced [4] - 11:18, 60:11, 90:13, 142:28 comment [4] - 24:10, 159:22, 168:11, 168:27 commentary [1] - 123:7 comments [2] - 118:15, 118:26 commission [1] - 145:29 commitment [3] - 82:25, 82:26, 101:10 Committee [107] - 6:5, 6:26, 6:28, 7:4, 7:5, 7:10, 7:11, 7:15, 7:16, 7:23, 8:13, 8:23,	10:24, 11:2, 40:27, 42:20, 42:25, 45:17, 50:4, 52:11, 67:20, 67:22, 69:8, 69:27, 70:8, 70:17, 70:25, 70:27, 72:6, 72:8, 80:3, 82:13, 84:14, 84:18, 84:22, 87:27, 88:10, 88:13, 88:14, 91:7, 98:4, 98:6, 99:1, 99:2, 100:5, 100:23, 100:25, 101:18, 101:20, 101:21, 102:2, 105:13, 108:2, 108:19, 111:2, 111:4, 112:17, 112:24, 114:3, 114:4, 114:9, 114:15, 115:11, 116:10, 116:12, 116:20, 116:21, 116:29, 117:6, 117:7, 117:13, 117:14, 117:18, 117:20, 118:11, 129:5, 136:4, 139:21, 139:25, 145:5, 145:7, 145:9, 146:14, 147:21, 149:11, 149:14, 150:11, 150:15, 152:2, 157:26, 158:5, 158:7, 159:24, 161:28, 162:6, 163:27, 164:17, 167:4, 169:21, 173:9, 176:12, 178:10, 179:14, 179:19 COMMITTEE [6] - 3:28, 4:1, 4:31, 80:8, 98:11, 175:4 Committee's [5] - 82:12, 82:15, 112:25, 162:3, 169:28 common [1] - 116:8 commonly [1] - 176:6 communicate [2] - 135:17, 139:11 communicatio	n [7] - 39:22, 45:9, 70:2, 135:18, 135:28, 140:4, 159:3 communicatio ns [4] - 40:2, 130:26, 140:9, 167:28 communiques [4] - 158:28, 160:16, 160:18, 168:15 Community [1] - 100:17 company [3] - 76:16, 87:5, 93:1 compare [1] - 154:16 competence [5] - 145:26, 147:8, 147:9, 150:19, 151:4 Competence [1] - 147:13 compile [1] - 76:8 compiled [2] - 76:9, 128:26 complain [2] - 32:4, 127:22 Complainant [10] - 6:15, 9:7, 9:12, 52:15, 72:8, 72:15, 84:24, 85:1, 99:15, 119:16 complainant [1] - 167:21 complaint [35] - 13:3, 13:7, 13:8, 13:10, 13:12, 13:18, 13:20, 13:21, 13:22, 13:23, 14:2, 14:9, 14:19, 32:3, 37:29, 38:6, 38:17, 39:6, 39:16, 40:19, 66:25, 66:29, 74:17, 80:15, 85:5, 85:8, 85:10, 105:26, 106:24, 107:1, 107:2, 137:24, 137:26, 139:12 complaints [6] - 14:1, 14:17, 99:16, 117:10, 117:28 complete [3] -	147:24, 175:17, 176:28 completion [1] - 176:29 compliance [1] - 149:22 complicated [1] - 171:29 comply [2] - 147:7, 150:5 comply.. [1] - 146:28 compulsory [1] - 148:19 computer [3] - 40:22, 122:22, 122:23 concern [2] - 71:28, 109:19 concerned [4] - 16:16, 37:3, 37:27, 38:11 concerns [7] - 13:28, 13:29, 24:20, 109:2, 109:4, 109:21, 140:8 conclude [5] - 8:21, 50:7, 152:2, 178:17, 179:9 concluded [3] - 77:13, 93:27, 121:5 conclusion [6] - 124:3, 139:26, 152:5, 165:27, 179:25, 179:26 conclusions [1] - 102:24 conditions [1] - 90:11 Conduct [2] - 109:16, 129:11 conduct [13] - 129:9, 130:3, 130:8, 140:7, 145:18, 145:25, 145:28, 146:1, 150:28, 151:12, 151:14, 171:26, 172:1 conducted [1] - 113:8 confidential [3] - 75:2, 77:8, 93:22 confined [1] - 70:29 confirm [4] - 87:14, 96:27,	106:12, 134:24 confirmed [5] - 66:4, 76:26, 90:3, 93:13, 179:16 confused [2] - 82:22, 82:27 confusion [2] - 83:5, 177:12 conjecture [5] - 162:29, 163:12, 163:17, 165:9, 165:15 conjunction [1] - 101:7 connect [2] - 73:9, 169:2 connected [5] - 145:28, 149:12, 151:13, 170:1, 170:2 connection [4] - 95:6, 95:19, 101:27, 110:16 connects [1] - 169:25 conscious [1] - 111:2 consecutive [1] - 150:4 conserve [1] - 95:19 consider [5] - 116:5, 145:27, 146:8, 151:5, 169:29 considerable [1] - 108:7 consideration [6] - 42:26, 169:13, 170:7, 170:21, 171:7, 179:24 considered [3] - 116:22, 117:20, 130:1 considering [2] - 13:24, 170:6 constant [1] - 24:4 constitute [1] - 155:27 constraint [2] - 52:4, 66:10 consultant [7] - 26:7, 26:8, 26:10, 26:16, 26:17, 88:2, 88:3 consultant's [1] - 86:24 consultants [3] -
--	--	--	--	---	---

26:23, 26:25, 86:20 consultation [1] - 178:19 contact [38] - 21:29, 31:28, 32:5, 33:19, 33:25, 39:15, 41:5, 53:24, 59:18, 59:25, 66:6, 77:10, 78:14, 78:22, 78:23, 93:24, 97:1, 97:5, 97:8, 97:10, 97:13, 109:2, 110:12, 110:21, 125:2, 128:16, 128:17, 128:18, 137:11, 138:9, 138:10, 140:10, 142:4, 142:12, 145:2, 145:12, 160:23 contacted [5] - 65:3, 65:6, 79:1, 80:12, 110:13 contacting [5] - 14:28, 20:24, 77:20, 78:29, 141:23 contacts [2] - 53:28, 79:20 contained [2] - 105:11, 149:7 contamination [1] - 82:3 content [8] - 27:10, 27:20, 53:26, 95:25, 117:8, 120:3, 139:28, 158:12 contents [1] - 107:5 context [9] - 82:4, 135:14, 162:18, 162:22, 162:23, 162:27, 165:3, 179:14, 179:15 continuation [2] - 29:24, 45:7 continue [4] - 95:26, 96:3, 128:18, 158:19 CONTINUED [9] - 3:12, 4:11, 4:22, 4:30, 43:1, 84:1, 107:23, 120:11, 158:21 continuing [1] -	147:24 continuity [1] - 155:13 contradicts [1] - 114:23 contravened [1] - 147:10 contravention [1] - 6:9 controversy [2] - 116:24, 118:22 conversation [11] - 18:5, 18:8, 46:27, 47:1, 60:11, 60:13, 60:15, 60:16, 64:23, 79:5, 96:23 conversations [1] - 64:5 converted [1] - 46:22 coordinating [1] - 100:23 Coordinating [1] - 101:18 copies [6] - 11:2, 40:26, 69:17, 70:2, 90:14, 91:4 copy [10] - 10:12, 16:7, 56:5, 71:27, 74:2, 74:3, 90:29, 102:1, 110:29, 111:3 Core [15] - 16:24, 54:29, 55:2, 55:4, 55:13, 74:5, 105:23, 121:29, 125:11, 126:25, 128:22, 130:27, 138:4, 140:16, 153:11 core [1] - 55:5 Cork [7] - 54:1, 54:2, 58:24, 58:27, 81:19, 100:7, 100:10 corner [1] - 75:20 Corner [1] - 128:2 Corona [1] - 139:6 correct [152] - 6:22, 9:9, 11:23, 11:24, 11:28, 12:2, 12:5, 12:6, 12:29, 13:1, 13:2, 15:26, 17:1, 17:5,	18:6, 20:10, 20:11, 21:21, 21:24, 22:9, 22:20, 23:17, 25:23, 28:27, 29:9, 31:19, 31:22, 31:23, 39:20, 41:19, 49:5, 54:2, 54:3, 54:7, 54:15, 58:9, 58:10, 60:28, 61:12, 61:13, 65:17, 66:7, 66:8, 66:22, 75:10, 76:3, 77:17, 78:28, 79:2, 83:4, 84:28, 86:13, 91:28, 92:12, 92:13, 94:16, 96:8, 96:15, 96:21, 96:22, 96:28, 96:29, 100:22, 101:26, 101:29, 108:1, 108:6, 108:9, 108:13, 108:14, 108:20, 109:5, 109:9, 109:12, 109:18, 109:22, 109:29, 110:3, 110:24, 110:28, 119:9, 120:18, 121:8, 124:24, 127:15, 128:25, 130:5, 131:5, 131:21, 133:12, 135:22, 137:15, 138:23, 139:20, 139:24, 140:15, 142:5, 145:23, 146:2, 146:5, 146:11, 149:8, 149:19, 149:24, 149:25, 150:8, 150:24, 152:25, 153:7, 154:3, 154:6, 154:7, 154:8, 154:10, 154:12, 154:23, 154:24, 154:25, 154:26, 155:2, 155:9, 155:10, 155:14, 156:1, 156:7, 158:28, 158:29, 159:3, 159:9, 159:16, 159:19, 159:22, 160:10, 160:11, 160:13, 160:14, 160:19, 160:21, 161:27, 164:9,	164:11, 164:21, 165:29, 166:11, 169:24, 171:18, 172:22, 172:23, 175:11, 175:12, 177:10 corrected [2] - 52:21, 72:13 correction [3] - 104:15, 114:8, 155:9 correctly [2] - 79:4, 149:3 corridor [1] - 122:24 corroborate [1] - 25:22 cost [1] - 131:28 Council [18] - 7:26, 23:8, 23:14, 32:15, 37:29, 38:6, 65:7, 66:17, 66:25, 74:29, 82:26, 86:6, 101:25, 107:27, 107:28, 129:12, 137:25, 176:20 Council's [4] - 105:12, 109:16, 140:6, 147:7 counsel [13] - 7:5, 34:21, 42:19, 52:26, 70:19, 72:17, 81:3, 84:19, 85:16, 116:26, 157:12, 179:16 counselling [2] - 77:8, 93:22 counsels [1] - 85:14 count [1] - 62:26 counter [1] - 148:8 countersigned [1] - 75:10 country [3] - 27:23, 139:2, 149:1 couple [3] - 40:12, 86:16, 100:12 course [20] - 7:12, 13:26, 41:28, 48:7, 69:6, 112:24, 115:5, 115:28, 116:8, 117:21, 118:4, 118:11, 129:16, 149:9, 162:9,	164:27, 171:1, 173:22, 176:24, 177:20 Court [3] - 172:17, 172:18, 172:19 court [2] - 116:10, 172:14 courtesy [1] - 24:13 cover [1] - 104:23 CPD [29] - 109:4, 109:21, 145:19, 147:22, 147:26, 148:4, 149:2, 149:13, 149:15, 149:22, 149:25, 149:26, 150:5, 150:7, 151:6, 151:15, 152:3, 175:7, 175:10, 175:20, 175:24, 175:29, 176:1, 176:7, 176:15, 176:16, 176:22, 176:26, 177:1 created [2] - 113:22, 159:6 criticism [1] - 177:18 Croke [1] - 81:17 cross [23] - 8:12, 9:4, 24:4, 42:16, 42:21, 42:23, 50:12, 52:14, 69:16, 70:22, 72:5, 113:8, 116:26, 117:21, 156:8, 157:17, 157:18, 157:26, 157:27, 157:29, 160:2, 162:1, 174:13 CROSS [14] - 3:6, 3:13, 3:17, 3:27, 3:32, 4:23, 4:30, 10:1, 45:20, 53:1, 73:1, 90:20, 152:21, 158:21 cross- examination [15] - 8:12, 9:4, 24:4, 42:16, 42:21, 42:23, 52:14, 72:5, 113:8, 117:21, 156:8, 157:26, 157:27, 160:2, 174:13 CROSS-	EXAMINATION [2] - 4:30, 158:21 cross-examine [2] - 69:16, 157:29 cross- examined [3] - 116:26, 157:17, 162:1 CROSS- EXAMINED [10] - 3:6, 3:17, 3:27, 3:32, 4:23, 10:1, 53:1, 73:1, 90:20, 152:21 cross- examiner [1] - 157:18 cross- examining [1] - 70:22 cruel [1] - 138:15 Cullen [11] - 8:14, 9:1, 11:1, 23:21, 43:4, 44:1, 51:11, 51:12, 140:9, 140:25, 141:14 CULLEN [9] - 3:5, 3:11, 10:1, 40:9, 43:1, 45:20, 50:24, 51:19, 51:23 cullen [13] - 9:2, 10:4, 11:17, 22:1, 40:7, 40:11, 45:16, 49:7, 50:3, 50:5, 50:9, 50:28, 51:5 cullen's [4] - 69:21, 70:2, 71:20, 71:29 cumulatively [2] - 146:18, 159:21 curious [9] - 13:26, 16:9, 16:12, 16:13, 16:19, 16:20, 16:21, 74:25 customary [1] - 116:3 cut [1] - 88:9 damage [1] - 169:5 date [43] - 17:17, 18:7, 18:26, 18:27, 19:4, 19:7, 22:12, 28:23, 29:20, 29:22, 30:8, 30:9, 34:26,
---	---	--	---	--	---

40:5, 41:20, 41:26, 41:29, 42:1, 42:6, 43:18, 43:24, 47:25, 49:22, 51:1, 55:28, 64:19, 67:12, 67:16, 87:29, 91:11, 91:28, 92:12, 92:17, 92:20, 116:1, 134:18, 142:14, 147:28, 148:21, 148:22, 166:13 dated [21] - 101:27, 103:6, 103:7, 103:9, 103:11, 103:13, 103:14, 103:15, 103:16, 103:17, 103:22, 103:25, 103:26, 103:27, 103:29, 104:1, 104:3, 104:5, 104:7, 104:9, 167:17 dated.. [1] - 167:14 dates [9] - 43:19, 46:16, 46:18, 48:8, 49:10, 49:15, 87:19, 98:14, 119:9 Davin [2] - 7:1, 84:16 DAVIN [7] - 50:6, 67:24, 80:6, 83:8, 98:8, 176:14, 177:2 Davin-Power [2] - 7:1, 84:16 DAVIN-POWER [7] - 50:6, 67:24, 80:6, 83:8, 98:8, 176:14, 177:2 days [6] - 24:6, 99:19, 113:1, 119:10, 178:7, 178:21 Days [1] - 99:11 de [2] - 112:6, 115:18 deal [5] - 110:1, 110:4, 112:3, 125:21, 126:24 dealing [3] - 13:24, 71:3, 102:16 deals [1] -	125:18 dealt [3] - 42:23, 122:5, 146:23 December [4] - 103:11, 103:24, 103:25, 104:19 decide [5] - 82:13, 136:4, 162:3, 163:27, 164:16 decided [2] - 17:10, 146:9 deciding [2] - 119:28, 163:28 decision [1] - 7:17 decisions [1] - 164:12 declaration [2] - 176:21, 176:23 declare [2] - 176:26, 176:29 declaring [1] - 176:27 declined [1] - 124:15 Dee [1] - 103:27 defence [1] - 48:21 defined [1] - 151:3 definitely [3] - 65:27, 92:4, 92:16 definition [5] - 135:10, 136:25, 150:22, 151:2, 151:12 definitions [1] - 145:24 defunct [1] - 101:20 degree [2] - 102:23, 156:3 deliberate [1] - 179:20 deliver [1] - 86:8 demonstrate [1] - 129:7 department [1] - 26:23 dependent [2] - 42:14, 116:17 describe [1] - 86:27 describing [1] - 122:16 description [1] - 125:25 desist [1] -	77:26 desk [1] - 122:24 details [6] - 89:6, 89:8, 89:26, 127:21, 129:23, 129:26 determine [1] - 22:24 determined [1] - 158:3 Devins [2] - 6:29, 84:15 DEVINS [10] - 67:25, 80:5, 98:9, 175:6, 175:9, 175:13, 175:16, 175:18, 176:3, 176:11 dialling [1] - 28:3 Diarmid [2] - 7:4, 84:18 die [2] - 138:13, 138:20 difference [2] - 37:18, 118:1 different [23] - 32:5, 37:28, 43:4, 54:12, 54:13, 59:3, 59:15, 63:13, 111:19, 116:26, 118:5, 118:6, 126:2, 131:1, 133:13, 135:23, 137:17, 147:1, 153:6, 154:27, 157:4, 173:26 differently [1] - 155:11 difficult [2] - 9:8, 81:9 dinner [2] - 20:23, 141:22 direct [7] - 31:6, 35:22, 38:19, 50:12, 73:22, 112:12, 113:4 directed [3] - 14:16, 42:15, 171:9 direction [1] - 41:9 DIRECTLY [8] - 3:31, 4:4, 4:11, 4:22, 86:1, 100:1, 107:23, 120:11 directs [1] - 99:2 disagree [1] - 119:3	disciplinary [1] - 89:10 disclose [1] - 6:21 disclosures [1] - 6:23 disconnect [1] - 98:25 discuss [3] - 58:20, 87:8, 123:16 discussed [9] - 14:22, 14:25, 28:16, 30:7, 53:27, 67:3, 77:11, 89:29, 93:25 discussing [1] - 179:25 discussion [3] - 42:19, 60:9, 109:13 disgraceful [2] - 145:27, 151:5 dishonourable [2] - 145:27, 151:6 disparaging [2] - 173:21, 174:1 dispense [1] - 99:12 dispute [7] - 42:19, 46:13, 48:24, 48:26, 49:19, 51:8, 165:20 disputed [4] - 49:9, 49:10, 165:22, 165:24 disputing [1] - 48:15 distinct [1] - 169:27 distinction [1] - 108:29 disturb [3] - 19:22, 29:16, 141:1 disturbance [5] - 57:3, 61:4, 61:29, 143:15, 161:4 divergence [1] - 113:3 doctor [17] - 56:2, 57:10, 62:4, 85:10, 104:25, 124:17, 129:8, 143:24, 147:25, 147:29, 150:21, 150:27, 152:14,	161:13, 174:26, 175:17, 175:29 doctors [16] - 129:25, 145:18, 145:26, 146:1, 147:23, 147:27, 148:4, 148:6, 148:21, 148:22, 148:24, 148:25, 151:4, 151:15, 151:23, 176:16 document [8] - 75:1, 75:4, 87:12, 87:27, 88:10, 108:2, 113:22, 160:9 documentation [5] - 11:13, 102:22, 104:12, 104:13, 156:28 documents [12] - 74:27, 75:3, 105:1, 105:5, 105:10, 105:11, 105:14, 105:21, 106:13, 106:16, 106:25, 108:4 done [13] - 21:6, 36:10, 36:17, 94:4, 123:3, 149:26, 149:27, 150:6, 160:4, 174:16, 174:25, 174:26, 175:24 double [1] - 105:17 double-check [1] - 105:17 doubt [6] - 28:7, 47:16, 153:5, 159:2, 159:13, 165:9 down [9] - 12:19, 44:5, 51:20, 54:29, 59:9, 78:18, 98:17, 123:11, 178:25 DR [46] - 3:5, 3:11, 3:16, 3:26, 4:3, 4:10, 4:21, 4:29, 10:1, 40:9, 43:1, 45:20, 50:6, 50:24, 51:19, 51:23, 52:7, 53:1, 66:13, 67:21, 67:24, 67:25, 68:3, 68:25, 69:2, 69:6, 73:1, 73:4, 79:29, 80:2, 80:6,	81:7, 81:19, 83:8, 98:8, 98:9, 99:6, 99:10, 100:1, 107:23, 120:11, 152:21, 158:21, 176:14, 177:2, 178:10 Dr [159] - 7:1, 8:14, 8:15, 8:18, 9:1, 9:2, 10:4, 11:1, 11:11, 11:17, 22:1, 23:21, 25:25, 25:26, 25:29, 26:4, 26:5, 26:10, 40:7, 40:11, 43:4, 44:1, 45:16, 49:7, 50:3, 50:5, 50:9, 50:28, 51:5, 51:11, 51:28, 52:6, 53:4, 53:6, 56:4, 66:9, 66:15, 67:18, 67:26, 68:8, 68:9, 68:22, 69:10, 69:13, 69:21, 69:22, 69:23, 69:24, 69:27, 70:2, 71:2, 71:20, 71:29, 72:3, 73:11, 75:23, 76:17, 76:19, 77:12, 80:1, 80:11, 81:4, 81:18, 81:25, 82:1, 82:9, 83:6, 83:8, 84:16, 88:1, 88:2, 88:3, 88:23, 89:16, 90:2, 90:12, 91:24, 93:2, 93:3, 93:4, 93:26, 97:16, 98:18, 99:3, 99:4, 100:4, 100:19, 101:23, 102:23, 104:28, 107:11, 107:26, 108:27, 112:17, 112:23, 114:20, 114:21, 114:29, 115:3, 115:15, 116:22, 116:24, 117:15, 118:4, 119:27, 120:14, 122:4, 124:4, 130:26, 130:29, 135:12, 136:3, 136:10, 137:9, 140:2, 140:8, 140:9, 141:14, 142:20, 142:24, 142:26, 143:8, 143:17,
--	--	--	---	--	---

143:26, 144:4, 144:19, 144:22, 145:1, 145:20, 146:23, 149:4, 152:1, 152:18, 160:16, 162:14, 162:24, 162:25, 162:27, 165:2, 165:3, 165:4, 165:11, 165:19, 165:28, 169:29, 170:26, 173:18, 173:20, 175:2, 176:13, 176:15, 177:4, 178:4, dr [3] - 26:1, 51:12, 175:6 Draft [1] - 167:2 draw [5] - 40:17, 40:20, 109:15, 137:16, 169:28 drew [1] - 70:19 drifted [1] - 12:12 Dubh [3] - 133:21, 134:5, 134:12 Dublin [2] - 81:10, 81:17 due [4] - 70:1, 74:28, 119:2, 149:9 during [16] - 7:12, 13:18, 14:26, 27:16, 27:17, 38:5, 38:14, 53:27, 64:1, 110:9, 125:3, 130:18, 146:27, 150:7, 171:1, 177:19 duty [1] - 172:16 e-mail [12] - 97:16, 103:13, 103:15, 103:16, 103:21, 103:24, 103:29, 104:1, 104:2, 104:6, 104:8, 104:18 e-mailed [3] - 36:15, 77:10, 93:24 e-mailing [1] - 89:28 e-mails [3] - 66:3, 104:17, 106:5 early [3] - 52:8, 67:17, 82:14 ease [1] - 106:23	easier [2] - 71:17, 96:5 easily [1] - 87:25 easy [3] - 20:25, 141:24, 148:7 ED [9] - 57:18, 57:19, 62:14, 62:18, 63:18, 144:6, 144:10, 161:20, 161:22 edit [1] - 111:20 education [2] - 147:24, 148:28 educational [3] - 100:16, 148:13, 175:24 effect [2] - 39:5, 52:21 effort [2] - 145:11, 156:10 efforts [1] - 73:9 Eglinton [1] - 128:2 ego [1] - 127:28 eight [11] - 14:26, 17:16, 28:4, 37:5, 38:14, 73:18, 74:21, 79:10, 102:26, 108:28, 109:23 eight-month [1] - 37:5 either [17] - 6:18, 8:4, 13:21, 15:11, 21:1, 42:15, 81:3, 117:20, 118:2, 128:3, 139:5, 141:28, 142:28, 157:21, 166:11, 167:1, 173:1 electronic [2] - 121:24, 121:25 em [1] - 79:18 emerge [1] - 111:5 emojis [1] - 132:24 emotional [1] - 140:1 Employee [5] - 77:8, 89:6, 89:7, 89:9, 93:22 employment [1] - 110:16 enable [1] - 44:8 end [8] - 64:28, 86:7, 122:20, 123:9, 126:10, 148:8, 157:10,	166:27 endeavouring [2] - 160:23 ended [1] - 122:23 engaged [2] - 39:3, 108:21 English [4] - 126:26, 128:14, 153:17, 153:25 ensued [1] - 33:16 ensure [2] - 151:23, 151:26 ensured. [1] - 16:15 entirely [4] - 112:25, 119:14, 170:8, 179:21 entirety [1] - 42:26 entitle [1] - 157:18 entitled [23] - 10:27, 24:6, 24:7, 24:8, 24:23, 42:22, 46:19, 46:23, 47:15, 47:17, 48:9, 48:18, 49:26, 49:27, 69:16, 116:13, 116:21, 155:18, 155:19, 156:5, 156:24, 157:20, 158:8 entitlement [1] - 174:8 entry [1] - 57:22 episode [3] - 124:16, 124:18 error [7] - 70:1, 72:13, 92:20, 124:17, 129:8, 136:22, 140:3 errors [1] - 84:27 escalating [1] - 139:28 escort [1] - 169:20 essence [1] - 109:10 establish [8] - 46:10, 47:18, 50:15, 114:28, 115:20, 140:10, 142:4, 145:2 et [4] - 46:15, 46:18, 46:23, 59:4	Ethics [2] - 109:16, 129:11 ethics [1] - 145:17 evening [2] - 64:23, 180:1 evenings [1] - 176:8 event [3] - 6:18, 122:9, 176:10 events [2] - 125:25, 163:20 evidence [159] - 8:20, 10:9, 10:18, 11:18, 12:26, 15:23, 16:25, 19:15, 21:23, 22:2, 23:16, 25:3, 25:20, 26:13, 27:4, 27:15, 30:22, 30:26, 30:28, 31:1, 31:4, 31:7, 31:14, 31:18, 31:21, 32:8, 32:12, 33:16, 35:22, 36:2, 36:3, 36:6, 36:7, 36:8, 36:13, 37:3, 37:16, 38:9, 38:19, 39:4, 39:6, 39:18, 42:26, 47:19, 47:22, 47:23, 47:29, 48:5, 48:12, 49:27, 50:21, 51:9, 51:28, 53:13, 54:13, 54:19, 56:1, 64:13, 66:18, 69:14, 71:24, 72:12, 73:13, 73:15, 73:22, 78:17, 80:11, 82:10, 82:11, 82:22, 82:29, 92:21, 99:20, 103:5, 104:20, 104:21, 106:7, 106:9, 108:12, 111:28, 112:4, 112:6, 112:12, 112:21, 112:23, 113:4, 113:14, 113:15, 113:16, 113:23, 113:26, 114:1, 114:3, 114:5, 114:22, 115:18, 115:28, 116:9, 116:17, 116:21, 116:25,	117:3, 117:4, 117:7, 117:10, 117:17, 117:27, 118:1, 118:3, 118:4, 118:7, 118:8, 119:4, 119:5, 119:7, 119:26, 120:7, 121:2, 121:10, 124:2, 124:9, 125:10, 126:22, 149:11, 149:14, 149:20, 149:22, 150:6, 155:18, 155:23, 158:4, 158:26, 161:29, 162:5, 165:10, 166:1, 166:9, 167:10, 167:19, 168:6, 168:20, 169:13, 169:22, 169:24, 170:6, 170:21, 170:26, 171:1, 171:7, 171:29, 172:9, 172:13, 172:20, 172:21, 179:17, 179:18, 179:22 evidence-in- chief [3] - 69:14, 113:15, 113:16 exact [8] - 17:16, 30:8, 30:9, 54:28, 64:19, 153:14, 160:17, 167:7 exactly [8] - 29:11, 43:8, 44:20, 46:6, 67:14, 89:29, 154:29, 171:23 exam [2] - 57:26, 144:17 examination [23] - 8:12, 9:4, 22:19, 22:22, 24:4, 42:13, 42:15, 42:16, 42:21, 42:23, 52:14, 70:18, 70:29, 72:5, 113:8, 117:21, 156:8, 157:26, 157:27, 160:2, 174:13 EXAMINATION [2] - 4:30, 158:21 examine [4] - 34:4, 42:22, 69:16, 157:29 examined [3] -	116:26, 157:17, 162:1 EXAMINED [28] - 3:6, 3:7, 3:12, 3:13, 3:14, 3:17, 3:18, 3:27, 3:31, 3:32, 4:4, 4:11, 4:22, 4:23, 10:1, 40:9, 43:1, 45:20, 50:24, 53:1, 66:13, 73:1, 86:2, 90:20, 100:2, 107:23, 120:11, 152:21 examiner [1] - 157:18 examining [1] - 70:22 example [13] - 12:16, 71:16, 104:17, 104:18, 153:8, 153:13, 155:14, 155:19, 160:6, 167:18, 167:25, 170:7, 171:11 except [1] - 49:21 exchange [6] - 140:24, 142:24, 142:28, 165:1, 165:2, 165:17 exculpatory [4] - 23:17, 25:3, 25:20, 49:28 excuse [2] - 135:4, 135:6 Executive [9] - 7:25, 8:20, 66:16, 69:15, 86:5, 101:25, 108:18, 136:18, 179:16 Executive's [2] - 8:21, 178:14 exercise [1] - 131:2 Exhibit [5] - 16:22, 16:24, 55:15, 102:6, 104:9 exhibit [5] - 54:29, 55:6, 55:13, 55:14, 102:4 exhibits [7] - 55:7, 67:7, 94:9, 104:10, 104:11, 111:18, 142:21 Exhibits [2] - 55:18, 55:20
---	---	---	--	--	--

existence ^[1] - 46:13 expect ^[2] - 135:18, 135:28 expectation ^[1] - 137:4 expected ^[2] - 146:1, 151:15 experience ^[3] - 100:6, 145:26, 151:4 expert ^[25] - 8:19, 101:24, 115:10, 115:28, 116:3, 116:4, 116:8, 116:13, 155:26, 157:17, 163:25, 171:23, 171:26, 171:27, 171:28, 171:29, 172:4, 173:10, 173:21, 173:22, 174:11, 174:17, 177:14, 177:26, 177:28 expertise ^[1] - 163:25 experts ^[1] - 171:24 explain ^[7] - 124:8, 129:5, 136:26, 139:25, 145:9, 149:28, 159:4 explained ^[4] - 26:22, 125:22, 136:29, 164:24 explanation ^[1] - 42:25 exploit ^[1] - 113:9 explore ^[1] - 157:18 extent ^[4] - 117:18, 117:24, 117:27, 117:29 external ^[12] - 148:12, 148:14, 152:13, 175:19, 175:20, 175:24, 175:25, 175:26, 175:29, 176:1, 176:5, 176:7 eyes ^[1] - 127:26 face ^[5] - 57:9, 62:3, 132:25, 143:23, 161:12 facilitating ^[1] - 81:8 facility ^[1] - 56:3	facing ^[1] - 85:2 fact ^[18] - 70:3, 80:18, 82:18, 108:22, 109:25, 109:26, 119:29, 120:4, 142:14, 145:7, 148:26, 150:15, 151:18, 151:21, 163:19, 171:13, 174:24, 179:20 facto ^[2] - 112:6, 115:18 facts ^[20] - 50:15, 64:6, 108:17, 109:10, 152:28, 155:27, 155:29, 156:10, 158:11, 162:2, 162:3, 162:7, 162:8, 163:27, 163:28, 174:21, 174:24, 177:6, 177:15 factual ^[4] - 136:18, 155:18, 161:29, 174:8 factually ^[1] - 152:25 fail ^[1] - 138:28 failed ^[2] - 146:28, 147:7 failing ^[6] - 135:8, 136:23, 150:16, 151:2, 151:10 failure ^[1] - 150:19 faint ^[3] - 44:12, 86:7, 126:4 fair ^[15] - 15:12, 23:23, 24:28, 25:6, 25:17, 38:29, 54:19, 59:15, 63:10, 79:17, 79:23, 96:15, 96:16, 104:22, 167:7 fairly ^[2] - 107:12, 115:12 fairness ^[2] - 79:7, 105:19 Faisal ^[1] - 7:29 fall ^[3] - 106:26, 149:5, 159:18 fallen ^[2] - 145:29, 151:14 falls ^[2] - 156:2, 159:14 familiar ^[3] -	105:21, 140:11, 149:18 familiarise ^[1] - 107:4 far ^[4] - 13:27, 103:4, 115:5, 166:10 fashioned ^[1] - 121:27 favour ^[1] - 138:25 February ^[2] - 103:14, 103:28 FEBRUARY ^[2] - 6:2, 180:5 fed ^[1] - 164:9 felt ^[5] - 76:14, 88:7, 92:29, 123:21, 129:29 few ^[11] - 54:1, 64:26, 65:1, 66:26, 69:10, 73:12, 75:17, 86:17, 95:20, 134:21, 140:17 Fieldfisher ^[5] - 7:27, 46:29, 47:5, 47:18, 49:24 figure ^[1] - 75:5 file ^[1] - 102:17 File.. ^[1] - 102:28 final ^[1] - 101:22 finally ^[1] - 142:18 findings ^[8] - 152:23, 152:26, 153:5, 158:27, 163:1, 163:11, 163:22, 163:23 fine ^[4] - 30:17, 85:12, 115:23, 175:1 finish ^[8] - 24:14, 34:11, 83:10, 128:11, 163:5, 163:7, 163:13, 163:15 finished ^[2] - 8:20, 30:11 firm ^[1] - 21:26 first ^[28] - 42:13, 62:26, 64:26, 65:1, 66:20, 67:13, 76:28, 86:17, 86:24, 89:15, 93:14, 100:29, 101:10, 101:12, 101:14, 104:27, 106:28,	114:17, 114:28, 119:11, 128:8, 142:19, 142:23, 146:22, 153:15, 160:20, 170:17, 177:18 firstly ^[4] - 11:21, 45:3, 53:17, 125:18 Fitness ^[7] - 6:5, 6:25, 7:9, 52:11, 84:13, 117:7, 167:3 five ^[10] - 69:9, 74:23, 79:12, 101:21, 127:7, 147:15, 148:18, 150:4, 152:7, 176:10 fix ^[1] - 48:8 flagging ^[1] - 52:3 flesh ^[1] - 35:26 flirt ^[2] - 133:14, 135:24 FLYNN ^[12] - 4:3, 4:10, 4:21, 4:29, 99:6, 99:10, 100:1, 107:23, 120:11, 152:21, 158:21, 178:10 Flynn ^[51] - 8:18, 81:25, 82:1, 82:9, 83:6, 83:8, 99:3, 99:4, 100:4, 100:19, 101:23, 102:23, 104:28, 107:11, 107:26, 108:27, 112:17, 112:23, 114:20, 114:21, 115:3, 116:22, 117:15, 119:27, 120:14, 122:4, 124:4, 130:26, 130:29, 135:12, 136:3, 136:10, 137:9, 140:8, 145:20, 146:23, 149:4, 152:1, 152:18, 165:2, 165:19, 169:29, 170:26, 173:18, 173:20, 175:2, 176:13, 176:15, 177:4, 178:4 flynn ^[1] - 175:6 Flynn's ^[3] - 114:29, 115:15, 118:4	focused ^[1] - 156:9 Folder ^[1] - 16:24 folder ^[1] - 107:18 follow ^[3] - 81:3, 98:16, 168:20 follow-up ^[2] - 81:3, 98:16 followed ^[1] - 25:4 following ^[10] - 19:6, 35:26, 57:16, 74:13, 75:8, 90:9, 147:9, 154:14, 160:12, 160:19 FOLLOWS ^[19] - 6:1, 10:2, 40:9, 43:1, 45:21, 50:25, 53:2, 66:13, 73:2, 82:6, 84:1, 86:2, 90:20, 100:2, 107:14, 107:24, 120:12, 152:21, 158:22 follows ^[3] - 117:22, 138:7, 141:9 foot ^[1] - 116:5 FOR ^[1] - 83:19 forgetting ^[2] - 53:7, 115:21 forgive ^[2] - 10:7, 139:6 forgotten ^[2] - 33:21, 82:28 form ^[3] - 113:3, 129:27, 169:23 formal ^[5] - 13:20, 76:25, 88:22, 89:10, 93:8 formally ^[3] - 6:25, 155:16, 179:19 format ^[1] - 172:4 formed ^[1] - 157:19 former ^[1] - 140:25 formulate ^[1] - 80:10 formulated ^[1] - 118:8 forth ^[2] - 105:25, 171:24 forthcoming ^[1]	- 20:17 forum ^[1] - 156:7 forward ^[3] - 127:12, 131:16, 158:1 forwarded ^[4] - 47:29, 48:3, 48:13, 49:16 founded ^[1] - 109:3 four ^[6] - 36:27, 36:29, 38:2, 38:6, 100:29, 101:21 fourth ^[2] - 63:2, 84:17 frame ^[1] - 171:12 free ^[2] - 55:8, 118:11 fresh ^[1] - 81:29 fresher ^[1] - 79:14 Friday ^[15] - 75:24, 77:4, 77:10, 83:3, 87:28, 92:1, 92:4, 92:5, 92:15, 92:16, 92:17, 93:18, 93:24, 178:21 friend ^[14] - 19:12, 19:23, 20:23, 29:24, 37:2, 76:16, 93:2, 126:1, 126:2, 128:3, 128:4, 140:25, 141:2, 141:22 Friend ^[1] - 113:13 friends ^[4] - 12:17, 38:24, 53:21, 142:27 friendship ^[2] - 11:22, 53:18 frightening ^[1] - 135:29 front ^[11] - 40:22, 43:6, 55:19, 77:21, 77:24, 77:28, 78:19, 94:20, 96:26, 121:29, 122:23 frozen ^[1] - 95:5 fulfilled ^[1] - 152:3 full ^[5] - 108:25, 139:14, 164:14, 164:15, 164:17
--	--	---	--	--	---

fully ^[1] - 50:21 function ^[3] - 86:19, 155:25, 156:2 functions ^[1] - 86:20 fundamental ^[1] - 115:15 furnished ^[6] - 10:24, 10:26, 91:7, 107:27, 108:11, 116:4 FURTHER ^[2] - 3:14, 50:24 future ^[5] - 88:24, 88:26, 94:28, 96:14, 96:21 Galway ^[26] - 11:27, 12:7, 12:16, 12:18, 12:19, 30:11, 30:15, 33:5, 33:6, 53:20, 103:18, 103:19, 103:20, 103:23, 103:24, 103:28, 103:29, 104:1, 128:3, 131:12, 132:17, 168:14, 169:26 gap ^[1] - 152:15 Garda ^[30] - 13:4, 13:11, 15:2, 46:21, 65:3, 102:16, 102:18, 102:27, 103:6, 103:7, 103:8, 103:9, 103:13, 103:15, 103:16, 103:17, 103:18, 103:19, 103:20, 103:21, 103:23, 103:24, 103:25, 103:26, 103:27, 103:28, 104:18, 106:18, 117:4, 117:8 Gardaí ^[7] - 14:9, 16:16, 103:29, 104:1, 137:19, 138:10, 142:15 gather ^[7] - 17:3, 49:11, 54:13, 97:2, 97:11, 178:24, 178:26 gathered ^[1] - 53:12 gathering ^[8] - 31:18, 31:21,	32:11, 33:16, 36:2, 36:3, 36:5, 46:28 gawk ^[1] - 127:24 General ^[3] - 100:10, 100:14, 100:20 generally ^[4] - 148:6, 175:24, 176:4, 176:9 generated ^[1] - 119:15 gentleman ^[3] - 73:25, 75:28 geriatrician ^[1] - 88:2 given ^[40] - 10:10, 10:27, 22:2, 24:27, 31:6, 39:4, 47:19, 47:29, 48:11, 68:12, 69:13, 70:17, 71:23, 82:10, 98:13, 108:12, 108:20, 113:4, 114:4, 116:9, 116:18, 117:1, 120:7, 120:15, 123:23, 124:10, 156:25, 163:19, 163:20, 163:21, 164:18, 166:23, 170:13, 170:15, 170:20, 171:6, 172:2, 172:13, 174:10, 175:10 glad ^[1] - 68:29 God ^[1] - 139:2 God's ^[1] - 127:7 gosh ^[1] - 59:8 GP ^[10] - 36:25, 100:7, 100:11, 100:13, 100:16, 100:23, 100:27, 100:28, 101:2, 101:19 grab ^[17] - 17:11, 17:14, 17:17, 18:22, 19:3, 19:7, 39:27, 43:5, 43:29, 44:9, 44:10, 45:13, 49:3, 49:22, 55:27, 68:22, 94:7 grabs ^[10] - 22:11, 35:25, 37:14, 39:19,	46:16, 58:11, 58:12, 58:14, 58:16, 58:20 graduated ^[1] - 100:8 graduating ^[1] - 100:11 grammar ^[1] - 63:14 grateful ^[5] - 9:6, 52:18, 72:11, 81:7, 81:10 great ^[4] - 81:19, 81:28, 107:21, 176:11 greatly ^[1] - 50:20 green ^[2] - 128:24, 156:14 grounded ^[1] - 102:23 grounds ^[2] - 108:24, 109:27 group ^[2] - 12:17, 54:10 grow ^[2] - 132:16, 155:11 guards ^[18] - 13:6, 23:3, 23:6, 23:7, 25:20, 30:2, 31:11, 32:2, 32:17, 32:18, 32:20, 39:15, 63:25, 63:27, 90:7, 97:5, 106:6, 106:20 guess ^[1] - 132:16 guide ^[5] - 101:5, 129:11, 140:7, 145:17 Guide ^[2] - 109:16, 129:11 guides ^[1] - 140:6 guilty ^[1] - 121:6 gun ^[1] - 82:8 gurney ^[1] - 35:9 gymnastics ^[1] - 82:23 H. ^[2] - 133:12, 135:22 halfway ^[1] - 44:5 halo ^[1] - 132:24 hand ^[13] - 9:14, 17:28, 52:25, 56:21, 56:22, 72:17, 74:4, 75:3, 75:20, 85:15,	99:19, 102:1, 111:1 handed ^[4] - 40:27, 70:2, 70:10, 112:14 hands ^[4] - 69:4, 82:12, 82:15, 112:26 handwritten ^[4] - 46:8, 46:22, 46:24, 75:19 happy ^[17] - 8:8, 8:29, 47:3, 70:5, 87:16, 95:22, 95:23, 107:3, 107:20, 112:22, 113:15, 114:10, 114:12, 133:15, 135:25, 162:5, 164:7 harassed ^[2] - 37:13, 39:8 harassment ^[8] - 32:8, 32:10, 35:23, 37:2, 38:12, 39:5, 39:10, 39:11 Harkin ^[4] - 6:27, 52:10, 72:5, 84:12 harm ^[1] - 82:19 hate ^[2] - 133:17, 135:27 hating ^[1] - 134:3 HAVING ^[2] - 86:1, 100:1 hazy ^[4] - 79:14, 79:17, 79:18, 79:19 headed ^[1] - 74:29 Health ^[1] - 100:17 healthcare ^[1] - 163:26 hear ^[13] - 53:7, 68:27, 73:6, 82:1, 83:5, 83:8, 85:7, 95:7, 95:9, 107:8, 116:13, 116:21, 158:5 heard ^[18] - 8:13, 99:13, 104:26, 114:22, 115:4, 117:7, 118:7, 118:12, 126:9, 149:11, 149:14, 169:16, 169:21, 171:1,	171:7, 172:9, 179:22 HEARING ^[7] - 6:1, 82:6, 83:19, 84:1, 107:14, 121:20, 180:4 hearing ^[4] - 7:12, 10:10, 32:15, 77:22 hearings ^[1] - 171:25 heart ^[1] - 134:2 heavily ^[1] - 73:19 held ^[3] - 86:14, 94:2, 100:14 hello ^[5] - 95:7, 126:4, 126:5, 126:6 help ^[6] - 19:22, 32:13, 92:14, 141:1, 161:28, 166:28 helpful ^[10] - 32:19, 51:18, 81:5, 86:9, 95:24, 104:29, 106:24, 129:14, 163:28, 178:1 helpfully ^[1] - 49:11 helping ^[1] - 101:6 herself ^[2] - 50:18, 168:2 hi ^[9] - 19:22, 56:15, 59:22, 61:16, 62:29, 141:1, 143:5, 144:24, 160:26 hiding ^[2] - 20:13, 29:9 high ^[2] - 100:17, 109:12 highlighted ^[7] - 76:21, 76:25, 88:19, 93:5, 93:9, 94:22, 177:13 highly ^[3] - 19:27, 50:11, 141:6 himself ^[1] - 89:5 hmm ^[4] - 30:24, 128:10, 153:18, 154:2 hold ^[1] - 95:3 honest ^[1] - 113:12 hope ^[7] - 51:20,	73:6, 87:28, 98:24, 106:25, 178:19, 178:20 hopefully ^[1] - 111:5 hoping ^[1] - 178:18 hospital ^[9] - 35:12, 35:27, 54:8, 59:3, 60:4, 73:5, 80:13, 100:29, 125:1 Hospital ^[10] - 11:27, 35:5, 36:18, 40:15, 41:6, 86:12, 89:14, 94:17, 110:21, 123:9 hot ^[1] - 73:4 hotspot ^[1] - 69:3 hour ^[11] - 68:1, 150:27, 175:15, 175:16, 175:17, 175:18, 176:1, 176:3, 176:4, 176:6, 176:8 hourly ^[1] - 127:24 hours ^[8] - 147:25, 148:4, 150:7, 151:6, 175:14, 176:7, 176:10 house ^[12] - 11:22, 33:5, 54:2, 54:15, 58:26, 58:27, 59:5, 60:10, 64:21, 64:27, 65:2, 65:3 housemates ^[6] - 162:28, 165:5, 165:6, 165:7, 165:12, 165:20 houses ^[2] - 59:7, 59:15 HR ^[8] - 14:16, 26:15, 26:17, 26:23, 86:20, 135:14, 136:29, 142:15 HSE ^[4] - 77:9, 89:9, 93:23, 100:17 Hugh ^[2] - 7:23, 66:15 human ^[2] - 86:19, 138:25 hung ^[1] - 126:18
--	--	--	--	---	--

hurling [1] - 81:20 hymn [1] - 92:13 hypothetical [1] - 162:26 ICGP [1] - 100:15 ID [1] - 160:13 idea [12] - 15:19, 15:20, 17:8, 17:9, 17:10, 22:15, 30:10, 35:7, 35:8, 42:1, 81:28, 147:21 identified [2] - 174:13, 174:18 identify [2] - 6:20, 178:20 identities [1] - 178:27 identity [2] - 6:21, 20:13 ii [1] - 110:18 iii [1] - 109:8 IMC [7] - 25:21, 25:22, 32:2, 37:19, 37:22, 49:28, 53:12 immediate [1] - 47:20 immediately [5] - 29:29, 47:20, 47:28, 48:2, 61:18 impermissible [1] - 157:29 implement [1] - 151:23 implied [1] - 22:10 implies [1] - 13:8 important [10] - 50:16, 147:22, 147:27, 148:1, 148:20, 148:26, 149:29, 151:25, 165:16 impression [2] - 123:3, 174:15 improvement [1] - 148:2 impugn [1] - 158:9 impugned [1] - 174:12 impulsive [1] - 129:17 IN [1] - 121:20 in... [1] - 170:27	inadvertent [1] - 6:23 inadvertently [2] - 6:18, 52:20 inappropriate [17] - 21:15, 21:27, 27:7, 76:14, 76:21, 79:20, 87:2, 88:8, 88:20, 92:29, 93:5, 94:23, 110:15, 125:8, 130:23, 145:4, 179:24 inappropriately [1] - 14:28 incidents [1] - 33:20 include [2] - 6:28, 84:15 included [3] - 41:13, 108:10, 120:16 including [2] - 6:10, 105:16 inconsistencie s [4] - 117:2, 117:3, 155:25, 159:11 inconsistency [2] - 113:9, 159:11 inconsistent [1] - 117:16 inconvenience [3] - 51:21, 67:29, 178:7 inconvenience d [2] - 50:20, 98:24 incorrect [2] - 92:17, 154:12 incorrectly [1] - 92:2 incredibly [1] - 173:24 indeed [1] - 134:29 independent [13] - 101:6, 171:17, 171:19, 171:20, 171:22, 172:3, 172:10, 172:11, 172:12, 172:24, 177:13 INDEX [1] - 3:1 Index [1] - 10:28 indication [2] - 123:23, 123:25 indices [1] - 102:27	individual [2] - 85:9, 159:20 individually [5] - 124:23, 145:21, 146:15, 150:17, 159:21 individuals [2] - 8:14, 108:11 inferred [1] - 96:23 information [10] - 16:16, 46:28, 49:11, 55:24, 104:25, 114:23, 156:26, 164:9, 164:10, 178:28 informed [4] - 14:27, 34:22, 38:29, 39:1 injunction [3] - 14:4, 14:6, 14:10 Inquiry [38] - 6:5, 6:7, 6:14, 6:20, 6:22, 6:27, 53:23, 53:24, 53:26, 72:6, 76:1, 76:4, 81:12, 83:2, 84:12, 84:13, 94:7, 96:25, 108:28, 109:1, 109:25, 115:5, 120:8, 137:26, 145:21, 147:2, 147:3, 154:7, 162:16, 166:9, 166:15, 166:20, 166:24, 167:3, 171:2, 171:7, 177:20, 179:21 insight [1] - 142:13 insisting [1] - 27:8 insofar [1] - 116:24 instagram [1] - 153:27 Instagram [5] - 57:24, 62:23, 127:1, 138:22, 144:15 instance [6] - 42:14, 76:28, 93:14, 122:22, 130:8, 172:24 instead [1] - 121:1 instructed [5] - 7:25, 7:29, 51:29, 109:11, 174:17	instruction [8] - 108:20, 152:27, 170:12, 170:13, 170:15, 170:16, 172:28 instructions [4] - 107:19, 108:5, 112:1, 174:10 instructs [1] - 162:6 intend [1] - 149:10 intended [1] - 173:15 intending [1] - 165:11 interest [1] - 169:6 intern [7] - 76:23, 80:14, 88:7, 88:20, 88:21, 92:28, 93:7 internal [6] - 16:22, 102:24, 109:6, 148:5, 175:20, 175:21 interns [1] - 38:22 interpersonal [1] - 80:27 interpret [1] - 173:28 interpretation [3] - 21:8, 160:15, 162:9 interrupt [2] - 24:17, 88:9 interrupted [4] - 91:19, 122:15, 165:8, 165:17 interruption [2] - 24:1, 24:5 introduce [1] - 6:25 introductions [1] - 99:12 invalidity [1] - 158:2 investigated [1] - 90:28 investigating [2] - 37:25, 106:6 investigation [8] - 18:12, 18:15, 22:19, 22:23, 23:1, 23:24, 37:26, 91:26 investigative [1] - 102:17	Investigative [1] - 102:28 invitation [1] - 123:15 invite [7] - 8:2, 98:6, 105:3, 115:9, 157:2, 157:11, 179:8 involuntarily [2] - 14:14, 14:15 involve [1] - 138:10 involved [8] - 20:29, 21:3, 21:10, 21:13, 100:26, 101:18, 123:17, 141:27 Ireland [7] - 59:2, 59:23, 100:28, 139:1, 144:25, 148:25, 151:25 Irish [6] - 52:1, 100:9, 100:13, 100:20, 129:12, 154:22 is.. [3] - 52:2, 133:13, 135:23 issue [37] - 14:22, 24:11, 37:10, 42:12, 42:23, 42:27, 64:1, 64:3, 64:6, 74:17, 78:21, 79:19, 80:18, 83:9, 86:21, 86:28, 87:1, 87:8, 87:19, 87:23, 89:19, 90:9, 90:26, 97:14, 97:15, 102:14, 112:13, 113:27, 114:25, 118:10, 118:20, 155:21, 166:25, 173:16, 174:7, 179:20 issues [11] - 7:11, 30:1, 64:11, 70:29, 79:14, 80:27, 109:14, 117:1, 156:27, 157:20, 179:18 IT [2] - 69:1, 96:5 it.. [1] - 76:17 item [1] - 127:22 itself [4] - 19:7, 112:6, 166:9, 166:15 iv [1] - 109:13 January [13] - 12:3, 41:1, 58:2, 58:9, 59:27, 60:19, 66:5, 67:5, 103:13, 103:26, 144:21, 146:27, 162:13 job [1] - 113:11 journal [1] - 148:9 journey [2] - 101:6, 101:17 judgment [5] - 124:17, 129:8, 136:23, 140:3, 179:21 July [20] - 11:29, 54:5, 58:3, 58:25, 89:14, 110:10, 111:9, 120:22, 120:27, 130:18, 137:13, 138:1, 138:3, 138:6, 139:9, 139:14, 146:28 jump [2] - 158:24, 171:15 jumped [2] - 82:8, 168:1 juncture [3] - 8:7, 69:28, 174:28 June [27] - 55:28, 56:12, 57:22, 59:18, 59:19, 60:18, 64:13, 64:16, 66:21, 66:26, 89:14, 103:17, 104:2, 110:10, 111:9, 120:22, 120:27, 131:10, 142:25, 144:13, 160:18, 160:19 June/July [2] - 12:4, 122:21 junior [2] - 27:8, 135:19 keen [1] - 98:13 keep [12] - 16:6, 16:10, 19:28, 53:7, 81:28, 91:6, 94:8, 115:21, 141:7, 148:20, 160:1, 160:3 keeping [4] - 28:19, 33:21, 124:10, 129:10 KELLY [8] - 3:30, 85:3, 85:5, 85:12, 86:1,
---	---	--	--	---

90:20, 98:2, 98:26 Kelly [29] - 73:24, 73:29, 75:23, 75:27, 76:9, 76:20, 77:15, 78:7, 78:23, 79:1, 80:12, 82:10, 82:25, 82:29, 83:5, 83:6, 83:11, 84:6, 84:9, 84:11, 86:4, 88:9, 90:17, 90:22, 93:29, 96:4, 98:1, 98:4, 98:15 kept [1] - 122:21 Kevin [7] - 103:8, 103:15, 103:16, 103:17, 103:21, 103:25, 104:18 key [6] - 54:18, 56:15, 61:16, 62:29, 143:5, 160:26 Khan [2] - 7:29, 103:3 kind [15] - 12:17, 21:13, 30:3, 31:12, 34:9, 61:11, 80:21, 101:13, 122:20, 122:26, 123:1, 126:13, 164:29, 166:5, 169:13 kindly [2] - 19:22, 141:1 knowledge [8] - 42:3, 42:6, 78:6, 79:21, 97:17, 150:19, 150:20, 152:15 known [11] - 11:25, 11:26, 14:12, 53:18, 105:14, 110:15, 123:19, 125:7, 130:22, 145:4, 162:25 lady [3] - 131:12, 168:14, 169:26 language [2] - 129:20, 129:28 laptop [2] - 68:26, 69:2 large [1] - 156:3 last [13] - 10:18, 11:18, 15:23, 23:13, 26:13,	38:2, 38:5, 60:24, 63:6, 66:5, 99:8, 127:26, 133:23 lasts [1] - 36:26 latitude [1] - 50:14 law [1] - 42:21 lawyers [1] - 102:16 lead [3] - 42:24, 73:5, 100:16 leadership [1] - 100:15 leading [2] - 157:6, 157:7 learned [2] - 64:10, 119:2 least [6] - 49:5, 115:29, 127:1, 127:4, 138:25, 155:9 leave [14] - 21:13, 27:23, 54:18, 76:18, 77:11, 77:12, 86:26, 87:7, 93:3, 93:26, 122:11, 122:18, 139:1 leaving [4] - 82:18, 123:8, 134:5 led [4] - 61:10, 106:8, 113:23, 119:4 Lee [33] - 8:15, 11:11, 26:4, 26:5, 68:8, 68:9, 68:13, 68:22, 69:10, 69:13, 69:22, 69:23, 71:2, 72:3, 73:11, 75:23, 76:19, 77:12, 79:28, 80:1, 80:11, 81:4, 81:18, 88:2, 89:16, 90:2, 90:12, 91:24, 93:4, 93:26, 97:16, 98:18 LEE [9] - 3:26, 68:25, 69:2, 69:6, 73:1, 73:4, 79:29, 80:2, 81:7 Lee's [4] - 69:27, 76:17, 88:23, 93:2 LEE... [1] - 81:19 left [11] - 12:21, 14:22, 18:8, 56:21, 75:20,	80:12, 97:11, 121:14, 123:2, 123:3, 174:15 left-hand [2] - 56:21, 75:20 LEGAL [10] - 3:9, 3:20, 4:13, 4:27, 5:1, 42:10, 70:14, 115:25, 157:14, 179:11 legal [12] - 7:5, 7:6, 7:9, 7:11, 7:14, 7:18, 14:7, 14:8, 84:18, 105:22, 114:9 length [1] - 108:4 less [2] - 47:20, 61:11 letter [6] - 75:7, 102:18, 103:5, 103:25, 103:27, 170:16 letters [1] - 63:13 level [3] - 100:18, 109:12, 175:1 levelled [1] - 99:16 leveraging [1] - 140:1 life [1] - 139:11 light [1] - 7:18 limb [17] - 109:1, 109:3, 109:19, 109:20, 135:10, 136:25, 142:19, 145:25, 145:27, 146:4, 146:22, 146:24, 151:3, 151:11, 170:17 limbs [2] - 121:6, 129:2 line [12] - 63:1, 79:7, 86:7, 121:11, 122:7, 123:11, 125:24, 133:14, 135:24, 167:29, 168:8, 168:9 lined [1] - 82:29 lines [4] - 75:17, 78:18, 96:14, 161:1 link [1] - 134:12 list [2] - 97:22, 105:1 listened [1] - 177:20	listening [1] - 162:4 litigation [1] - 172:5 live [4] - 12:7, 15:5, 138:28, 138:29 lived [5] - 11:22, 14:12, 27:19, 38:23, 54:1 living [8] - 32:22, 64:27, 65:2, 65:3, 67:13, 67:17, 142:29 load [1] - 56:9 local [2] - 100:17, 175:23 locked [1] - 138:27 log [9] - 15:13, 15:14, 97:24, 148:24, 148:28, 150:2, 151:6, 152:14 logged [5] - 149:3, 150:27, 152:13, 152:16, 176:1 logical [1] - 106:28 lonely [3] - 76:15, 89:8, 93:1 look [16] - 25:20, 25:21, 32:5, 43:13, 43:21, 43:27, 105:24, 106:16, 125:11, 138:4, 140:16, 140:22, 142:20, 146:23, 147:20, 166:17 looked [9] - 25:22, 28:21, 45:5, 49:28, 122:25, 136:19, 140:17, 146:17, 146:18 looking [16] - 18:28, 35:9, 56:13, 59:12, 74:8, 74:9, 88:18, 102:21, 103:2, 123:17, 125:10, 136:12, 137:14, 140:23, 176:25 looks [3] - 17:12, 17:18, 25:11 lose [1] - 134:4 losing [2] -	16:16, 94:8 loss [1] - 46:12 lost [4] - 16:9, 25:12, 32:14, 119:11 lost.. [1] - 95:1 loudly [1] - 86:8 love [1] - 138:18 lovely [1] - 99:4 low [3] - 36:15, 126:5, 126:9 luck [1] - 68:1 ludicrous [1] - 41:27 LUNCH [2] - 83:19, 84:1 lunch [6] - 82:14, 82:20, 83:13, 83:15, 90:24 lunchtime [2] - 125:29, 176:7 mail [12] - 97:16, 103:13, 103:15, 103:16, 103:21, 103:24, 103:29, 104:1, 104:2, 104:6, 104:8, 104:18 mailed [3] - 36:15, 77:10, 93:24 mailing [1] - 89:28 mails [3] - 66:3, 104:17, 106:5 main [1] - 35:12 maintained [1] - 151:26 maintains [1] - 16:17 Maintenance [1] - 147:13 manager [1] - 78:11 Manager [10] - 74:1, 76:9, 77:16, 78:8, 86:11, 94:1, 94:14, 94:15, 110:21, 125:1 manipulation [2] - 15:17 manner [5] - 76:25, 93:8, 113:28, 137:6, 137:7 Manpower [14] - 73:29, 76:9, 76:20, 76:21, 77:15, 78:7, 78:8,	78:12, 86:11, 94:1, 94:14, 94:15, 110:20, 124:29 March [11] - 75:11, 75:13, 91:8, 91:13, 101:28, 103:15, 107:28, 125:4, 125:25, 126:27, 140:20 Marie [2] - 103:11, 103:12 marked [5] - 54:29, 55:12, 55:13, 121:15, 121:28 marry [2] - 27:22, 27:24 marrying [1] - 27:9 Mary [4] - 6:29, 7:1, 84:15, 84:16 material [8] - 42:24, 102:22, 108:7, 116:13, 117:15, 117:24, 119:27, 136:18 materials [2] - 116:5, 120:15 matter [18] - 42:8, 42:18, 42:20, 42:21, 52:14, 71:4, 72:9, 88:22, 114:13, 117:13, 118:4, 120:6, 132:9, 173:5, 174:2, 177:22, 178:3, 178:16 matters [11] - 42:16, 48:24, 108:16, 109:8, 115:10, 117:19, 123:16, 152:24, 158:8, 179:2, 179:29 Maura [3] - 7:28, 10:7, 73:11 Mayo [22] - 11:23, 12:4, 12:10, 12:21, 12:24, 13:16, 14:22, 25:28, 30:13, 35:4, 54:9, 60:1, 60:5, 63:29, 64:1, 81:9, 86:11, 89:13, 94:17, 97:11, 110:21, 123:8
--	--	---	---	---	---

mcDowell ^[1] - 156:16 McDowell ^[140] - 3:7, 3:14, 3:18, 3:22, 3:31, 4:4, 4:8, 4:11, 4:15, 4:19, 4:22, 7:23, 7:24, 8:2, 8:6, 8:10, 8:27, 9:1, 9:16, 10:15, 10:20, 10:22, 15:21, 23:4, 23:29, 24:10, 24:20, 40:9, 40:11, 40:20, 40:26, 41:23, 41:25, 42:21, 43:3, 43:21, 43:26, 45:16, 50:7, 50:22, 50:24, 50:27, 51:3, 51:27, 55:3, 55:5, 55:8, 56:4, 65:19, 66:13, 66:15, 67:18, 67:22, 68:7, 68:10, 68:24, 69:13, 69:22, 69:29, 70:9, 71:4, 71:6, 71:8, 72:2, 74:5, 80:1, 81:24, 82:8, 82:28, 83:6, 83:9, 83:13, 83:17, 84:4, 84:6, 85:16, 86:2, 86:4, 87:16, 87:22, 87:26, 90:16, 91:2, 91:4, 91:16, 91:21, 98:3, 99:1, 99:19, 100:2, 100:4, 102:9, 105:3, 105:8, 105:10, 105:29, 106:1, 106:23, 107:24, 107:26, 111:13, 111:16, 111:21, 111:23, 111:25, 111:28, 112:1, 112:3, 112:16, 113:6, 115:11, 118:14, 118:17, 118:19, 119:18, 119:20, 119:23, 119:25, 120:12, 120:14, 122:3, 125:17, 135:4, 135:6, 152:18, 155:16, 156:17, 158:16, 158:17, 169:15, 170:25, 174:2,	174:4, 174:20, 174:29, 178:4, 178:14, 178:28, 179:6 McGuinness ^[27] - 3:9, 3:20, 4:13, 4:27, 5:1, 7:4, 7:14, 42:8, 42:10, 42:12, 70:7, 70:14, 70:16, 84:19, 114:13, 114:27, 115:9, 115:25, 115:27, 118:14, 157:2, 157:14, 157:16, 158:13, 179:8, 179:11, 179:13 McGuinness' ^[2] - 118:15, 157:11 McLoughlin ^[2] - 103:11, 103:12 McNally ^[193] - 3:6, 3:13, 3:17, 3:24, 4:6, 4:17, 4:23, 4:25, 4:30, 7:28, 8:7, 8:11, 9:14, 10:1, 10:4, 10:7, 10:17, 10:23, 11:7, 15:22, 23:6, 23:28, 24:3, 24:11, 24:16, 24:24, 40:7, 40:13, 40:15, 40:19, 41:17, 41:21, 41:24, 42:5, 43:17, 43:23, 45:20, 45:23, 46:2, 46:5, 46:11, 46:15, 47:15, 47:22, 47:25, 48:14, 48:16, 48:18, 48:25, 49:2, 49:9, 49:18, 49:21, 49:26, 50:1, 50:3, 50:11, 51:4, 51:5, 51:10, 51:14, 52:25, 53:1, 53:4, 55:4, 55:7, 55:11, 55:18, 56:7, 66:9, 68:11, 68:29, 69:4, 69:5, 69:8, 69:16, 69:19, 69:20, 69:23, 69:28, 70:4, 70:22, 71:10, 71:12, 71:14, 71:25, 72:1, 72:17, 73:11,	73:12, 74:8, 76:2, 76:6, 79:28, 81:16, 82:17, 82:18, 85:6, 87:15, 87:19, 87:23, 90:18, 90:22, 91:3, 91:6, 91:18, 91:23, 92:19, 95:22, 95:25, 96:2, 96:4, 98:1, 102:11, 102:13, 103:1, 105:6, 105:19, 106:4, 106:5, 106:11, 106:14, 106:18, 106:25, 107:6, 107:9, 107:16, 107:18, 108:3, 111:12, 111:15, 111:18, 111:22, 111:24, 111:27, 111:29, 112:2, 112:5, 112:27, 113:6, 113:22, 114:18, 114:24, 115:17, 115:21, 118:23, 118:29, 119:2, 121:12, 121:22, 121:27, 125:15, 152:19, 152:21, 152:23, 155:17, 155:29, 156:5, 156:13, 156:21, 156:23, 157:6, 158:8, 158:13, 158:15, 158:19, 158:22, 158:24, 160:3, 165:8, 165:13, 165:18, 165:22, 165:24, 165:26, 169:24, 170:4, 171:4, 171:6, 171:11, 171:15, 173:16, 173:20, 174:7, 174:19, 174:22, 177:11, 177:17, 178:5, 178:18, 179:5 mcNALLY ^[4] - 3:27, 3:32, 73:1, 90:20 McNally's ^[2] - 106:2, 118:26 McPartlan ^[12] - 103:8, 103:10, 103:13, 103:15, 103:16, 103:17, 103:22, 103:25, 104:18, 106:19,	117:4, 117:8 me.. ^[1] - 111:18 meal ^[1] - 82:19 mean ^[22] - 13:12, 14:6, 14:26, 15:10, 15:11, 17:12, 21:3, 21:4, 26:20, 28:6, 30:13, 37:27, 43:7, 46:8, 76:7, 92:5, 113:1, 113:19, 155:17, 164:3, 164:5, 167:21 means ^[3] - 76:20, 123:8, 151:28 meant ^[5] - 19:26, 29:13, 91:23, 141:5, 165:13 mechanism ^[1] - 156:7 media ^[1] - 140:1 Medical ^[39] - 6:6, 6:9, 7:25, 23:8, 23:13, 32:15, 37:29, 38:6, 65:7, 66:16, 66:25, 73:29, 74:29, 76:9, 76:20, 77:15, 78:7, 78:8, 78:11, 82:26, 86:6, 86:11, 93:29, 94:14, 94:15, 101:25, 105:12, 107:27, 107:28, 109:15, 109:17, 110:20, 124:29, 129:12, 137:25, 140:6, 147:7, 147:10, 176:20 medical ^[22] - 6:12, 6:27, 6:29, 7:2, 38:22, 84:14, 84:16, 84:17, 88:1, 88:6, 90:12, 92:28, 100:7, 146:26, 149:6, 149:16, 149:21, 171:29, 172:13, 172:21, 176:17, 176:19 medicine ^[1] - 147:28 meds ^[5] - 57:19, 62:18, 63:19, 144:10,	161:22 meet ^[26] - 28:9, 77:1, 86:25, 87:7, 89:1, 89:3, 90:4, 93:17, 123:2, 127:7, 130:2, 130:9, 132:1, 132:9, 132:17, 133:21, 135:8, 136:14, 136:28, 147:26, 150:17, 150:19, 150:29, 151:2, 151:22, 173:1 meeting ^[46] - 14:21, 26:15, 26:17, 26:22, 27:9, 47:10, 47:11, 65:23, 73:23, 73:27, 74:7, 75:23, 75:26, 75:27, 76:13, 77:12, 86:28, 87:11, 87:17, 87:18, 88:5, 88:15, 89:20, 89:26, 90:5, 91:11, 91:13, 91:18, 91:24, 91:29, 92:9, 92:27, 93:27, 94:2, 94:4, 96:10, 96:17, 96:28, 122:5, 122:10, 124:11, 135:14, 136:29, 137:18, 148:8 meetings ^[7] - 32:24, 78:4, 78:6, 80:29, 148:7, 148:13, 175:22 meets ^[3] - 136:1, 136:23, 137:7 member ^[2] - 7:9, 101:20 members ^[11] - 6:28, 7:23, 45:17, 67:20, 84:14, 94:13, 98:4, 99:1, 102:2, 110:20, 124:29 memo ^[1] - 46:8 memory ^[8] - 33:7, 74:16, 79:13, 79:14, 79:17, 79:18, 79:19, 166:29 memos ^[1] - 65:28	menacing ^[4] - 135:15, 135:20, 137:6, 159:18 mental ^[1] - 82:23 mention ^[12] - 36:1, 37:16, 37:19, 37:20, 37:23, 37:24, 37:26, 38:4, 38:5, 46:16, 69:29, 96:7 mentioned ^[7] - 38:1, 38:7, 40:16, 58:22, 67:1, 87:29, 91:9 mentioning ^[2] - 37:18, 161:25 mentorship ^[1] - 100:28 message ^[48] - 12:15, 17:12, 19:12, 19:23, 20:29, 21:26, 22:6, 22:10, 25:14, 25:15, 28:24, 28:25, 29:24, 41:17, 41:20, 41:27, 43:5, 43:7, 43:9, 43:11, 43:13, 44:6, 44:10, 44:14, 45:4, 46:14, 47:21, 48:1, 48:2, 48:7, 48:9, 48:12, 48:27, 49:7, 49:16, 56:11, 60:11, 67:6, 67:10, 122:29, 126:26, 128:24, 131:9, 131:22, 134:11, 141:2, 141:27, 165:3 messages ^[79] - 14:29, 21:5, 25:19, 27:7, 31:8, 33:24, 34:18, 34:29, 39:14, 44:13, 44:24, 45:4, 45:14, 51:1, 54:22, 60:15, 60:17, 60:19, 60:22, 63:22, 63:23, 63:24, 64:9, 64:16, 64:18, 64:21, 64:22, 66:20, 67:11, 70:21, 87:4, 87:6, 88:20,
---	---	---	---	---	---

88:25, 96:11, 97:21, 122:19, 123:22, 125:5, 125:19, 126:24, 127:10, 128:26, 129:7, 130:20, 131:1, 131:24, 133:8, 133:10, 134:29, 135:7, 135:13, 136:6, 136:9, 137:5, 138:5, 138:7, 139:18, 139:27, 140:17, 140:18, 140:27, 142:2, 142:4, 142:7, 142:9, 142:16, 142:17, 142:23, 142:24, 142:28, 144:27, 145:1, 155:21, 159:20, 162:14, 169:26 messaging [1] - 129:29 met [5] - 30:6, 36:15, 88:3, 88:17, 129:29 method [1] - 113:28 methodology [1] - 158:10 microphone [3] - 53:6, 53:8, 114:11 midday [1] - 52:1 middle [1] - 155:11 midway [1] - 44:5 might [34] - 6:19, 40:14, 40:15, 43:14, 45:17, 46:5, 46:25, 49:24, 50:9, 59:12, 66:1, 66:2, 67:20, 83:9, 90:17, 95:20, 105:20, 106:26, 118:21, 120:8, 122:29, 123:24, 129:14, 152:18, 155:8, 157:20, 161:27, 166:28, 173:14, 177:13, 179:26 mind [8] - 32:11, 102:21, 103:1, 118:20, 169:17, 171:13, 177:27,	177:29 mine [5] - 74:28, 76:18, 93:3, 128:5, 154:18 minute [6] - 61:26, 74:10, 87:11, 87:16, 122:6, 161:15 minutes [14] - 52:2, 69:9, 69:10, 74:6, 74:8, 89:26, 90:5, 92:8, 95:20, 107:4, 107:11, 121:16, 127:8, 134:22 misconduct [33] - 6:8, 109:28, 121:6, 124:4, 124:20, 129:2, 130:1, 130:3, 135:2, 135:9, 135:11, 136:2, 136:24, 137:8, 139:22, 139:23, 140:5, 142:7, 142:10, 145:6, 145:8, 145:16, 145:22, 145:25, 146:20, 150:25, 151:1, 151:3, 151:11, 151:28, 155:28, 173:2, 177:8 mislead [1] - 92:6 misled [1] - 22:28 miss [32] - 134:14, 153:12, 153:16, 154:5, 154:13, 154:15, 154:17, 154:20, 154:24, 154:26, 154:29, 155:2, 155:5, 155:7, 155:12, 155:15, 159:16, 159:20, 159:27, 160:7, 160:11, 160:14, 160:21, 167:7, 167:11, 167:15, 167:24, 167:29, 168:8, 170:18, 175:8, 175:12 missed [4] - 64:28, 133:2, 133:6, 133:25 missing [1] - 138:11 mistaken [1] -	119:8 mistakes [1] - 84:27 mobile [3] - 17:3, 18:18, 18:19 model [2] - 100:28 modification [1] - 118:5 moment [8] - 13:22, 20:4, 21:17, 75:3, 90:8, 114:12, 141:12, 164:6 moments [1] - 140:18 MONDAY [1] - 6:1 Monday [2] - 77:6, 93:20 month [5] - 36:24, 36:27, 36:29, 37:5, 58:2 months [18] - 11:26, 12:10, 13:15, 13:17, 13:18, 14:12, 33:17, 38:14, 59:4, 64:26, 65:1, 67:13, 89:15, 89:16, 89:17, 127:27 morning [17] - 6:4, 7:23, 7:28, 8:11, 9:2, 10:4, 10:5, 27:15, 52:6, 52:7, 52:8, 53:4, 53:5, 53:6, 90:22, 99:8, 127:17 move [5] - 74:13, 130:11, 137:9, 145:12, 145:19 moved [5] - 12:4, 58:28, 59:5, 59:14, 89:16 moving [4] - 59:6, 109:25, 123:11, 126:23 MR [135] - 3:7, 3:9, 3:14, 3:18, 3:20, 3:22, 3:31, 4:4, 4:8, 4:11, 4:13, 4:15, 4:19, 4:22, 4:27, 5:1, 7:23, 8:6, 8:10, 8:27, 9:1, 9:16, 10:15, 10:22, 15:21, 23:4,	23:29, 24:10, 40:9, 40:11, 40:20, 40:26, 41:23, 41:25, 42:10, 42:12, 43:3, 43:21, 43:26, 45:16, 50:7, 50:24, 50:27, 51:3, 51:27, 55:3, 55:5, 55:8, 56:4, 65:19, 66:13, 66:15, 67:18, 68:7, 68:10, 68:24, 69:13, 69:22, 69:29, 70:7, 70:9, 70:14, 70:16, 71:6, 71:8, 72:2, 74:5, 80:1, 81:24, 82:8, 82:28, 83:6, 83:9, 83:13, 83:17, 84:6, 86:2, 86:4, 87:16, 87:22, 87:26, 90:16, 91:2, 91:4, 91:16, 91:21, 98:3, 99:1, 100:2, 100:4, 102:9, 105:8, 105:10, 106:1, 106:23, 107:23, 107:26, 111:13, 111:16, 111:21, 111:23, 111:25, 111:28, 112:1, 112:3, 112:16, 113:6, 115:25, 115:27, 118:17, 118:19, 119:20, 119:23, 119:25, 120:11, 120:14, 122:3, 125:17, 135:4, 135:6, 152:18, 155:16, 156:17, 157:14, 157:16, 158:17, 169:15, 174:4, 174:20, 174:29, 178:4, 178:14, 179:6, 179:11, 179:13 MS [172] - 3:6, 3:13, 3:17, 3:24, 3:27, 3:30, 3:32, 4:6, 4:17, 4:23, 4:25, 4:30, 7:28, 8:7, 10:1, 10:4, 10:17, 10:23, 11:7, 15:22, 23:6, 23:28, 24:3, 24:16, 24:24, 40:7, 40:19,	41:21, 41:24, 42:5, 43:17, 43:23, 45:20, 45:23, 46:2, 46:5, 46:11, 46:15, 47:15, 47:22, 47:25, 48:14, 48:16, 48:18, 48:25, 49:2, 49:9, 49:18, 49:21, 49:26, 50:1, 50:3, 50:11, 51:5, 51:10, 51:14, 53:1, 53:4, 55:4, 55:7, 55:11, 55:18, 56:7, 66:9, 68:11, 68:29, 69:5, 69:8, 69:20, 69:23, 69:28, 71:12, 71:14, 71:25, 72:1, 73:1, 73:11, 74:8, 76:2, 76:6, 79:28, 80:5, 81:16, 82:18, 85:3, 85:5, 85:6, 85:12, 86:1, 87:15, 87:19, 87:23, 90:20, 90:22, 91:3, 91:6, 91:18, 91:23, 92:19, 95:22, 96:4, 98:1, 98:2, 98:26, 102:11, 102:13, 103:1, 105:6, 106:5, 106:11, 106:14, 106:18, 107:6, 107:9, 107:18, 111:12, 111:15, 111:18, 111:22, 111:24, 111:27, 111:29, 112:2, 112:5, 112:27, 113:22, 114:18, 114:24, 115:17, 115:21, 118:29, 119:2, 121:12, 121:22, 121:27, 125:15, 152:21, 152:23, 156:13, 156:21, 156:23, 157:6, 158:15, 158:21, 158:24, 160:3, 165:13, 165:18, 165:22, 165:24, 165:26, 170:4, 171:4, 171:6, 171:11, 171:15, 173:16, 173:20, 174:19, 174:22, 175:6,	175:9, 175:13, 175:16, 175:18, 176:3, 176:11, 177:17, 178:5, 178:18, 179:5 multiple [4] - 21:4, 39:12, 39:13, 39:14 must [3] - 75:26, 130:4 myself.. [1] - 76:19 Naas [5] - 57:20, 62:19, 63:20, 144:11, 161:23 name [18] - 6:19, 6:26, 7:24, 7:28, 10:7, 26:1, 52:10, 66:29, 72:5, 73:11, 84:12, 128:8, 154:1, 154:4, 154:8, 154:12, 155:1, 178:20 namely [1] - 175:10 names [4] - 9:9, 47:6, 178:24, 178:25 narrative [1] - 122:15 national [1] - 100:22 National [1] - 101:18 naturally [1] - 12:12 nature [7] - 76:15, 88:8, 92:29, 169:21, 170:6, 170:21, 175:21 NCHD [1] - 85:3 NCHD" [1] - 75:20 NCHDs [2] - 80:27, 86:20 necessarily [1] - 88:14 necessary [7] - 6:22, 7:17, 111:5, 116:4, 116:14, 118:12, 173:20 necessity [1] - 118:10 need [15] - 11:5, 13:23, 17:22, 17:26, 18:8, 32:1, 38:4, 51:21, 55:11, 71:28,
---	---	---	--	---	--

88:11, 106:3, 122:2, 138:16, 156:24 needs [4] - 31:29, 102:3, 105:28, 178:28 negative [2] - 20:24, 141:23 network [1] - 145:12 Network [1] - 100:17 never [4] - 19:25, 29:13, 34:24, 141:4 next [26] - 8:3, 8:9, 24:14, 43:26, 44:23, 51:27, 57:22, 62:23, 63:1, 66:24, 68:7, 81:26, 84:4, 92:10, 125:29, 131:16, 133:1, 133:28, 134:11, 134:17, 141:9, 144:13, 154:18, 161:1, 171:16, 179:15 nexus [1] - 165:27 nick [1] - 8:18 Nick [1] - 99:3 NICK [2] - 4:3, 100:1 nine [2] - 26:26, 28:4 nobody [7] - 18:20, 22:29, 23:22, 25:22, 34:24, 34:27, 122:25 noise [1] - 80:16 none [6] - 15:7, 15:8, 15:9, 151:19, 151:21, 158:15 normally [4] - 148:6, 148:13, 175:26, 175:27 note [31] - 46:8, 47:8, 71:18, 75:16, 75:18, 76:2, 76:6, 76:7, 77:16, 77:18, 77:27, 78:1, 78:13, 78:15, 90:26, 91:14, 92:23, 94:1, 94:18, 94:20, 94:21, 94:22,	94:27, 96:7, 96:9, 96:12, 96:19, 96:24, 96:25, 96:28 notes [30] - 45:24, 45:27, 46:22, 46:24, 47:15, 47:17, 49:13, 49:26, 51:14, 51:15, 58:8, 65:28, 73:19, 73:21, 73:22, 73:29, 74:1, 74:2, 74:3, 74:9, 74:10, 74:21, 74:26, 75:15, 76:6, 79:10, 88:14, 119:12 noteworthy [1] - 80:25 nothing [8] - 89:21, 96:16, 96:19, 137:3, 152:17, 160:9, 161:25, 177:29 notice [2] - 11:14, 113:13 Notice [12] - 94:7, 96:25, 108:28, 109:24, 145:21, 147:2, 147:3, 166:14, 166:24, 167:1, 167:3 noticed [2] - 156:27, 156:29 notwithstandin g [1] - 124:28 November [1] - 106:1 nowadays [4] - 57:25, 62:24, 132:9, 144:16 number [45] - 17:1, 28:3, 28:7, 29:1, 56:28, 61:28, 65:14, 65:20, 66:6, 75:21, 77:10, 93:24, 100:23, 102:4, 126:3, 126:15, 126:26, 127:17, 128:5, 128:14, 131:18, 131:23, 133:3, 133:6, 133:26, 133:29, 134:18, 136:5, 136:27, 143:14, 148:28,	148:29, 149:2, 149:3, 150:6, 153:17, 154:22, 160:8, 161:3, 164:25, 168:17, 168:29 numbers [6] - 30:3, 31:12, 65:15, 94:12, 102:7, 131:2 o'clock [6] - 82:14, 83:10, 83:12, 83:15, 179:4, 180:1 O'Flanagan [1] - 103:27 O'Kennedy [4] - 104:2, 104:5, 104:6, 104:8 O'Malley [1] - 26:10 O'Malley's [1] - 89:17 O'Sullivan [3] - 7:26, 40:26, 102:1 object [3] - 41:24, 118:23, 155:16 objecting [2] - 70:27, 106:17 objection [14] - 24:18, 71:8, 74:11, 91:20, 106:26, 107:7, 107:8, 113:11, 113:21, 114:19, 114:28, 115:14, 119:17, 174:29 objections [2] - 158:14, 173:24 objective [2] - 30:28, 31:1 obligation [2] - 149:2, 176:16 obligations [2] - 149:5, 149:22 obliged [4] - 8:7, 107:6, 107:9, 158:24 observation [2] - 168:17, 168:29 observing [1] - 101:13 obtained [3] - 11:10, 104:25, 175:11 obtains [2] - 11:8, 71:27 obvious [1] -	63:18 obviously [23] - 11:13, 34:16, 34:19, 34:22, 38:4, 38:28, 42:2, 52:2, 69:15, 71:18, 73:18, 74:23, 79:12, 105:19, 116:3, 148:1, 153:4, 156:5, 157:16, 169:6, 174:7, 178:27, 179:23 occasion [9] - 10:19, 11:18, 15:23, 26:14, 67:3, 80:29, 117:9, 117:11, 130:17 occasions [5] - 50:19, 110:7, 110:9, 125:3 occupants [1] - 59:10 occur [1] - 15:18 occurred [9] - 24:5, 67:12, 88:15, 111:9, 120:26, 137:18, 158:2, 158:3, 167:8 occurrence [1] - 80:26 occurring [2] - 76:27, 93:14 occurs [1] - 66:24 October [4] - 66:28, 83:1, 103:9, 104:9 of.. [1] - 91:1 offence [1] - 96:1 offend [2] - 19:26, 141:5 offer [3] - 89:5, 115:10, 162:5 Office [4] - 104:3, 104:5, 104:7, 104:9 office [3] - 79:3, 79:6, 90:2 often [3] - 80:26, 80:28 old [1] - 121:27 omission [1] - 151:14 ON [1] - 6:1 on.. [2] - 118:26, 177:23	once [5] - 8:24, 52:21, 84:21, 101:11, 126:8 one [99] - 10:29, 17:12, 19:23, 23:16, 32:23, 40:4, 50:8, 50:27, 59:19, 60:9, 60:18, 60:24, 60:28, 61:11, 61:14, 62:27, 63:1, 63:2, 63:6, 63:17, 65:10, 66:1, 66:2, 66:3, 66:17, 66:18, 71:3, 74:27, 75:5, 75:6, 75:7, 75:11, 75:14, 75:15, 91:11, 94:13, 98:13, 101:3, 101:14, 106:10, 110:7, 110:9, 110:19, 112:8, 112:9, 113:27, 114:11, 114:14, 114:21, 122:21, 124:28, 125:2, 125:5, 125:6, 128:22, 130:17, 130:19, 130:20, 133:23, 136:27, 138:13, 141:2, 148:19, 148:28, 149:2, 150:27, 150:28, 152:13, 153:15, 156:19, 162:13, 164:29, 171:13, 171:22, 171:24, 173:7, 173:22, 173:25, 174:25, 174:26, 175:6, 175:9, 175:10, 175:15, 175:16, 176:1, 176:3, 176:5, 176:8, 176:10, 176:14, 178:24, 178:25, 178:26, 179:2 one-on-one [1] - 101:3 one-sided [1] - 173:25 ones [2] - 158:26, 160:23 ongoing [1] - 38:3 online [7] - 68:10, 84:7, 99:8, 99:10, 166:12,	176:7, 176:19 onus [1] - 150:1 open [8] - 104:15, 114:8, 120:19, 120:29, 123:29, 149:9, 155:9, 177:27 opened [2] - 102:14, 103:4 operating [1] - 134:28 opine [2] - 112:23, 177:7 opining [1] - 177:14 opinion [72] - 42:22, 42:24, 104:19, 108:17, 108:24, 108:25, 110:25, 112:18, 115:6, 116:6, 116:16, 117:19, 118:8, 119:28, 120:14, 124:9, 124:18, 124:22, 129:10, 135:7, 135:20, 135:29, 136:21, 136:22, 137:5, 137:8, 139:23, 140:5, 142:1, 142:3, 142:6, 142:9, 145:5, 145:16, 145:20, 146:5, 146:13, 150:14, 150:28, 151:1, 151:4, 151:9, 151:12, 151:22, 152:9, 152:27, 156:9, 156:26, 157:19, 157:22, 158:10, 162:1, 162:5, 162:6, 162:7, 162:10, 162:11, 164:25, 164:27, 166:7, 166:8, 166:27, 170:8, 170:14, 171:3, 171:20, 171:21, 172:8, 172:9, 172:29, 177:23, 177:24 opinions [1] - 164:13 opportunity [2] - 116:29, 178:25 option [1] - 113:10 oral [2] - 121:2, 121:10
--	---	--	---	--	---

order [4] - 83:2, 106:28, 130:2, 176:17 ordered [1] - 6:20 ordinarily [1] - 108:15 ordinary [1] - 171:24 organise [1] - 87:6 organised [1] - 86:25 orientate [2] - 122:5, 142:25 original [7] - 45:24, 45:27, 49:6, 49:25, 51:15, 58:7, 65:28 otherwise [3] - 49:28, 99:2, 104:22 ought [5] - 110:15, 125:7, 130:22, 145:3, 179:20 ourselves [1] - 71:28 outline [2] - 8:11, 86:27 outlined [2] - 88:17, 149:5 output [1] - 122:10 outrageous [1] - 169:9 outside [1] - 104:25 own [4] - 56:5, 113:18, 140:1, 168:1 page [91] - 10:13, 10:19, 10:29, 11:17, 16:25, 16:26, 19:6, 26:14, 26:16, 27:5, 28:10, 28:28, 29:27, 34:21, 40:21, 43:23, 44:5, 44:23, 53:14, 54:28, 55:1, 55:20, 55:22, 57:16, 67:7, 68:13, 73:15, 74:13, 75:7, 75:9, 75:16, 78:17, 79:7, 91:1, 92:10, 102:21,	102:25, 109:23, 110:8, 111:10, 111:12, 121:11, 122:3, 123:11, 124:26, 125:23, 125:24, 127:12, 127:14, 128:13, 128:22, 130:12, 130:27, 130:28, 131:7, 131:17, 131:22, 133:1, 133:5, 133:8, 133:28, 134:11, 134:17, 137:14, 140:13, 140:22, 141:9, 144:21, 153:14, 153:15, 153:17, 153:24, 154:14, 154:17, 154:18, 154:28, 155:3, 155:6, 160:12, 167:18, 167:25, 167:26, 167:27, 168:7, 168:24, 168:25 PAGE [1] - 3:3 pager [1] - 168:1 pages [11] - 53:13, 60:17, 71:15, 75:8, 94:8, 102:26, 109:25, 136:12, 142:23, 160:20 pagination [3] - 16:23, 109:7, 127:13 pain [1] - 127:29 paper [2] - 74:29, 121:28 paragraph [9] - 40:18, 41:3, 43:21, 43:27, 92:8, 92:9, 92:11, 111:11, 111:14 paragraphs [2] - 70:19, 71:19 paraphrasing [2] - 54:20, 166:6 pardon [4] - 125:13, 164:4, 167:23, 167:24 Park [1] - 81:17 Part [1] - 6:5 part [13] - 6:11, 35:12, 36:25, 38:14, 38:29, 91:26, 101:17, 108:5, 118:6, 118:7, 142:8, 148:27, 169:23	particular [10] - 24:7, 41:29, 79:18, 108:10, 135:13, 155:4, 166:2, 166:3, 174:25, 174:26 particularly [3] - 80:25, 113:2, 163:20 parties [10] - 6:20, 7:16, 7:22, 8:28, 49:6, 52:14, 70:26, 92:14, 118:13, 179:4 partner [1] - 100:11 party [2] - 8:4, 142:13 pass [2] - 19:25, 141:4 passed [1] - 78:21 passing [1] - 129:17 past [5] - 21:6, 56:28, 61:28, 143:15, 161:3 patient [3] - 35:9, 127:21, 129:23 patient's [1] - 129:26 patients [1] - 123:18 Paul [4] - 6:26, 52:10, 72:5, 84:12 PAUSE [1] - 121:20 pause [1] - 7:21 PC [1] - 95:10 people [4] - 10:17, 46:28, 47:4, 123:18 perfect [1] - 9:13 perfectly [1] - 48:9 performance [12] - 6:8, 109:27, 129:1, 146:9, 146:10, 146:15, 150:13, 150:18, 151:21, 151:29, 173:2, 177:9 perhaps [11] - 46:25, 49:24, 50:19, 69:5, 69:29, 70:12, 87:22, 95:21, 102:3, 166:28,	176:8 period [15] - 36:24, 37:5, 54:4, 58:1, 58:2, 58:23, 110:9, 125:3, 130:18, 137:12, 137:29, 146:27, 151:7, 151:16, 152:12 period.. [1] - 110:7 periods [9] - 36:28, 36:29, 147:9, 147:15, 147:16, 150:7, 152:4, 152:5, 152:7 permanent [1] - 86:18 permissible [1] - 157:27 permit [1] - 7:15 persist [1] - 137:5 persistence [5] - 124:15, 129:28, 158:27, 159:1, 159:14 persistency [1] - 27:11 persistent [6] - 27:11, 129:15, 135:13, 135:15, 137:1, 139:27 person [19] - 16:13, 20:12, 32:28, 32:29, 33:1, 33:4, 36:15, 37:1, 53:9, 60:6, 84:17, 96:5, 99:5, 159:5, 164:16, 166:12, 169:10, 172:27, 178:26 personal [2] - 145:12, 148:18 personally [3] - 39:8, 39:9, 173:27 personnel [2] - 168:12, 168:28 persons [1] - 22:25 persuade [2] - 156:11 pertaining [1] - 77:23 pertains [1] - 73:23 phone [86] - 15:11, 15:25,	16:10, 17:3, 18:18, 18:19, 19:18, 21:5, 22:16, 22:17, 22:20, 22:21, 22:24, 22:26, 23:3, 23:6, 23:7, 23:9, 23:14, 23:25, 23:26, 23:27, 24:24, 24:25, 24:26, 24:27, 24:28, 25:1, 25:2, 25:5, 25:9, 25:16, 27:11, 27:15, 27:18, 27:20, 27:25, 27:26, 28:3, 29:2, 30:3, 31:12, 34:2, 34:3, 34:7, 34:17, 34:24, 34:27, 39:11, 39:12, 39:13, 39:24, 44:1, 44:3, 44:19, 45:10, 50:29, 65:24, 65:25, 66:1, 66:6, 69:3, 73:5, 78:24, 79:21, 89:23, 97:22, 97:24, 97:26, 105:25, 125:6, 125:18, 126:1, 126:2, 126:18, 126:22, 129:7, 130:21, 131:1, 133:29, 134:18, 136:5, 168:17, 168:29 photographs [1] - 35:24 photos [1] - 37:14 phrased [1] - 173:14 physical [1] - 18:18 Physicians [1] - 149:12 pics [1] - 139:4 pictures [1] - 139:29 piece [2] - 66:18, 75:19 place [8] - 17:23, 37:4, 37:17, 71:1, 81:19, 87:11, 90:10, 148:10 planned [1] - 179:3 plenty [1] -	123:18 plough [3] - 11:7, 107:20, 121:23 plural [1] - 65:25 plz [1] - 134:24 plzz [1] - 134:21 Plzzz [1] - 134:24 PO [1] - 75:20 point [32] - 8:24, 9:17, 22:22, 24:21, 24:29, 49:22, 49:23, 64:9, 77:24, 98:13, 100:16, 114:28, 118:12, 119:3, 122:19, 122:28, 127:25, 142:15, 150:28, 152:13, 152:16, 158:25, 159:24, 159:26, 162:12, 164:8, 164:29, 165:7, 165:19, 170:25, 173:16, 175:10 pointed [2] - 108:3, 155:26 pointing [1] - 159:10 points [14] - 47:1, 47:9, 49:13, 65:14, 65:20, 107:19, 148:5, 148:12, 148:14, 148:15, 148:18, 175:7, 175:19, 175:26 police [1] - 128:17 poor [13] - 6:8, 109:27, 129:1, 142:13, 146:9, 146:10, 146:14, 150:12, 150:18, 151:20, 151:28, 173:1, 177:8 portions [1] - 71:15 position [7] - 48:5, 78:5, 86:14, 86:15, 100:26, 104:24, 177:15 positions [1] - 100:15 possible [6] - 19:25, 50:14, 50:17, 86:9, 141:4, 179:17
---	---	--	--	--	---

possibly [9] - 33:20, 37:4, 38:13, 38:15, 38:16, 38:18, 47:12, 59:13, 157:21 post [1] - 76:10 postgraduate [1] - 100:9 potential [1] - 25:3 potentially [2] - 23:17, 37:1 Power [2] - 7:1, 84:16 POWER [7] - 50:6, 67:24, 80:6, 83:8, 98:8, 176:14, 177:2 PPC [3] - 105:13, 167:4 practice [8] - 100:12, 101:2, 101:5, 101:6, 101:13, 101:14, 175:21, 175:22 Practise [7] - 6:5, 6:26, 7:10, 52:11, 84:13, 117:7, 167:3 practising [3] - 35:11, 148:25, 150:21 practitioner [12] - 6:12, 6:28, 7:1, 7:2, 35:6, 84:14, 84:16, 84:17, 146:26, 149:16, 149:21, 176:17 practitioners [5] - 148:29, 149:1, 149:6, 150:1, 150:2 Practitioners [7] - 6:6, 6:10, 100:10, 100:14, 100:21, 109:17, 147:11 practitioners' [1] - 172:1 preamble [2] - 130:13, 137:16 predating [1] - 119:13 prefer [3] - 53:9, 70:4, 71:14 preliminary [1] - 8:4 Preliminary [2] - 68:19, 105:12	premature [1] - 177:14 premeditated [4] - 129:15, 129:18, 139:27, 142:12 premise [3] - 78:2, 108:26, 155:28 premised [2] - 152:23, 164:10 premises [1] - 96:25 prepare [2] - 114:20, 171:16 prepared [4] - 101:27, 104:29, 162:1, 173:23 preparing [2] - 57:26, 144:17 present [7] - 8:3, 15:8, 15:24, 15:27, 16:1, 90:2, 105:16 presentation [1] - 165:13 presented [10] - 79:22, 163:18, 166:8, 166:26, 170:9, 170:26, 173:17, 173:25, 174:23 press [2] - 53:8, 115:21 pressing [1] - 10:6 pressure [1] - 52:24 presumably [1] - 26:25 presume [8] - 9:15, 11:2, 28:6, 33:8, 55:27, 71:26, 79:1, 114:21 presumed [1] - 108:23 presuming [2] - 76:20, 154:8 presumption [4] - 117:14, 152:24, 163:17, 177:6 pretend [2] - 163:24, 169:8 pretty [1] - 169:9 previous [8] - 18:4, 30:15, 67:3, 79:7, 99:19, 102:16, 123:22, 168:22	previously [8] - 8:13, 10:10, 16:26, 40:17, 47:24, 74:11, 99:9, 105:15 primarily [1] - 12:15 principals [1] - 84:22 principle [1] - 175:1 private [8] - 7:17, 75:1, 131:18, 133:3, 133:6, 133:26, 136:5, 139:29 privilege [1] - 177:27 problem [5] - 68:25, 106:18, 121:28, 174:12, 174:17 procedural [3] - 42:13, 114:24, 173:5 proceed [4] - 8:29, 82:13, 95:22, 95:23 proceeding [1] - 6:14 proceedings [4] - 14:7, 14:8, 174:28, 179:15 Proceedings [2] - 68:19, 105:12 process [7] - 15:1, 101:8, 147:23, 152:16, 163:26, 166:21, 167:8 prod [1] - 24:7 produce [2] - 150:6, 175:26 produced [2] - 166:29, 167:1 Prof [1] - 89:16 profession [4] - 145:28, 151:13, 151:24, 151:27 professional [51] - 6:7, 6:8, 108:15, 109:27, 109:28, 121:6, 124:4, 124:19, 129:1, 129:2, 130:1, 130:3, 135:1, 135:9, 135:11, 136:2, 136:24, 137:8, 139:22, 139:23,	140:5, 140:7, 142:7, 142:10, 145:6, 145:8, 145:16, 145:22, 145:25, 146:9, 146:10, 146:15, 146:19, 147:8, 147:9, 148:27, 150:12, 150:18, 150:25, 151:1, 151:3, 151:11, 151:20, 151:28, 151:29, 155:28, 156:26, 173:2, 177:8, 177:9 Professional [2] - 109:16, 147:13 professionally [1] - 150:2 professionals [1] - 129:25 proffered [2] - 94:11, 179:22 profile [1] - 138:22 project [1] - 175:22 prompting [1] - 46:17 proof [1] - 138:27 proper [1] - 104:22 propose [2] - 8:23, 81:25 prove [3] - 25:15, 25:16, 158:1 proven [38] - 108:18, 119:5, 119:15, 119:29, 120:4, 149:27, 152:7, 152:28, 153:1, 153:2, 153:3, 153:4, 153:5, 153:13, 153:19, 153:21, 156:1, 156:10, 159:1, 159:12, 159:13, 162:2, 162:7, 162:8, 162:9, 163:24, 164:26, 164:27, 170:14, 171:21, 171:27, 172:29, 174:21, 177:7, 177:15 provenance [4] - 159:2, 159:4, 163:18, 164:19	provide [3] - 18:11, 69:17, 111:3 provided [13] - 66:29, 68:19, 87:9, 87:21, 105:14, 105:22, 108:4, 108:16, 108:23, 108:25, 110:25, 156:27, 167:13 provides [1] - 149:21 provision [2] - 6:9, 6:10 provisions [2] - 109:15, 109:19 public [5] - 6:14, 84:28, 124:13, 139:5, 148:21 pull [1] - 10:17 punctuation [1] - 63:14 purported [4] - 15:25, 15:28, 16:2, 16:10 purpose [22] - 30:25, 42:14, 42:27, 45:29, 70:18, 76:13, 88:5, 92:27, 96:10, 113:12, 113:20, 123:15, 131:2, 139:17, 140:10, 142:3, 145:1, 147:22, 149:15, 157:25, 162:14 pursue [4] - 48:10, 76:24, 88:22, 93:8 put [44] - 10:26, 11:14, 23:21, 24:6, 29:21, 34:20, 39:3, 59:11, 61:1, 63:17, 65:14, 78:5, 85:14, 90:10, 92:17, 102:5, 103:9, 104:19, 104:24, 106:5, 106:7, 106:21, 111:27, 111:29, 112:2, 112:7, 112:9, 112:15, 112:28, 113:1, 113:2, 113:18, 113:22, 113:29, 114:8, 118:3, 156:24,	156:25, 158:1, 158:8, 160:15, 162:16, 164:2 putting [6] - 46:3, 157:7, 157:8, 162:21, 162:26, 164:1 qualifications [1] - 115:29 quality [3] - 101:8, 148:1, 148:15 query [1] - 162:16 QUESTIONING [6] - 3:28, 4:1, 4:31, 80:8, 98:11, 175:4 questioning [4] - 156:15, 157:9, 160:1, 160:3 questions [38] - 8:27, 8:28, 24:7, 24:11, 24:23, 37:28, 40:12, 45:17, 50:5, 50:6, 51:4, 51:10, 67:19, 67:20, 67:23, 67:24, 67:25, 73:12, 73:16, 80:1, 80:4, 80:6, 86:6, 90:17, 96:3, 98:3, 98:5, 98:7, 115:14, 122:4, 152:19, 155:17, 155:24, 157:6, 157:8, 174:4, 175:2, 176:13 quickly [1] - 92:24 quite [8] - 9:8, 87:15, 95:25, 104:12, 122:26, 126:7, 136:11, 154:25 racers [6] - 12:16, 33:5, 33:6, 33:7, 33:11, 33:16 raise [2] - 117:1, 157:20 raised [5] - 42:16, 42:20, 74:11, 78:22, 78:29 raising [1] - 74:17 rambling [1] - 63:13
--	---	--	---	--	---

ramifications ^[1] - 113:28 rang ^[6] - 77:4, 90:3, 93:18, 98:17, 98:18 rather ^[1] - 156:10 RCSI ^[1] - 149:12 rd ^[1] - 103:24 re ^[5] - 42:13, 42:15, 70:18, 70:29, 95:21 RE ^[8] - 3:7, 3:12, 3:13, 3:18, 40:9, 43:1, 45:20, 66:13 RE-CROSS-EXAMINED ^[2] - 3:13, 45:20 re-examination ^[4] - 42:13, 42:15, 70:18, 70:29 RE-EXAMINED ^[6] - 3:7, 3:12, 3:18, 40:9, 43:1, 66:13 reach ^[4] - 8:24, 124:14, 124:19, 152:4 reached ^[2] - 59:27, 157:23 reaching ^[1] - 179:25 reaction ^[1] - 126:15 reactivate ^[1] - 138:22 read ^[32] - 30:20, 47:2, 55:26, 65:21, 75:17, 76:11, 77:22, 77:29, 88:11, 89:27, 89:29, 90:4, 92:24, 99:11, 107:18, 108:25, 111:8, 121:9, 124:10, 130:14, 131:23, 133:10, 138:7, 147:2, 161:1, 165:14, 166:3, 166:12, 170:21, 177:21 reading ^[9] - 103:10, 104:15, 104:16, 128:21, 148:19, 168:20, 168:22, 170:4, 172:7	ready ^[1] - 84:3 realise ^[2] - 71:21, 127:28 realised ^[1] - 156:13 really ^[13] - 28:13, 34:3, 68:26, 68:27, 86:16, 100:18, 126:4, 126:5, 133:17, 135:27, 152:27, 156:2, 156:8 reason ^[10] - 24:17, 88:18, 91:8, 91:9, 95:3, 127:20, 129:22, 159:10, 174:25, 174:27 reasonable ^[6] - 82:16, 153:5, 159:2, 159:13, 162:10, 164:28 reasonably ^[2] - 148:6, 171:28 reassure ^[1] - 148:21 rebuttal ^[1] - 179:18 receipt ^[3] - 47:20, 47:29, 48:2 receive ^[3] - 41:20, 89:23, 142:17 received ^[40] - 15:27, 16:1, 16:4, 16:18, 19:12, 28:25, 29:24, 33:24, 39:21, 40:2, 41:18, 41:26, 41:29, 42:1, 43:11, 45:3, 45:4, 45:13, 48:8, 48:12, 48:29, 49:15, 51:1, 54:23, 58:21, 60:10, 66:20, 67:5, 102:18, 103:5, 103:26, 103:27, 105:5, 105:27, 106:13, 114:16, 114:23, 126:27, 127:16, 160:17 receiving ^[4] - 43:4, 55:16, 64:18, 122:18 recent ^[2] - 139:4, 165:1	recently ^[7] - 57:19, 62:18, 63:8, 63:19, 75:10, 144:10, 161:22 reciprocated ^[3] - 76:23, 93:6, 94:24 recollect ^[1] - 80:23 recollection ^[10] - 46:3, 46:4, 47:13, 49:10, 51:7, 60:7, 60:8, 79:5, 88:15, 89:28 record ^[11] - 16:10, 30:15, 75:23, 75:26, 87:17, 87:18, 90:5, 91:18, 91:24, 96:12, 96:13 recorded ^[3] - 17:23, 47:12, 115:13 records ^[2] - 25:8, 96:20 red ^[1] - 156:13 redirect ^[3] - 50:12, 174:3, 174:5 refer ^[11] - 9:6, 9:11, 52:19, 72:11, 72:14, 84:26, 84:29, 92:8, 94:13, 99:14, 158:27 reference ^[6] - 11:13, 71:18, 88:13, 88:24, 120:7, 137:19 referenced ^[2] - 6:19, 168:15 referencing ^[1] - 91:9 referred ^[6] - 28:10, 43:18, 60:10, 73:22, 169:18, 177:11 referring ^[6] - 11:1, 55:29, 73:21, 74:6, 74:26, 84:23 refers ^[3] - 68:14, 91:8, 102:17 reflect ^[1] - 148:26 reflected ^[1] -	149:6 reflection ^[1] - 79:23 reflective ^[1] - 177:26 refresh ^[1] - 33:7 refuse ^[1] - 127:25 regard ^[14] - 19:23, 110:26, 116:1, 116:9, 116:14, 116:17, 117:25, 118:13, 120:2, 130:8, 135:1, 135:9, 141:2, 176:15 regarded ^[7] - 124:19, 136:1, 136:24, 137:8, 150:17, 150:29, 173:1 regarding ^[3] - 77:1, 93:17, 159:17 regards ^[6] - 14:2, 90:10, 135:9, 140:6, 150:12, 151:9 registered ^[6] - 6:12, 146:26, 149:17, 149:21, 176:17, 176:26 Registered ^[1] - 109:17 Registrant ^[15] - 6:16, 9:5, 9:7, 9:11, 52:16, 72:10, 72:15, 84:24, 85:1, 85:8, 99:15, 116:27, 117:1, 117:10, 179:23 registrar ^[5] - 88:1, 90:15, 101:2, 101:3, 123:19 registration ^[3] - 149:13, 149:17, 176:20 regulations ^[1] - 6:11 regulatory ^[1] - 108:16 reiterated ^[1] - 88:18 reiterating ^[1] - 22:1 relate ^[1] - 109:19 related ^[2] -	79:20, 123:16 relates ^[2] - 116:24, 137:11 relation ^[22] - 7:11, 30:2, 31:8, 31:11, 31:16, 42:18, 70:10, 97:16, 97:17, 109:14, 110:25, 120:15, 124:22, 126:22, 146:13, 149:13, 150:25, 152:5, 159:20, 169:16, 171:26, 175:7 relationship ^[1] - 101:3 relayed ^[1] - 79:15 relevance ^[2] - 106:16, 106:17 relevant ^[12] - 31:20, 31:25, 31:27, 31:28, 33:26, 119:27, 129:10, 140:6, 145:17, 147:24, 152:12 reliant ^[3] - 73:19, 74:21, 79:10 relied ^[5] - 69:20, 70:9, 71:15, 112:14, 114:20 relies ^[2] - 114:29, 136:18 rely ^[5] - 71:20, 112:8, 112:22, 113:16, 115:12 relying ^[3] - 11:9, 11:15, 74:1 remain ^[4] - 129:3, 151:24, 162:8, 176:17 remaining ^[2] - 82:9, 151:20 remains ^[2] - 129:4, 150:1 remember ^[25] - 20:3, 26:26, 26:28, 41:29, 43:4, 43:8, 55:28, 57:25, 58:11, 58:13, 60:1, 66:3, 67:3, 67:7, 67:14, 67:15, 67:16, 77:29, 79:25, 80:20, 94:5, 141:11, 144:16,	167:7 remind ^[8] - 9:4, 57:9, 62:3, 70:16, 113:6, 117:6, 143:23, 161:12 remote ^[2] - 81:8, 178:26 remotely ^[3] - 8:16, 51:28, 82:11 renew ^[1] - 176:19 repeat ^[3] - 120:24, 163:23, 170:13 rephrase ^[1] - 164:7 replies ^[1] - 132:3 reply ^[6] - 127:1, 132:16, 139:1, 153:27, 159:26, 162:21 reply..." ^[1] - 131:28 replying ^[1] - 140:2 report ^[58] - 37:5, 37:21, 63:25, 63:27, 101:27, 102:2, 102:14, 102:21, 103:1, 104:23, 104:29, 107:27, 108:3, 109:6, 110:2, 110:8, 112:18, 114:21, 114:29, 115:15, 119:13, 119:14, 121:5, 124:26, 128:27, 128:29, 136:10, 136:12, 137:10, 137:14, 139:17, 140:14, 145:24, 147:1, 152:26, 166:29, 167:2, 167:14, 167:15, 167:17, 170:27, 171:2, 171:5, 171:17, 171:23, 172:3, 172:4, 172:10, 172:11, 172:24, 173:3, 173:23, 174:11, 177:6, 177:13, 177:14, 178:2 reporting ^[1] - 37:18 reports ^[1] -
---	---	---	--	---	--

172:22 represent [2] - 8:1, 135:8 representative s [1] - 105:22 represented [1] - 113:7 represents [1] - 175:14 reputation [2] - 169:5, 173:10 repute [2] - 145:26, 151:5 request [6] - 77:12, 93:26, 94:19, 94:26, 96:8, 96:27 requested [6] - 77:25, 77:26, 78:13, 94:18, 110:19, 171:16 requests [2] - 94:13, 124:28 required [5] - 111:4, 147:23, 147:25, 148:5, 150:21 requirement [6] - 130:6, 147:26, 147:29, 148:24, 149:15, 176:28 requirements [4] - 147:8, 149:25, 150:5, 152:3 requisite [2] - 150:6, 176:22 resequence [1] - 102:7 reserve [1] - 179:21 resided [2] - 58:26, 59:2 residing [1] - 58:23 resolved [1] - 122:20 resources [1] - 86:19 respect [37] - 12:26, 14:7, 14:21, 15:18, 15:24, 16:21, 25:25, 26:13, 31:27, 33:28, 39:15, 46:18, 54:22, 58:11, 58:26, 59:1, 59:17, 63:24, 70:21, 75:14,	78:4, 79:24, 113:28, 119:2, 146:3, 146:7, 147:8, 150:4, 152:7, 153:24, 154:7, 156:23, 163:6, 172:16, 172:20, 172:22, 173:23 respected [1] - 151:27 respectful [1] - 120:1 respectfully [1] - 169:23 respond [1] - 24:10 responded [1] - 20:6 Respondent's [1] - 8:25 response [8] - 66:28, 98:14, 105:4, 132:7, 132:24, 141:26, 143:21, 144:19 responsibility [1] - 148:27 responsible [2] - 37:1, 53:11 restaurant [1] - 128:2 resume [5] - 8:25, 82:14, 82:22, 83:15, 84:4 RESUMED [3] - 6:1, 82:6, 107:14 resumption [1] - 179:3 retained [2] - 16:17, 101:24 retaining [1] - 70:27 retire [1] - 7:17 retrospective [2] - 80:14, 80:21 return [3] - 16:29, 86:26, 87:7 revenge [1] - 127:28 reviews [2] - 148:9, 175:22 right-hand [2] - 17:28, 56:22 ring [2] - 35:19, 89:24 rise [2] - 69:8, 163:21	risk [1] - 82:3 Roisin [3] - 133:21, 134:5, 134:12 role [4] - 7:6, 162:3, 164:20, 166:17 romance [1] - 138:24 room [10] - 35:10, 59:23, 60:14, 60:26, 67:15, 121:15, 121:17, 144:25, 162:15, 166:5 rota [8] - 12:28, 13:1, 14:11, 14:14, 26:19, 26:21, 90:12, 90:14 rotation [3] - 89:18, 122:21, 123:9 rotations [1] - 101:1 roughly [1] - 125:28 round [3] - 85:6, 148:8, 164:23 ruin [1] - 127:28 ruining [1] - 139:11 Rule [4] - 147:11, 147:12 rule [1] - 107:3 ruled [2] - 72:8, 84:22 rules [3] - 6:11, 112:6, 149:6 Rules [1] - 147:12 run [2] - 113:29, 148:13 running [2] - 83:2, 127:26 Russell [37] - 8:15, 11:11, 25:25, 25:26, 25:29, 26:1, 26:2, 51:28, 52:6, 53:4, 53:6, 56:4, 66:9, 66:15, 67:18, 67:26, 69:24, 142:20, 142:24, 142:26, 143:8, 143:17, 143:26, 144:4, 144:19, 144:22, 145:1, 160:16, 162:14, 162:24, 162:25,	162:27, 165:3, 165:4, 165:11, 165:28 RUSSELL [6] - 3:16, 52:7, 53:1, 66:13, 67:21, 68:3 Russell's [1] - 71:16 sake [1] - 127:7 salient [1] - 107:19 Sara [1] - 47:7 satisfactory [2] - 174:15, 176:29 satisfied [9] - 29:2, 29:5, 113:14, 124:2, 136:4, 136:6, 146:4, 152:2, 152:6 satisfy [1] - 29:7 Saturdays [1] - 176:9 saved [2] - 28:7, 29:1 saw [11] - 15:14, 35:5, 35:8, 36:18, 36:22, 36:23, 37:12, 41:7, 41:8, 106:25, 106:27 scenario [1] - 140:3 scheduled [2] - 83:3, 83:11 Scheme [1] - 100:10 screen [32] - 17:11, 17:14, 17:17, 18:22, 19:3, 19:6, 19:7, 22:11, 35:25, 37:14, 39:19, 39:27, 40:22, 43:5, 43:29, 44:9, 44:10, 44:18, 45:13, 46:16, 49:3, 49:22, 52:5, 55:27, 56:6, 58:11, 58:12, 58:14, 58:16, 58:20, 68:23, 99:5 screen.. [1] - 25:18 screenshot [14] - 17:3, 17:6, 17:10, 17:15, 17:19, 17:20, 22:14, 28:24,	29:22, 33:12, 41:16, 47:19, 56:11, 131:17 screenshots [5] - 28:22, 31:17, 56:7, 104:10, 153:9 seafood [1] - 128:2 second [22] - 23:25, 24:24, 24:25, 36:12, 43:22, 56:6, 62:1, 68:13, 70:9, 71:3, 89:17, 101:1, 101:11, 101:12, 101:14, 109:20, 119:12, 125:14, 125:18, 146:24, 170:17, 179:7 secondly [1] - 117:27 seconds [1] - 56:9 secretariat [1] - 178:29 Section [1] - 147:10 section [2] - 77:23, 102:17 see [94] - 15:4, 17:2, 18:26, 18:27, 21:16, 22:8, 28:2, 33:11, 35:22, 37:21, 41:11, 44:5, 44:12, 44:14, 44:18, 44:23, 44:26, 45:1, 45:9, 50:29, 55:26, 55:29, 57:9, 62:3, 68:11, 68:27, 69:5, 69:6, 69:27, 70:4, 78:13, 78:15, 87:3, 89:1, 95:12, 95:27, 95:28, 97:20, 97:21, 97:22, 97:25, 99:5, 102:26, 106:16, 106:29, 118:22, 120:9, 121:16, 125:17, 125:21, 125:24, 126:20, 126:25, 127:10, 127:25, 128:8, 128:9, 128:23, 128:24, 130:28, 131:1, 131:9, 131:14, 131:17,	131:19, 131:20, 131:22, 132:18, 132:28, 133:1, 133:5, 133:8, 133:25, 133:28, 134:9, 134:11, 134:17, 134:26, 134:27, 136:13, 136:15, 137:10, 137:20, 139:14, 140:23, 143:23, 144:21, 144:27, 155:3, 155:12, 161:12, 162:29, 180:1 seeing [5] - 37:1, 38:17, 38:18, 60:1, 96:1 seek [1] - 166:18 seeking [2] - 112:16 seem [2] - 121:22, 139:28 self [1] - 176:27 self-declaring [1] - 176:27 send [12] - 18:22, 18:24, 19:23, 27:7, 33:26, 36:6, 76:26, 93:13, 105:28, 141:2, 142:16, 155:20 sender [3] - 22:5, 131:24, 159:7 sending [11] - 31:8, 31:20, 31:24, 37:15, 58:13, 76:14, 88:6, 88:20, 88:25, 92:28, 131:3 senior [7] - 7:4, 21:28, 78:11, 84:19, 100:14, 123:21, 135:19 sense [6] - 63:16, 63:21, 63:22, 63:23, 85:11, 126:14 sensitive [1] - 173:14 sent [37] - 18:23, 21:25, 22:6, 22:10, 22:13, 22:14, 28:23, 28:25, 31:16, 39:19, 47:1, 47:9, 48:27, 48:28,
--	--	--	---	---	---

49:2, 49:3, 49:4, 49:7, 58:12, 58:17, 87:2, 88:6, 92:2, 97:15, 106:1, 123:22, 125:5, 128:9, 130:19, 138:5, 139:18, 140:9, 140:18, 140:27, 142:23, 153:27, 162:13 sentence [8] - 30:21, 61:11, 61:14, 62:1, 63:1, 63:10, 63:12, 64:28 sentencing [1] - 63:16 separate [2] - 55:6, 112:13 separately [1] - 54:11 September [5] - 33:8, 103:7, 104:3, 104:6, 104:7 sequence [2] - 125:22, 126:23 serious [13] - 113:27, 129:8, 130:4, 130:9, 135:8, 136:22, 136:23, 138:15, 140:3, 150:16, 151:2, 151:10 seriously [3] - 37:10, 145:29, 151:13 service [2] - 77:9, 93:23 session [2] - 84:28, 101:11 sessions [1] - 101:4 set [7] - 108:4, 109:7, 109:13, 109:23, 140:13, 145:24, 147:15 setting [1] - 171:24 seven [4] - 23:2, 36:17, 37:8, 78:18 several [1] - 177:5 SHANE [2] - 3:16, 53:1 Shane [20] - 8:14, 11:11, 25:25, 25:29,	26:1, 26:2, 56:15, 56:19, 59:22, 61:4, 61:16, 61:20, 62:29, 142:20, 143:5, 143:6, 144:24, 160:26, 160:27 shape [1] - 129:26 share [1] - 178:27 sharing [1] - 54:2 sheet [1] - 92:13 SHORT [1] - 121:20 short [4] - 61:10, 81:26, 145:29, 151:14 shortly [2] - 111:6, 137:23 SHOs [1] - 123:20 show [4] - 19:7, 112:17, 121:1, 173:7 showed [1] - 79:26 shows [3] - 142:13, 152:13, 177:26 shudder [1] - 126:13 SI [3] - 147:13, 149:7, 149:9 sic [2] - 91:14, 134:29 sic [1] - 91:15 side [6] - 17:28, 56:21, 56:22, 70:1, 171:23, 171:24 sided [1] - 173:25 sides [2] - 104:21, 107:12 sign [3] - 74:28, 74:29, 92:3 signal [1] - 95:18 signature [1] - 43:24 signed [18] - 10:29, 40:29, 43:26, 47:3, 47:14, 58:6, 58:8, 65:15, 65:21, 75:11, 75:13, 77:15, 90:27, 91:7, 91:12,	93:29, 111:25 significant [1] - 148:29 similar [1] - 136:11 similarly [2] - 159:17, 160:12 simple [4] - 14:1, 113:24, 113:27, 162:19 simply [15] - 10:25, 42:3, 61:1, 69:24, 69:26, 102:15, 108:23, 112:21, 114:4, 138:22, 166:4, 166:19, 170:10, 171:23, 174:20 sincerely [1] - 67:27 single [5] - 45:7, 111:11, 124:16, 124:18 singular [2] - 76:17, 79:19 sister [2] - 133:14, 135:24 sit [3] - 59:9, 83:3, 155:25 sitting [2] - 60:14, 67:15 six [21] - 11:26, 12:9, 13:17, 13:18, 14:12, 23:12, 23:13, 23:24, 33:17, 36:17, 36:24, 37:8, 58:2, 59:3, 59:4, 63:10, 79:4, 89:15, 127:27, 176:10 six-month [1] - 58:2 skewed [2] - 173:8, 174:22 skewed [3] - 163:20, 173:7, 173:8 skill [2] - 150:20 skip [1] - 82:19 slightly [6] - 44:12, 83:10, 86:7, 137:17, 139:28, 147:1 slip [1] - 52:20 slips [2] - 9:10, 72:12 slots [1] - 176:4 slowly [1] - 73:7 slur [2] - 173:9,	173:13 smiley [1] - 132:25 so.. [10] - 55:29, 71:22, 77:21, 78:17, 78:27, 83:13, 101:22, 105:26, 109:6, 111:28 social [1] - 139:29 solicitor [3] - 7:29, 106:2, 106:29 Solicitor's [4] - 104:3, 104:5, 104:7, 104:9 Solicitors [1] - 7:27 solicitors [5] - 65:14, 65:24, 92:3, 105:15, 105:16 someone [2] - 48:8, 169:8 sometime [2] - 64:18, 64:20 sometimes [1] - 9:9 somewhere [2] - 46:8, 48:7 soon [2] - 165:6, 165:7 Sorry [2] - 10:6, 156:23 sorry [125] - 11:17, 16:23, 18:16, 18:26, 19:22, 23:23, 25:12, 26:25, 29:16, 30:15, 30:20, 32:14, 33:7, 33:13, 34:11, 36:21, 36:26, 37:15, 39:21, 39:26, 40:3, 40:19, 41:3, 41:21, 41:23, 41:24, 41:25, 43:5, 50:7, 50:8, 50:11, 50:27, 51:2, 53:5, 53:6, 54:28, 55:2, 55:12, 56:2, 56:19, 56:28, 57:3, 61:4, 61:20, 61:28, 61:29, 62:29, 64:28, 65:13, 68:26, 68:27, 75:8, 78:7,	80:16, 81:18, 82:21, 83:1, 83:4, 85:4, 87:15, 88:9, 90:23, 91:18, 91:19, 91:23, 95:3, 95:6, 95:10, 96:4, 106:1, 106:11, 109:6, 110:8, 111:16, 112:5, 112:27, 114:7, 115:21, 120:24, 120:25, 121:12, 121:15, 121:23, 122:15, 125:13, 127:13, 128:21, 129:2, 130:28, 131:5, 131:8, 133:1, 134:2, 140:19, 141:1, 143:5, 143:14, 143:15, 146:6, 146:28, 152:26, 153:2, 153:15, 154:29, 156:1, 156:17, 157:7, 159:4, 160:16, 160:26, 161:3, 161:16, 163:4, 163:5, 165:18, 165:24, 167:9, 167:23, 168:22, 170:18, 174:1, 174:25 sort [5] - 8:10, 139:12, 169:6, 174:29, 179:25 sought [1] - 136:14 sound [3] - 95:20, 95:22, 95:23 sourced [3] - 54:14, 54:16, 54:17 sources [1] - 49:1 space [2] - 61:26, 161:15 Spain [1] - 139:5 speakerphone [1] - 79:5 speaking [3] - 55:21, 77:7, 93:21 speciality [1] - 147:25 specific [1] - 170:25 specifically [1] - 171:9	speculate [2] - 41:21, 41:26 speculating [4] - 34:20, 34:23, 42:2, 49:15 speculation [7] - 34:22, 34:23, 38:28, 38:29, 39:1, 39:4, 162:29 speed [4] - 28:13, 28:19, 33:22, 107:18 spelling [17] - 133:13, 135:23, 154:1, 154:3, 154:6, 154:8, 154:11, 154:27, 154:29, 155:9, 155:10, 155:13, 155:25, 159:22 spelt [2] - 155:4, 155:10 spend [1] - 147:25 spent [2] - 14:18, 101:1 spoken [1] - 128:17 spot [2] - 82:24, 102:5 spotted [1] - 82:21 spotting [1] - 73:4 staff [3] - 94:13, 110:20, 124:29 stage [11] - 16:17, 38:2, 65:4, 67:10, 90:7, 97:6, 107:1, 117:1, 174:6, 179:15, 179:19 stages [1] - 67:17 stamp [2] - 44:14, 45:10 stamps [1] - 44:26 stand [2] - 80:24, 124:3 standard [3] - 135:18, 148:15, 150:19 standards [3] - 145:29, 151:14, 151:23 standing [3] - 27:21, 55:8, 122:23
---	--	---	--	---	--

start [9] - 21:4, 39:7, 53:20, 61:2, 127:21, 134:3, 153:25, 159:5, 179:4 started [5] - 23:1, 23:12, 23:24, 86:15, 89:25 starting [1] - 155:28 startled [2] - 122:26, 122:28 starts [3] - 26:14, 75:19, 168:24 state [2] - 19:4, 117:17 State [4] - 104:3, 104:5, 104:7, 104:8 statement [96] - 10:9, 10:12, 10:25, 33:28, 33:29, 34:5, 40:21, 40:29, 41:13, 43:9, 43:14, 43:15, 43:18, 43:22, 43:24, 45:25, 45:28, 46:7, 46:21, 56:5, 58:6, 58:15, 58:18, 63:18, 65:9, 65:13, 65:16, 66:4, 68:13, 68:16, 68:18, 69:21, 69:27, 70:3, 70:10, 70:17, 70:20, 71:16, 71:20, 74:27, 87:10, 87:11, 90:27, 90:28, 91:2, 91:3, 91:11, 91:12, 91:26, 92:18, 92:21, 96:13, 106:8, 106:21, 110:27, 111:1, 111:10, 111:14, 111:26, 112:7, 112:9, 112:10, 112:13, 112:19, 112:27, 113:1, 113:5, 113:12, 113:19, 113:25, 114:4, 114:15, 114:16, 114:20, 114:29, 115:16, 115:18, 117:2,	117:4, 117:9, 118:2, 119:14, 119:26, 120:3, 120:16, 120:19, 120:21, 120:25, 120:29, 121:5, 142:20, 142:21, 163:9, 163:11 Statements [7] - 10:14, 10:16, 10:28, 55:3, 55:10, 111:16, 111:21 statements [18] - 10:23, 10:29, 11:8, 11:10, 40:24, 43:19, 53:11, 68:12, 69:11, 69:17, 70:21, 70:28, 71:9, 82:3, 108:10, 111:20, 111:23, 115:13 station [1] - 103:7 Station [6] - 103:18, 103:19, 103:21, 103:23, 103:24, 103:29 stay [3] - 12:13, 12:18, 70:12 stayed [3] - 12:11, 12:21, 33:19 stems [1] - 100:27 step [3] - 51:20, 89:10, 106:10 stick [2] - 71:14, 112:5 still [14] - 14:28, 22:16, 22:27, 28:13, 33:18, 33:21, 47:15, 53:21, 76:10, 95:1, 106:29, 107:7, 131:27 stint [1] - 59:14 stints [1] - 59:3 stood [1] - 80:13 stop [5] - 77:19, 94:18, 94:24, 139:14 stopped [1] - 89:13 story [3] - 164:14, 164:15, 164:17 straight [4] - 29:10, 52:25,	85:15, 158:25 Strandhill [1] - 125:28 strange [6] - 60:14, 60:17, 60:19, 63:13, 63:15, 64:22 Street [4] - 128:2, 169:18, 170:1, 170:2 stress [2] - 138:16, 170:10 Strictly [1] - 75:1 strong [1] - 156:12 stuck [1] - 69:24 study [2] - 77:11, 93:25 stuff [2] - 34:3, 56:3 stupid [9] - 19:23, 20:22, 127:20, 127:21, 129:22, 129:26, 141:2, 141:21 subject [7] - 8:23, 42:18, 76:1, 76:3, 85:5, 137:26, 179:17 SUBMISSION [16] - 3:22, 3:24, 4:6, 4:8, 4:15, 4:17, 4:19, 4:25, 71:6, 71:12, 102:11, 105:8, 118:17, 118:29, 119:23, 156:21 submission [6] - 70:24, 74:22, 74:25, 79:12, 120:1, 158:7 submissions [3] - 7:15, 7:19, 118:13 submit [3] - 63:18, 104:22, 162:2 submitted [2] - 56:1, 170:27 subsequent [3] - 64:10, 96:17, 167:1 subsequently [6] - 76:18, 77:4, 86:25, 89:2, 93:3, 93:18 substance [2] - 13:24, 105:24 suffices [1] - 120:20	sufficient [1] - 120:9 sufficiently [2] - 130:4, 130:9 suggest [1] - 95:20 suggested [3] - 160:9, 174:6, 174:9 suggesting [3] - 49:24, 119:18, 164:6 suggestion [5] - 12:27, 20:12, 41:27, 113:18, 160:22 suits [1] - 179:5 summarised [3] - 46:29, 47:1, 47:12 summary [3] - 100:18, 109:10, 109:12 summer [2] - 12:3, 30:11 Sundays [1] - 176:9 superiors [2] - 32:2, 37:27 supervised [1] - 101:5 supplemental [1] - 68:18 supplemental.. [1] - 68:16 Support [5] - 77:8, 89:6, 89:7, 89:9, 93:22 support [10] - 30:22, 30:26, 30:29, 31:3, 31:14, 32:7, 32:12, 37:2, 81:11, 138:16 supporting [4] - 36:8, 36:13, 37:15, 39:18 suppose [27] - 13:26, 17:7, 22:27, 27:10, 30:21, 30:27, 31:13, 37:28, 69:18, 73:28, 79:4, 88:13, 90:26, 100:27, 101:3, 101:5, 101:7, 101:12, 105:26, 119:25, 129:14, 137:1, 140:1, 148:26,	161:27, 164:12, 170:17 suppose.. [1] - 30:20 supposed [1] - 38:9 surely [4] - 32:1, 32:18, 156:27, 173:3 surgery [1] - 68:1 suspect [1] - 95:18 Suzanne [4] - 104:2, 104:4, 104:6, 104:8 swap [1] - 26:29 swapped [4] - 12:28, 14:11, 14:14, 126:3 switch [2] - 26:19, 26:21 switched [1] - 96:2 switching [4] - 95:13, 95:14, 95:15, 95:16 SWORN [1] - 100:1 sworn [5] - 91:11, 91:12, 91:26, 92:21, 117:7 Síochána [8] - 13:4, 13:11, 15:2, 46:21, 65:4, 102:18, 103:6, 103:26 tab [25] - 43:26, 54:25, 55:1, 55:3, 74:5, 111:15, 111:16, 111:21, 111:26, 125:12, 126:25, 131:6, 131:7, 131:16, 138:4, 140:17, 153:8, 153:9, 154:19, 154:28, 155:8, 160:6, 160:12 tabs [1] - 154:21 tag [1] - 105:25 taint [1] - 174:27 talks [1] - 27:9 Tallaght [18] - 35:5, 36:18, 38:13, 38:14, 40:14, 41:6, 57:20, 62:19, 63:8, 63:19,	63:20, 70:11, 144:11, 161:23 TC [2] - 57:10, 143:24 tea [3] - 122:25, 123:15, 123:26 teaching [2] - 101:4, 101:10 team [5] - 54:10, 89:17, 123:19, 148:7, 175:23 teams [3] - 54:12, 54:13, 80:27 tease [1] - 81:1 technology [1] - 53:9 telecommunica [2] - 163:25, 171:28 telephone [21] - 12:14, 15:3, 15:5, 17:1, 18:11, 18:14, 32:26, 78:29, 102:18, 103:6, 103:8, 103:10, 103:12, 103:14, 103:18, 103:19, 103:20, 103:22, 103:23, 103:28, 104:4 telephone.. [1] - 18:16 telephoned [2] - 36:14, 97:2 temporary [1] - 86:17 ten [4] - 56:9, 107:4, 107:10, 175:14 tend [3] - 157:21, 158:8, 176:5 tendered [3] - 8:12, 8:19, 69:15 term [1] - 129:3 termination [1] - 12:9 terms [13] - 13:26, 13:28, 32:15, 34:29, 37:29, 72:12, 80:21, 86:27, 128:12, 142:19, 149:4, 149:14, 158:4 terribly [1] - 16:23 terrified [1] - 37:13
---	---	--	--	--	--

terrified... [1] - 126:18 test [1] - 121:7 testimony [1] - 81:8 testing [1] - 170:11 text [51] - 12:15, 14:29, 20:12, 21:4, 27:27, 27:29, 29:20, 31:8, 32:28, 33:24, 35:15, 39:14, 48:7, 56:19, 66:5, 70:21, 87:3, 87:6, 88:5, 88:20, 96:10, 97:21, 122:29, 125:5, 125:19, 126:24, 126:26, 127:20, 127:22, 128:9, 128:26, 129:7, 129:22, 130:20, 131:1, 133:8, 133:9, 133:29, 134:11, 135:7, 136:6, 136:8, 143:5, 154:10, 154:25, 155:20, 159:23, 160:26, 161:16, 165:3, 169:25 texted [2] - 36:14, 61:4 texting [6] - 29:11, 76:22, 77:19, 89:25, 93:6, 94:25 texts [21] - 15:28, 16:2, 16:11, 16:18, 29:10, 39:22, 61:10, 71:17, 76:13, 76:27, 87:2, 92:27, 93:13, 96:18, 97:20, 131:3, 160:15, 162:13, 166:3, 166:4, 168:14 THE [19] - 3:28, 4:1, 4:31, 6:1, 51:25, 68:5, 80:8, 81:14, 81:22, 82:6, 83:19, 84:1, 98:11, 98:28, 107:14, 121:20, 175:4, 178:12, 180:4	the.. [1] - 54:27 theatre [1] - 52:1 them.. [1] - 54:25 thereafter [1] - 83:7 therefore [3] - 119:5, 137:7, 174:12 thinking [1] - 82:24 third [3] - 63:2, 67:7, 142:13 thirdly [1] - 117:29 this.. [1] - 46:1 thorough [2] - 22:19, 22:22 thoroughly [1] - 22:23 thoughts [1] - 70:9 threatened [1] - 38:12 three [16] - 8:12, 49:6, 78:21, 79:6, 79:13, 80:12, 80:17, 80:22, 89:15, 89:17, 101:1, 101:22, 132:24, 137:1, 152:7, 161:1 threefold [1] - 117:20 threshold [13] - 124:19, 129:29, 130:3, 130:6, 130:9, 135:8, 136:1, 136:24, 137:7, 150:17, 150:29, 151:22, 173:1 thrust [1] - 177:16 thumbs [3] - 17:28, 18:4, 18:9 THURSDAY [1] - 180:4 Thursday [6] - 8:25, 82:23, 83:3, 178:21, 179:3, 180:1 TO [9] - 3:12, 4:11, 4:22, 4:30, 43:1, 107:23, 120:11, 158:21, 180:4 to.. [1] - 121:12 today [28] - 6:26, 8:24, 17:9, 17:12,	39:7, 44:6, 48:1, 52:10, 53:21, 67:27, 76:19, 81:5, 81:6, 81:25, 83:3, 84:15, 84:21, 92:24, 93:4, 94:28, 98:24, 99:18, 121:13, 132:10, 170:7, 170:22, 171:8, 180:2 together [17] - 11:27, 12:7, 12:23, 27:19, 53:20, 54:1, 54:6, 54:16, 54:17, 58:24, 63:17, 67:14, 67:17, 79:3, 142:29, 143:1, 161:1 TOM [2] - 3:26, 73:1 Tom [3] - 8:15, 11:11, 68:8 tomorrow [2] - 132:18, 134:6 tonight [1] - 128:1 took [20] - 17:15, 17:17, 17:18, 17:20, 17:23, 22:11, 28:22, 28:23, 33:13, 39:27, 43:29, 44:9, 44:10, 45:12, 47:8, 47:19, 49:3, 71:1, 87:11, 117:15 tool [2] - 148:2, 148:20 tools [1] - 151:25 top [11] - 16:27, 17:24, 44:18, 45:9, 56:12, 75:20, 78:10, 121:11, 137:14, 155:3 total [1] - 37:4 totally [2] - 21:27, 32:14 touch [5] - 12:11, 12:13, 33:19, 53:22, 53:23 touched [1] - 16:29 towards [4] - 121:11, 122:20, 137:14, 163:28	trainer [2] - 100:13, 100:20 training [8] - 36:25, 100:8, 100:9, 100:23, 100:27, 100:28, 101:19 Training [1] - 100:10 trammel [1] - 48:20 transcribed [2] - 92:2, 114:5 transcript [23] - 6:21, 9:10, 24:6, 52:21, 53:15, 71:26, 72:13, 82:4, 102:8, 103:10, 112:12, 115:13, 119:8, 121:14, 121:25, 121:29, 122:3, 124:5, 125:24, 167:18, 170:4, 170:5 transcripts [10] - 69:25, 99:11, 104:17, 166:12, 167:10, 167:22, 170:22, 171:8, 172:7, 177:21 tree [1] - 78:11 TrialView [1] - 55:9 tribunal [2] - 103:5, 116:10 trips [1] - 81:17 true [8] - 15:18, 108:22, 108:23, 150:11, 152:29, 158:11, 159:16, 164:12 trust [3] - 43:9, 43:11, 151:26 trusted [1] - 151:24 truth [3] - 127:22, 158:2, 158:3 try [20] - 21:28, 42:15, 46:10, 48:23, 52:18, 54:24, 68:26, 69:2, 69:6, 72:11, 73:6, 75:5, 84:25, 99:14, 113:22, 138:26, 138:28, 155:19, 169:4, 169:8 trying [14] -	10:17, 32:5, 37:2, 46:13, 54:27, 54:28, 55:12, 77:29, 80:10, 95:19, 112:5, 140:10, 149:28, 165:26 turn [2] - 110:2, 114:11 turned [2] - 41:8, 92:20 turns [1] - 91:27 twice [3] - 36:27, 126:8, 168:6 two [38] - 10:28, 36:27, 36:29, 37:28, 38:22, 48:29, 50:19, 53:11, 60:17, 64:24, 65:26, 65:27, 66:3, 67:13, 71:19, 74:27, 75:2, 75:8, 78:9, 82:19, 84:22, 100:27, 100:29, 101:12, 121:16, 133:5, 136:28, 142:23, 145:24, 148:28, 149:3, 156:18, 160:20, 169:1, 169:27, 170:12, 177:11, 179:2 type [5] - 19:16, 45:25, 65:10, 140:2, 153:26 typed [11] - 19:1, 19:9, 46:5, 46:23, 49:11, 58:7, 58:8, 65:9, 65:12, 65:13, 92:5 typing [3] - 29:21, 47:26, 63:14 typo [1] - 33:12 UCC [1] - 100:8 UK [1] - 128:5 Uk [1] - 128:6 ultimately [4] - 108:12, 112:21, 169:22, 173:24 unblock [4] - 126:29, 127:4, 127:23, 128:5 unchanged [1] - 162:8 unclear [1] - 170:19 uncommon [1] - 80:26	under [11] - 6:5, 6:11, 52:24, 66:10, 121:6, 122:17, 123:3, 129:1, 129:2, 135:10, 144:29 undergraduate [1] - 100:7 undermine [1] - 157:21 underneath [2] - 153:26, 154:18 understood [6] - 51:9, 51:16, 86:29, 122:9, 122:17, 157:25 undertake [2] - 176:16, 176:22 undoubtedly [1] - 155:17 unearthly [1] - 68:1 unfortunate [1] - 156:18 uninvited [1] - 110:18 unit [1] - 175:23 University [4] - 86:12, 89:14, 110:21, 123:9 unknown [3] - 126:3, 162:24 unless [7] - 8:27, 51:14, 91:17, 92:1, 99:2, 119:8 unprofessional [7] - 129:9, 129:20, 135:16, 136:1, 137:6, 140:4, 145:15 unproven [1] - 153:4 unread [1] - 17:12 unusual [4] - 50:11, 59:12, 80:14, 80:17 unwanted [5] - 110:18, 125:8, 130:23, 135:15, 145:4 up [50] - 10:18, 12:3, 14:21, 17:28, 18:4, 18:9, 19:28, 27:9, 28:3, 28:12, 28:19, 32:11, 33:21, 38:1, 60:15, 60:16, 62:26,
--	--	--	--	--	---

64:8, 64:9, 64:12, 64:20, 64:22, 64:25, 65:10, 65:12, 65:13, 81:3, 82:29, 90:23, 94:4, 98:16, 120:29, 122:23, 123:2, 126:18, 127:1, 132:16, 138:27, 141:7, 141:9, 147:28, 148:21, 148:22, 155:11, 157:6, 157:7, 157:9, 163:26, 165:1, 167:11 up-to-date [3] - 147:28, 148:21, 148:22 update [1] - 107:16 updated [1] - 15:1 updates [1] - 105:25 upload [1] - 139:4 uploaded [6] - 40:25, 55:8, 55:25, 56:3, 56:5, 71:21 ups [1] - 28:9 upset [1] - 29:13 usual [1] - 172:4 vacant [3] - 59:23, 60:26, 144:25 validate [2] - 175:27, 175:28 validity [2] - 157:21, 158:10 varied [1] - 116:16 various [6] - 30:3, 31:12, 32:23, 106:20, 153:9, 178:7 verbatim [1] - 172:27 versa [1] - 53:27 version [9] - 43:27, 43:28, 46:23, 58:7, 58:8, 111:19, 121:24, 121:25, 163:20 versus [1] - 113:4 via [4] - 47:17, 49:24, 65:22, 95:19	vice [1] - 53:27 video [1] - 68:25 view [18] - 100:16, 118:5, 129:3, 129:4, 129:6, 135:1, 136:7, 136:8, 139:21, 150:12, 150:26, 152:8, 155:26, 157:4, 166:3, 171:24, 171:26, 174:11 views [1] - 82:17 visits [1] - 12:18 viva [2] - 112:21, 112:23 Viva [3] - 169:18, 170:1, 170:2 vocational [1] - 100:9 voce [2] - 112:22, 112:23 voice [2] - 126:4, 131:27 volume [2] - 108:7, 125:14 wait [3] - 11:3, 127:27, 132:16 waiting [4] - 35:10, 125:29, 128:1, 134:14 Wanna [1] - 132:1 wanna [1] - 132:9 wants [2] - 10:20, 155:22 ward [3] - 122:22, 124:13, 148:8 WAS [12] - 10:1, 40:9, 45:20, 50:24, 53:1, 66:13, 73:1, 86:1, 90:20, 100:1, 152:21, 180:4 wasn't.. [1] - 26:9 watched [1] - 177:21 watery [1] - 127:26 we.. [1] - 69:9 web [1] - 134:12 website [1] - 169:20 Wednesday [2] - 82:24, 82:26 week [1] -	101:14 weekend [3] - 77:5, 89:1, 93:19 weekly [1] - 101:4 weeks [1] - 66:26 weight [2] - 116:14, 118:6 welcome [3] - 9:3, 79:29, 84:12 well.. [1] - 124:9 wellbeing [1] - 140:2 were/are [1] - 142:26 What'sup [1] - 128:6 what.. [1] - 119:21 WhatsApp [26] - 12:15, 22:26, 25:8, 25:10, 25:11, 25:13, 25:15, 33:12, 33:13, 34:6, 34:17, 34:25, 34:29, 35:17, 44:4, 46:13, 48:12, 48:27, 49:6, 56:11, 125:5, 130:20, 131:22, 134:19, 162:14 WhatsApped [1] - 36:14 WhatsApps [9] - 25:19, 32:26, 35:25, 49:12, 51:6, 59:18, 127:16, 140:24 whatsoever [4] - 14:10, 128:5, 158:15 whereas [1] - 154:10 whilst [3] - 10:17, 91:14, 91:25 whispered [1] - 126:11 white [2] - 44:13, 44:24 whole [5] - 30:20, 34:4, 113:12, 127:26, 165:13 wholly [1] - 179:24 willing [1] -	115:12 win [1] - 81:19 wise [1] - 157:11 wish [8] - 8:4, 24:23, 69:19, 69:26, 76:24, 80:14, 93:7, 106:15 wishes [2] - 118:11, 155:29 withdrawn [1] - 173:11 WITHDREW [6] - 51:25, 68:5, 81:14, 81:22, 98:28, 178:12 Witness [321] - 6:15, 6:16, 8:1, 9:5, 9:7, 9:8, 9:11, 9:12, 10:8, 10:13, 10:15, 10:26, 10:28, 11:22, 12:10, 12:28, 13:1, 13:4, 13:28, 14:3, 14:5, 14:11, 14:18, 14:21, 14:23, 14:27, 15:16, 15:21, 15:22, 16:14, 16:18, 18:23, 18:24, 19:12, 19:24, 19:28, 20:3, 20:29, 21:5, 21:6, 21:7, 21:10, 26:8, 26:15, 26:17, 26:28, 27:9, 28:9, 28:16, 28:25, 28:26, 29:2, 29:5, 29:7, 29:24, 31:13, 33:24, 33:25, 35:3, 36:16, 36:18, 37:17, 37:20, 37:27, 38:14, 39:10, 39:16, 39:20, 39:22, 40:2, 40:3, 40:14, 41:5, 41:7, 41:8, 48:1, 48:13, 48:27, 48:28, 49:2, 49:4, 49:7, 52:16, 52:18, 52:19, 52:26, 53:18, 53:19, 53:22, 53:27, 54:14, 54:23, 55:3, 55:9, 58:4, 58:22, 59:17, 59:18, 60:9, 61:1,	61:28, 64:1, 64:2, 64:4, 64:5, 64:7, 64:11, 66:24, 66:25, 66:29, 67:6, 67:11, 70:11, 72:9, 72:10, 72:14, 72:15, 72:18, 73:25, 73:26, 73:27, 73:28, 74:16, 75:28, 76:4, 78:3, 78:4, 78:14, 78:22, 78:25, 79:25, 80:11, 84:24, 84:26, 84:29, 85:1, 85:3, 85:5, 85:9, 85:11, 86:22, 86:23, 86:26, 87:2, 87:3, 87:4, 87:7, 88:1, 88:7, 88:29, 89:11, 89:13, 89:19, 89:23, 90:11, 92:28, 93:16, 93:18, 94:2, 94:12, 97:1, 97:8, 97:10, 98:16, 99:14, 99:15, 105:15, 105:22, 108:29, 109:3, 109:20, 110:12, 110:14, 110:22, 110:27, 110:29, 111:8, 111:13, 111:16, 111:21, 111:24, 111:25, 112:19, 112:21, 113:7, 113:8, 113:15, 114:15, 114:16, 114:20, 114:29, 116:24, 116:25, 116:27, 117:11, 117:27, 120:2, 120:7, 120:16, 120:21, 120:22, 120:26, 121:5, 121:10, 122:4, 122:10, 123:7, 124:15, 125:2, 125:6, 125:22, 125:25, 126:9, 126:22, 126:26, 127:16, 127:20, 128:13, 130:21, 131:3, 131:9, 131:18, 131:24, 132:3, 132:12, 132:16, 134:2, 134:21, 134:24,	134:29, 135:3, 135:5, 135:28, 136:5, 136:7, 136:13, 136:14, 136:17, 136:27, 136:28, 136:29, 137:3, 137:4, 137:12, 137:20, 137:24, 137:25, 138:5, 138:6, 138:9, 139:18, 140:4, 140:9, 140:11, 140:19, 140:24, 140:26, 140:27, 140:28, 141:3, 141:18, 142:4, 142:8, 142:10, 142:12, 142:17, 142:24, 142:26, 143:3, 143:14, 143:29, 144:8, 144:13, 144:22, 145:1, 145:2, 145:3, 145:11, 145:12, 145:14, 146:26, 149:13, 150:4, 152:3, 152:25, 153:20, 154:11, 155:1, 159:3, 159:14, 160:10, 160:24, 161:16, 161:25, 162:25, 162:27, 163:19, 165:4, 165:10, 165:28, 167:27, 169:2, 169:11, 169:14, 169:17, 169:25 WITNESS [7] - 3:3, 51:25, 68:5, 81:14, 81:22, 98:28, 178:12 witness [103] - 6:18, 8:3, 8:9, 8:19, 10:23, 10:25, 10:29, 11:8, 11:10, 15:4, 15:6, 23:4, 23:29, 24:12, 24:13, 24:19, 24:22, 24:23, 39:10, 40:21, 40:24, 40:29, 41:13, 43:9, 43:14, 43:15, 43:18, 43:19, 43:22, 43:23, 46:25, 47:19, 48:11, 48:28, 49:14, 49:20, 49:21,
--	--	---	---	--	---

50:16, 50:18, 51:27, 65:9, 65:16, 66:4, 68:7, 70:3, 70:10, 73:27, 80:4, 81:24, 82:2, 82:10, 83:10, 84:5, 87:10, 98:7, 101:24, 108:10, 110:27, 110:29, 111:10, 111:13, 111:20, 111:23, 111:25, 112:7, 112:9, 112:19, 112:27, 112:29, 113:4, 113:12, 113:13, 113:19, 115:13, 115:16, 115:27, 115:29, 116:3, 116:4, 116:8, 116:13, 119:26, 120:3, 120:16, 120:19, 120:20, 120:25, 120:29, 121:4, 135:6, 149:10, 155:23, 156:25, 157:8, 157:17, 157:18, 169:15, 173:21, 173:22, 174:11 witness's ^[1] - 156:2 witness) ^[1] - 40:27 witnesses ^[9] - 8:12, 22:2, 99:14, 113:18, 149:11, 166:10, 166:11, 166:13, 178:20 wonder ^[12] - 23:29, 24:3, 50:8, 81:26, 88:12, 100:4, 102:13, 111:19, 140:22, 142:18, 147:20, 155:16 wondering ^[1] - 91:15 word ^[15] - 7:6, 14:1, 15:16, 34:20, 35:22, 44:6, 78:13, 94:26, 96:7, 96:27, 126:11, 159:17, 168:11, 168:27 word.. ^[1] - 40:19 wording ^[8] -	46:7, 47:13, 113:3, 146:29, 166:18, 166:19, 166:26, 176:23 words ^[11] - 15:21, 15:22, 21:12, 31:6, 55:12, 63:13, 63:17, 65:15, 152:6, 168:1 work" ^[1] - 169:26 works ^[10] - 26:11, 57:18, 57:19, 63:4, 63:8, 144:10, 161:18, 161:22 worried ^[3] - 16:14, 35:21, 35:23 worry ^[1] - 55:26 write ^[1] - 59:10 writes ^[2] - 143:8, 143:12 written ^[8] - 21:16, 22:8, 98:17, 112:18, 170:15, 170:27, 171:2, 171:3 wrongness ^[2] - 174:18, 174:20 wrote ^[2] - 128:13, 144:22 year ^[16] - 12:11, 14:26, 21:6, 21:28, 28:14, 30:12, 33:20, 35:26, 64:24, 66:28, 81:20, 101:12, 101:15, 147:26, 175:10, 176:2 years ^[37] - 14:27, 17:16, 23:2, 23:12, 23:13, 23:24, 26:26, 28:4, 36:17, 37:9, 38:2, 38:6, 64:25, 73:18, 74:21, 74:23, 78:21, 79:4, 79:11, 79:12, 79:13, 80:12, 80:17, 80:22, 86:16, 86:17, 100:12, 100:24, 100:29, 101:1, 101:11, 101:13, 101:21, 150:4, 176:24	yourself ^[21] - 9:3, 29:7, 39:6, 45:25, 51:17, 52:13, 52:22, 67:27, 72:4, 78:6, 81:4, 81:6, 91:25, 93:29, 107:5, 127:23, 127:29, 134:7, 164:20, 173:6, 178:8 yup ^[3] - 57:14, 143:27, 161:15 Zoom ^[4] - 47:10, 47:11, 65:22 Zooms ^[1] - 49:12
--	--	---