



Coimisiún um Chaighdeán in Oifigí Poiblí **Standards in Public Office Commission**

Investigation by the Standards in Public Office Commission
of Alleged Contraventions of the Ethics in Public Office Act 1995
and 2001, and Part 15 of the Local Government Act 2001

Councillor Joe Queenan
Sligo County Council

25 March 2019

Report under Section 24 of the Ethics in Public Office Act 1995,
as amended by the Standards in Public Office Act 2001 and
as applied by the Local Government Act 2001

*Standards in Public Office Commission
18 Lower Leeson Street
Dublin 2*

*Telephone: (01) 6395666
email: sipo@sipo.ie
Website: www.sipo.ie
Twitter: [@SIPOCIreland](https://twitter.com/SIPOCIreland)*

Foreword

The Standards in Public Office Commission (the “**Commission**”), in accordance with section 23 of the Ethics in Public Office Act 1995 (the “**Ethics Act**”) as amended by the Standards in Public Office Act 2001 (the “**Standards Act**”), has carried out an investigation to determine whether Councillor Joe Queenan, of Sligo County Council, has contravened Part 15 of the Local Government Act 2001 (the “**Local Government Act**”). The Commission, in accordance with section 24 of the Ethics Act, has prepared the following report of the result of that investigation, copies of which, in accordance with section 24(1) of the Ethics Act and section 180(3) of the Local Government Act, are being furnished to:

1. Councillor Joe Queenan, the subject of the investigation;
2. Mr. Ciarán Hayes, Chief Executive, Sligo County Council, and Councillor Martin Baker, Cathaoirleach, Sligo County Council, one of whose predecessors, Councillor Rosaleen O’Grady, along with Mr. Hayes, made a complaint to the Commission; and
3. The Minister for Public Expenditure and Reform.

Mr. Justice Daniel O’Keeffe
Chairperson

Mr. Seamus McCarthy
Comptroller and Auditor General

Mr. Peter Tyndall
Ombudsman

Mr. Peter Finnegan
Clerk of Dáil Éireann

Mr. Martin Groves
Clerk of Seanad Éireann

Mr. Jim O’Keeffe
Commissioner

25 March 2019

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1. Introduction

- 1.1 The Commission was established by section 21 of the Ethics Act, as amended by section 2 of the Standards Act, which was brought into operation by the Standards in Public Office Act 2001 (Commencement) Order 2001. The members of the Commission for the purposes of this investigation are:
- Mr. Justice Daniel O'Keeffe (Chairperson)
 - Mr. Seamus McCarthy, Comptroller and Auditor General
 - Mr. Peter Tyndall, Ombudsman
 - Mr. Peter Finnegan, Clerk of Dáil Éireann
 - Mr. Martin Groves, Clerk of Seanad Éireann
 - Mr. Jim O'Keeffe, former member of Dáil Éireann
- 1.2 The Commission's role is to supervise the operation of the Ethics Acts in so far as they concern office holders, an Attorney General who is not a member of a House of the Oireachtas, Ministerial special advisers, designated directors and employees of specified public bodies and certain civil servants, to provide guidance and advice on the applicability of the Ethics Acts and to carry out investigations into possible contraventions of the Ethics Acts and/or Part 15 of the Local Government Act.
- 1.3 The investigative function of the Commission is a formalised procedure giving its Chairman statutory powers that include the power to compel the attendance of witnesses and to procure documents or other material. The Ethics Acts oblige the Commission to hold hearings for the purpose of investigations. The detailed procedure determined by the Commission for the conduct of investigations is available on the Commission's website at <http://www.sipo.gov.ie/en/About-Us/Our-Policies/Investigation-Protocol/>
- 1.4 Having carried out an investigation under section 23 of the Ethics Act to determine whether there has been a contravention of the Ethics Acts or of Part 15 of the Local Government Act, the Commission, pursuant to section 24 of the Ethics Act and section 180 of the Local Government Act, is required to prepare a report and to furnish a copy of the report to:
- the person the subject of the investigation,
 - the person who made the complaint,
 - where a report relates to the Cathaoirleach of a local authority, to the Leas-Cathaoirleach and the Chief Executive of the authority,
 - where a report relates to any other member of a local authority, to the Cathaoirleach and the Chief Executive of the authority, and

- the Minister for Public Expenditure and Reform.

1.5 In addition, section 24(2) of the Ethics Act provides that, where the Commission is of the opinion that a person the subject of an investigation may have committed an offence relating to the performance of his or her functions, it shall prepare a report in writing in relation to the matter and furnish it to the Director of Public Prosecutions.

1.6 This report, under section 24 of the Ethics Act, sets out the findings of the Commission together with its determinations in relation to:

- (a) whether there has been a contravention of Part 15 of the Local Government Act, and whether the contravention is continuing,
- (b) in case the determination is that there has not been a contravention of Part 15, whether the Commission is of opinion that the complaint made was frivolous or vexatious or that there were no reasonable grounds for it, and
- (c) in case the determination is that there has been a contravention of Part 15 –
 - (i) if the determination is that the contravention is continuing, the steps required to be taken to secure compliance with Part 15, and the period of time within which such steps should be taken,
 - (ii) whether the contravention was committed inadvertently, negligently, recklessly or intentionally,
 - (iii) whether the contravention was, in all the circumstances, a serious or a minor matter, and
 - (iv) whether the person being investigated acted in good faith and in the belief that his or her action was in accordance with guidelines published or advice given in writing by the Commission under section 25 of the Ethics Act.

1.7 The Commission must be satisfied to the civil standard of proof, i.e. satisfied on the balance of probabilities, in finding that a contravention was committed or a 'specified act' was done.

2. Background

- 2.1 On 21 April 2016, the Commission received a complaint dated 20 April 2016 from Councillor Rosaleen O’Grady, then Cathaoirleach, Sligo County Council and Mr. Ciarán Hayes, Chief Executive, Sligo County Council, concerning Councillor Joe Queenan, a member of Sligo County Council, which was referred to the Commission in accordance with Section 174(8)(a)(iii) of the Local Government Act.
- 2.2 The background to the complaint lay in certain contacts between Councillor Queenan and an individual who, using the alias of “Nina Carlsson”, purported to represent an investment company, “Vinst Opportunities”, which was interested in investing in the development of wind farms in County Sligo. This individual was in fact an undercover reporter working for RTÉ. Councillor Queenan had three telephone calls and one meeting with the undercover reporter, all of which were secretly recorded. Extracts from these recordings featured in an RTÉ Investigates programme broadcast on 7 December 2015.
- 2.3 The complaint centred on alleged contraventions of Part 15 of the Local Government Act and the Code of Conduct for Councillors adopted under Section 169 of the Local Government Act. More particularly, the complaint concerned:
- (i) Whether the failure on the part of Councillor Queenan to disclose certain interests in his annual declaration submitted on 8 February 2015, subsequently submitted in revised form on 20 November 2015 and on 4 December 2015, was in breach of Section 171 of the Local Government Act and the Code of Conduct for Councillors;
 - (ii) Whether the conduct of Councillor Queenan was otherwise in breach of the Code of Conduct of Councillors. In this regard, the complaint raised two issues: first, whether the manner in which the meeting between Councillor Queenan and the undercover reporter was itself in accordance with appropriate ethical standards and a contributory factor in any breach; secondly, whether the selective use of extracts from the meeting was a true and fair reflection of Councillor Queenan’s behaviour and conduct at the meeting.
- 2.4 The complaint also enclosed certain documentation at the request of Councillor Queenan and his legal advisor, including a cover letter from the Councillor’s legal advisor and additional correspondence.

2.5 Having considered the matter, the Commission appointed an Inquiry Officer on 2 September 2016, under Section 6 of the Standards Act, to conduct a preliminary inquiry into the complaint, to prepare a report of her inquiry, to furnish any statements made to her by the persons complained of and any other relevant persons, along with any relevant documents and to express an opinion as to whether there was *prima facie* evidence to sustain the complaint. The Inquiry Officer presented the inquiry report to the Commission in July 2017, along with relevant statements and documents. In this report, the Inquiry Officer expressed the opinion that there was *prima facie* evidence to sustain an investigation of the complaint that Councillor Queenan contravened Part 15 of the Local Government Act and was in breach of the Code of Conduct for Councillors.

2.6 Having examined the provisions of the Ethics Acts and the Local Government Act and having taken account of the report of the Inquiry Officer, the Commission decided on 10 July 2017 that it was appropriate to carry out an investigation under section 23 of the Ethics Act to determine whether Councillor Queenan had contravened Part 15 of the Local Government Act. Details of the alleged contraventions, provided by the Commission in correspondence to Councillor Queenan on 7 February 2018, are included at Appendix 1 to this Report.

2.7 The alleged contraventions relate to Sections 168, 169, 170 and 171 of the Local Government Act. Section 168 of the Local Government Act provides:

“In carrying out their functions under this or any other enactment, it is the duty of every member and every employee of a local authority and of every member of every committee to maintain proper standards of integrity, conduct and concern for the public interest.”

2.8 Section 169 of the Local Government Act provides that the Minister with responsibility for Local Government may, after consultation with the Commission and the Minister for Finance, *“issue codes of conduct for the guidance of members of local authorities and of employees of local authorities”*. In 2004, the Minister issued a Code of Conduct for Councillors. Section 169(3)(a) of the Local Government Act provides *“Each member shall have regard to and be guided by the relevant code of conduct in the exercise of his or her functions.”*

2.9 Section 170 of the Local Government Act provides:

“(1) An employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward

or other favour for anything done or not done by virtue of his or her employment or office, and a code of conduct under section 169 may include guidance for the purposes of this subsection.

(2) Subsection (1) shall not be read so as to exclude the persons to whom that subsection relates from the application of the Prevention of Corruption Acts, 1889 to 1995, and any Act which is to be construed together as one with those Acts.”

2.10 Section 171 of the Local Government Act provides inter alia:

“(1) It is the duty of a person to whom section 167(1) applies to prepare and furnish to the ethics registrar in accordance with subsection (2) or (3), as the case may be, an annual written declaration (in this Part referred to as an “annual declaration” or “declaration”, as the case may be), in the form prescribed by regulations made by the Minister, signed and dated by him or her and containing—

(a) particulars of his or her declarable interests (within the meaning of section 175), and

(b) an undertaking by him or her to have regard to and be guided by the relevant code of conduct in the exercise of his or her functions.

(2) Each member of a local authority shall prepare and furnish to the ethics registrar within the return period each year, an annual declaration and a statement that none of the grounds for disqualification referred to in section 13 or 182, or under section 20 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, apply.”

2.11 The object and purpose of the Code of Conduct for Councillors is *“to set out principles and standards of conduct and integrity for councillors, to inform the public of the conduct it is entitled to expect and to uphold public confidence in local government”*. In paragraph 1.1, it states that *“[t]he public is entitled to expect conduct of the highest standards from all those involved in the local government service...”*.

2.12 Section 2 of the Code of Conduct for Councillors deals with general conduct and behaviour. Section 2.1 provides:

“The general conduct and behaviour of councillors in carrying out their role is an important yardstick by which the honesty, integrity, impartiality and performance of local government is judged and public trust maintained. It is important therefore that these core values underpin all actions of councillors affecting local authority business. As holders of elected office they have a duty to keep faith with the public trust placed

in them. This is a personal responsibility and requires them to observe the highest ethical standards in the performance of their role”.

Section 2.2 provides *inter alia*:

“Councillors in carrying out their role should abide by this Code and:-

- act in a way which enhances public trust and confidence;*
- avoid conflicts of interest and never seek to use improper influence;*
- make decisions based solely on consideration of the public interest and the common good;...”*

Section 2.3 provides that, *“more generally, councillors should in all matters seek to ensure that their conduct does not bring the integrity of their office or of local government into disrepute.”*

2.13 Section 3 of the Code of Conduct for Councillors deals with the conflict of personal and public interest. In Section 3.1, it is stated that the Local Government Act *“prohibits a councillor from influencing or seeking to influence a decision of a local authority in any matter with which the local authority is concerned in the performance of its functions and in which, or related to which, the councillor has actual knowledge that s/he or a connected person has a pecuniary or other beneficial interest”*. Sections 3.8, 3.9 and 3.10 provide as follows:

“3.8 - This is all the more so where the nature of a councillor's occupation, profession or business is such that it interfaces to a significant degree with local authority functions (e.g. related to land development or property transactions). There is a special onus on the person concerned to take extra care in these circumstances.

3.9 - Councillors must not seek to use their official position so as to benefit improperly themselves, their professional or business interests, or others with whom they have personal, family or other ties. Likewise they must not seek to use or pass on for personal gain or the personal gain of others, official information which is not in the public domain, or information obtained in confidence as a result of their public position.

3.10 - The Act provides that it is the duty of every councillor (and employee) to maintain proper standards of integrity, conduct and concern for the public interest. Councillors should base their conduct on a consideration of the public interest and the common good. They are individually responsible for being alert to potential conflict of interest, avoiding such conflicts and for ensuring that their actions,

whether covered specifically or otherwise by this Code, are governed by the ethical and other considerations implicit in it.”

2.14 Appendix 2 contains Part 15 of the Local Government Act and the Code of Conduct for Councillors.

3. Investigation Hearing of the Commission

- 3.1 In advance of the investigation hearing, the date, time and place of the hearing were notified to the legal advisors of Councillor Queenan. Councillor Queenan's legal advisors were also informed of the right to make a preliminary application in advance of the hearing and that such an application could be heard separately at a preliminary application hearing on a specified date before the Commission. No response was received by Councillor Queenan's legal advisors. Thereafter, further correspondence issued to the legal advisors of Councillor Queenan confirming that, as no response had been received, any preliminary application on behalf of Councillor Queenan would have to be made in writing and in advance of the scheduled investigation hearing on 10 September 2018. No written preliminary applications were received in advance of the investigation hearing.
- 3.2 The Commission sat for its investigation hearing on 10 September 2018. The transcript of the investigation hearing is included at Appendix 3 to this Report.
- 3.3 At the hearing, Michael O'Connor BL (instructed by Sinéad Durkan, Solicitor) appeared for Councillor Queenan. The Commission was represented by James Doherty SC and Kate McCormack BL (instructed by Madeleine Delaney, Solicitor).
- 3.4 At the outset of the hearing, counsel for Councillor Queenan made two preliminary applications.
- 3.5 First, counsel for Councillor Queenan requested that certain parts of the transcripts and recordings which referred to a named third party, who had no connection with the matters currently under investigation, be dealt with otherwise than in public hearing. In reply, counsel for the Commission submitted that this matter could be dealt with by way of a reporting restriction.
- 3.6 Having considered the application, and the submissions made, the Commission ruled that, in circumstances where the named third party had no connection with the matters currently under investigation, it was appropriate that there be a reporting restriction in respect of the third party's name and made a direction to this effect.
- 3.7 Second, counsel for Councillor Queenan made an application that the Commission should not proceed with its investigation on the basis of

anonymous evidence and in circumstances where the Councillor's representatives would not have an opportunity to cross-examine the undercover reporter whose contacts with Councillor Queenan provided the factual basis for the investigation. In reply, counsel for the Commission submitted that this was not a proper basis for not proceeding with the Commission's investigation.

- 3.8 Having considered the application, and the submissions made, the Commission concluded that the mere fact that the undercover reporter was not being called to give evidence did not provide a sufficient basis for not proceeding with its investigation and dismissed the application. In arriving at its decision, the Commission observed that the Commission's investigation was not a criminal trial and the rules applicable to evidence in criminal proceedings did not strictly apply to its proceedings. In any event, as the Commission did not intend to call the undercover reporter, there was no question of it relying on the evidence of an anonymous witness. In addition, the investigation took place on foot of a complaint from the Chief Executive and Cathaoirleach of Sligo County Council, not the undercover reporter, the Councillor was not being deprived of an opportunity to cross-examine his accuser. The Commission stated that the video and audio recordings, on which reliance was being placed, had been made available to Councillor Queenan and that Councillor Queenan would be afforded an opportunity to give evidence and call any witnesses on his behalf.
- 3.9 The Commission delivered a ruling in respect of the preliminary applications, which is recorded in the Transcript of the Investigation Hearing at Appendix 3. The ruling is also found as a separate appendix at Appendix 4 to this Report.
- 3.10 The Commission thereafter proceeded with the hearing of its investigation. Following an opening submission by Mr. Doherty SC, the Commission heard evidence.
- 3.11 On behalf of the Commission, the following witnesses were called, examined by Mr. Doherty SC on its behalf, and cross-examined by Mr. O'Connor BL on behalf of Councillor Queenan:
- (i) Cedric Culliton, retired cameraman with RTÉ;
 - (ii) Conor Ryan, journalist with RTÉ;
 - (iii) Elaine Laird, Inquiry Officer.
- 3.12 Mr. Culliton, who had set up the hidden cameras recording Councillor Queenan's meeting with the undercover reporter on 4 November 2015, provided a statement to the Commission on 3 September 2018. In this statement, Mr. Culliton confirmed the accuracy, completeness and

authenticity of the video recording. In his oral evidence to the Commission, Mr. Culliton again confirmed the position in this regard.

- 3.13 Mr. Ryan, who was involved in the recording of the three telephone conversations between Councillor Queenan and the undercover reporter, provided a statement to the Commission on 6 September 2018 in which he confirmed the accuracy, completeness and authenticity of these recordings. In his oral evidence to the Commission, Mr. Ryan again confirmed the position in this regard. In response to questions on behalf of Councillor Queenan which sought to ascertain the identity of the undercover reporter, Mr. Ryan gave evidence that RTÉ was asserting journalistic privilege in respect of the undercover reporter's identity.
- 3.14 Ms. Laird gave evidence in respect of her Inquiry Report dated July 2017, in which she had concluded that there was *prima facie* evidence to sustain an investigation of the complaint that Councillor Queenan contravened Part 15 of the Local Government Act and was in breach of the Code of Conduct for Councillors.
- 3.15 The Commission then heard the unedited audio recordings of the three telephone conversations between Councillor Queenan and the undercover reporter. The Commission also watched the unedited video footage of the meeting between Councillor Queenan and the undercover reporter which took place on 4 November 2015. The Commission was furnished with a copy of the transcripts of these recordings which had been prepared by RTÉ. The Commission was also furnished with a copy of the transcripts of these recordings which had been prepared on behalf of the Commission by Gwen Malone Stenography Services.
- 3.16 On behalf of Councillor Queenan, the following witnesses were called, examined by Mr. O'Connor on his behalf, and cross-examined by Mr. Doherty SC on behalf of the Commission:
- (i) Councillor Tom McHugh;
 - (ii) Councillor Joe Queenan.
- 3.17 Councillor McHugh, a member of Galway County Council, gave evidence of a meeting which took place between himself and the undercover reporter and also of his experience as a County Councillor.
- 3.18 Councillor Queenan's evidence in relation to the matters under investigation will be considered in detail below. For present purposes, it may be noted that Councillor Queenan gave evidence of his long history of service and contribution to his local community, including as a member of Sligo County Council. Councillor Queenan was first elected a member of Sligo County

Council in June 1999 on behalf of Fianna Fáil and has been successfully re-elected on three occasions, most recently in 2014. He has served as Cathaoirleach and Leas-Cathaoirleach of Sligo County Council. Following the broadcast of the RTÉ Investigates programme, Councillor Queenan resigned from Fianna Fáil and he is currently an independent member of Sligo County Council. Councillor Queenan is a farmer, auctioneer and business person, with a number of retail premises and an agri-feed business.

- 3.19 At the conclusion of the hearing, it was agreed that counsel for the Commission would make written submissions no later than 5 October 2018 and counsel for Councillor Queenan would make written submissions no later than 12 October 2018. These submissions are included in Appendix 5.

4. The Alleged Contraventions

- 4.1 The issues to be determined by the Commission are whether Councillor Queenan contravened Part 15 of the Local Government Act by engaging in the conduct set out in the Statement of Alleged Contraventions.
- 4.2 The Statement of Alleged Contraventions, included as Appendix 1 to this Report, sets out detailed particulars of alleged contraventions of four provisions of the Local Government Act. In summary, the four alleged contraventions relate to:
- (i) section 168 (failure to maintain proper standards of integrity, conduct and concern for the public interest);
 - (ii) section 170 (seeking assurances of payment and indicating a willingness to provide assistance as a member of the local authority in return for payment);
 - (iii) section 169(3) (failure to have regard to and be guided by the Code of Conduct for Councillors);
 - (iv) section 171 (failure to set out full particulars of declarable interests in the annual declaration furnished to Sligo County Council for the year 2014).
- 4.3 The first, second and third alleged contraventions relate to Councillor Queenan's contacts with a representative of a fictitious UK investment company interested in developing wind farms in County Sligo, who transpired to be an undercover reporter working for RTÉ.
- 4.4 The fourth allegation relates to the annual declaration submitted by Councillor Queenan on 8 February 2015. Subsequently, on 20 November 2015 and on 4 December 2015, Councillor Queenan submitted annual declarations for 2015 in revised form. This allegation will be considered separately.

The Written Submissions

- 4.5 On 5 October 2018, the legal team acting on behalf of the Commission delivered legal submissions to the members of the Commission, which are included in Appendix 5 of this Report. The submissions set out the background to the complaint, the factual and legal context of the alleged contraventions, the evidence before the Commission as well as a number of legal issues. In particular, the submissions address the law on entrapment. The submissions also address the standard of proof and the requirement that the Commission record in its Report the nature of any contravention found to have occurred.

- 4.6 On the issue of entrapment, it is submitted that, at its height, Councillor Queenan's argument of entrapment would appear to be raised in mitigation of any breach as opposed to as a ground of outright exculpation. The submissions refer to the English and Irish authorities on entrapment in a criminal context, specifically *R v. Looseley* [2001] 1 WLR 2060 and *DPP v Mills* [2015] 4 IR 659. They also address the question of entrapment by a non-state actor in a civil regulatory setting, referring in particular to the judgment of the High Court of England and Wales in *CRHCP v. General Medical Council and Saluja* [2007] 1 WLR 3094.
- 4.7 On 12 October 2018, submissions were delivered on behalf of Councillor Queenan, which are included in Appendix 5. It is submitted that the alleged contraventions against Councillor Queenan have not been proven, other than the technical breach of section 171 of the Local Government Act in respect of the amended Annual Declaration, which should still be considered by the Commission by way of the context set out by Councillor Queenan in evidence. The submissions raise a large number of arguments, the most important of which are summarised below:
- (i) Fair Procedures: It is submitted that, because of the nature of the Commission as a body charged with investigating, prosecuting and adjudicating upon breaches of the Ethics Acts, the Commission must be very careful to ensure fair procedures.
 - (ii) Selection of Evidence: It is asserted that it is RTÉ, rather than the Commission, which has determined the evidence to be called in the proceedings and that RTÉ is guilty of conduct contrary to section 17 of the Standards Act. It is further asserted that, as a result of the undercover reporter not being called, and therefore unavailable for cross-examination, Councillor Queenan has been deprived of an opportunity to test this evidence, by asking her questions on matters such as her instructions, credibility, whether she had convictions, and so on.
 - (iii) Anonymity of Undercover Reporter: It is submitted that there was no justification for the anonymity of the undercover reporter and that the Commission's investigation was deficient because it did not call this person as a witness or ascertain her identity.
 - (iv) Nature of the Transcripts: It is submitted that, by reason of a reference in correspondence from RTÉ to the transcripts not being official transcripts, reliance should not be placed on them, the

transcripts of the calls and meetings furnished by RTÉ due to concerns that they are unreliable.

- (v) Anonymous Evidence: It is submitted that, by reference to a series of authorities, there is a right to confront the relevant and main witnesses in civil and criminal proceedings. It is also submitted that there is a specific rule against anonymous evidence, with reliance placed on the decision of the House of Lords in *R v. Davis* [2008] 3 All ER 461. It is submitted that this is related to the presumption of open justice, with reference being made to the judgments of the High Court in *Roe v. Blood Transfusion Service Board* [1996] 3 IR 67 and *Doe v. Revenue Commissioners* [2008] IEHC 5. In light of this, counsel for Councillor Queenan submitted that the transcripts and recordings should be given “*a very light and flimsy weight indeed*” as evidence.
- (vi) Entrapment: Certain submissions are made in relation to entrapment, with particular reference to the judgment of the Court of Appeal in *DPP v Mills* [2015] 4 IR 659. It is submitted that the Commission should oppose the conduct of RTÉ in this regard.
- (vii) Standard of Proof: It is argued briefly that that the appropriate standard of proof is that of the criminal standard and that the Commission must be satisfied beyond reasonable doubt in finding that a contravention was committed. It is further submitted that in the alternative that the facts must be established as a matter of substantial probability.

4.8 Having carefully considered the written submissions, the Commission makes the following observations:

- (i) Fair Procedures: The Commission must act within the statutory framework under which it has been established. Within this statutory framework, the Commission is vested with the function of investigating breaches of the Local Government Act. In this case, the Commission has acted on foot of a complaint received from Sligo County Council and following the completion of its preliminary inquiry by a duly appointed Inquiry Officer. It is important to emphasise that this investigation is concerned with the conduct of Councillor Queenan having regard to his obligations under the Local Government Act and on foot of the complaint by Sligo County Council.

The assertions by Councillor Queenan regarding the investigative journalism employed by RTÉ or the alleged conduct of the undercover reporter are not within the remit of the Commission. In accordance with fair procedures, Councillor Queenan was put on notice of the evidence against him and the evidence to be adduced at the hearing. He was also afforded an opportunity to give evidence to the Commission and to put such other evidence before the Commission as he considered relevant to the case against him. The Commission has at all times acted in accordance with the requirements of fair procedures.

- (ii) Selection of Evidence: It is a matter for the Commission in the proper exercise of its statutory functions to determine whether the evidence before it is sufficient to support the alleged contraventions and to determine related matters, such as whether it is necessary to call a particular witness or whether a party has obstructed the Commission in its work.

- (iii) Anonymity of Undercover Reporter: The Commission is satisfied that there was no necessity for the undercover reporter to give evidence at the hearing. The matters in respect of which it is suggested that Councillor Queenan ought to be entitled to cross-examine the reporter relate to the journalistic methods employed by RTÉ, not the conduct of Councillor Queenan, and accordingly would fall outside the scope of the Commission's functions under the Ethics Acts. The investigation hearing was not deficient as a result of the identity of the undercover reporter not being disclosed. The Commission is of the opinion that the unedited footage and audio recordings of the undercover reporter and Councillor Queenan is sufficient in order to assess his conduct.

- (iv) Nature of the Transcripts: The written submissions submitted on behalf of Councillor Queenan raises issues with the journalistic methods employed by RTÉ which it is said should affect the weight to be given to the recordings and transcripts. In their evidence to the Commission, Mr. Culliton and Mr. Ryan confirmed the accuracy, completeness and authenticity of the video and audio recordings, respectively. The Commission notes that counsel for Councillor Queenan did not challenge the accuracy, completeness and authenticity of the recordings at the hearing and accepted that the recordings reflected what Councillor Queenan had said in the course of his conversations with the undercover reporter.

(v) Anonymous Evidence: The Commission has not relied on any anonymous evidence in its investigation.

(vi) Entrapment: The Commission recognises that a plea of entrapment may in certain circumstances be a basis for applying to exclude evidence or to stay proceedings as an abuse of process. However, as the judgment of the High Court of England and Wales in *Saluja* illustrates, it is only in very rare and exceptional circumstances that such a plea could be raised where the alleged entrapment is by a non-state agent (such as a journalist) as opposed to a state agent (such as a police officer). The Commission is satisfied that neither the factual nor the legal requirements for a successful plea of entrapment are met in the circumstances of this case.

In these circumstances, the Commission is entitled to accept as evidence the unedited audio recordings of the telephone calls between Councillor Queenan and the undercover reporter which took place on 20 October 2015 and 4 November 2015 and to the unedited video footage of the meeting that took place between Councillor Queenan and the undercover reporter on 4 November 2015.

(vii) Standard of Proof: The Commission has previously considered this issue and is satisfied that the appropriate standard of proof is that of the civil standard of proof, i.e. the balance of probabilities. The Supreme Court in *Lawlor v Planning Tribunal*¹ affirmed the application of the balance of probability standard by the Tribunal. In doing so, it held that a standard of proof of beyond a reasonable doubt is not required to make a finding of misconduct. In relation to the application of the balance of probability standard, Murray CJ. Said in *Lawlor* “[t]he findings made must clearly be proportionate to the evidence available. Any such findings of grave wrongdoing should in principle be grounded upon cogent evidence”.

The Commission has previously stated that it is guided by the foregoing and the following dicta of O’Flaherty J. in *O’Laoire v the Medical Council*², “The graver the allegation the greater will be the care which the tribunal or court will take to make sure that the case has been brought home against the person whose conduct is impugned”. The Commission accepts that the degree of probability should always be proportionate to the nature and gravity of the issue

¹ [2010] 1IR170

² Supreme Court, un reported, 25 July 1997

being investigated. However, this does not mean that a higher standard of probability must be applied.

Evidence in respect of the Alleged Contraventions of Section 168, Section 170 and Section 169(3) of the Local Government Act

4.9 For the purposes of this Report, the Commission makes reference to certain aspects of the evidence which are relevant to the alleged contraventions under investigation.

4.10 In the second telephone conversation on 20 October 2015, Councillor Queenan at an early stage made reference to his experience and expertise in relation to the planning process as a County Councillor. When the undercover reporter indicated that she had contacted Councillor Queenan in particular because he was a business person, he confirmed that he was a business person and had *“a good business head”*. Councillor Queenan thereafter agreed to meet with the undercover reporter, indicating that he could only give advice in relation to County Sligo. At an early stage during this telephone conversation, the undercover reporter indicated that she wished for their discussion to be strictly confidential, a suggestion to which Councillor Queenan readily agreed.

Nina Carlsson: *“No, No we’ll just have a chat you know and it’s strictly confidential of course, you know”*.

Councillor Queenan: *“Oh absolutely, absolutely, yeah”*

4.11 In the course of Councillor Queenan’s meeting with the undercover reporter on 4 November 2015, Councillor Queenan engaged in a lengthy conversation about the potential development of wind farms in County Sligo.

4.12 Councillor Queenan confirmed in the course of this conversation that he was supportive of wind-farms, at least in non-sensitive areas, while noting the significant controversy and strong opposition to which the development of wind farms gives rise to in the local community. In the course of the conversation, he suggested that the mountainous areas of the county were best placed for wind farm development and that the coast should be avoided.

4.13 Councillor Queenan provided information about the planning process in County Sligo and the potential difficulties that might arise in a planning application for a wind farm. In particular, he laid emphasis on the importance of the pre-planning process and agreed to work on behalf of the potential investor in this regard. Councillor Queenan indicated that he could do some

research, that he could talk to the Sligo County Council planners and seek their views on potential sites, and that he would do so on a confidential basis. He observed that planning permission was an executive function within the Council and that, while Councillors had a degree of influence within limits, neither he nor any member of the Council could give any guarantees that a particular application would be granted planning permission. Councillor Queenan indicated that he provided assistance with the pre-planning process routinely as part of his work.

- 4.14 When Councillor Queenan was asked if he would work with the potential investor on the process, he confirmed that he would do so and that it would “*cost nothing*” and that he was “*not looking for anything out of it*”, except a commitment of confidentiality. He indicated that he would do some lobbying behind the scenes with Sligo County Council for the potential investor, provided that this was realistic. He agreed to liaise with the potential investor’s experts. He again confirmed that he was not looking for money, stating that, if he was caught or seen to be doing so, he “*would be out on my ear straight away*”. At this stage, Councillor Queenan continued:

“But maybe down the road, because I am in business myself what I might have some business project coming up, you might be, some of your clients might be interested in investing with me in a project maybe you know something like that. I am just talking off the top of my head now, right.” (Appendix 3, Transcript, pg. 194).

- 4.15 Councillor Queenan then proceeded to outline a potential investment opportunity relating to the development of an agri-feed business in Enniscrone, County Sligo. He confirmed that he would be looking for investment for his companies and stated: “*that is where you, that way you could help me. If it ever comes to it, right.*” The Councillor followed this statement by repeating that he was not looking for anything, that he was not in the wind farm business himself, and that the potential investor should focus on its own project first.

- 4.16 When pressed on the issue of confidentiality, Councillor Queenan stated:

“Oh no I wouldn’t go, the last thing I want to do as a politician is to go public and say that I was being backed by tycoons from the UK who are lobbying. That is illegal what I would be doing there. Straightaway it would be a very grey area and I don’t want to go there.” (Appendix 3, Transcript, pg. 196)

Councillor Queenan confirmed that he would work with the potential investor as “*a link man or gofer or whatever*”. He would do so “*free gratis and for*

nothing". He also noted the potential benefits from Sligo County Council in wind farm development.

- 4.17 Towards the end of the meeting with the undercover reporter, he was asked again about the name of the business in respect of which he might be seeking investment. Councillor Queenan provided details of a company named Lackenslieva Limited.
- 4.18 Following the meeting, the undercover reporter called Councillor Queenan later that day on 4 November 2015. In the course of this telephone call, she followed up in relation to the potential investment opportunity mentioned by Councillor Queenan. The undercover reporter stated that she had spoken with her boss who was interested in the figure discussed of €200,000, in relation to the agri-feed business as part of the company's overall investment in Sligo. The undercover reporter sought clarity on whether this would be by way of loan or a stake in the company. In reply, Councillor Queenan said that he would be open to both but that he would prefer to get to know the potential investor better and make some progress on the wind farm before talking about this potential investment. In the course of this telephone call, Councillor Queenan queried whether the conversations were being taped.

Councillor Queenan said that there would be no cost or fee for his assistance and that he would be working for the benefit of Sligo. Councillor Queenan stated that if he were to go down the route of developing the agri-feed business (which he said he would know in the next month or six weeks), noting that he was speaking hypothetically, that this would be *"totally on a business nature, everything above board....."*. Having been assured again of the confidentiality of the conversations, Councillor Queenan agreed to meet the undercover reporter and any other representatives on their next visit to Sligo. This was the final contact between Councillor Queenan and the undercover reporter.

- 4.19 Councillor Queenan received a letter from RTÉ on 12 November 2015, informing him that the individual with whom he had met on 4 November 2015 was an undercover reporter retained by RTÉ. The correspondence provided an opportunity to respond to the issues raised in the correspondence by way of a pre-recorded interview for inclusion in the RTÉ Investigates programme.
- 4.20 In his evidence to the Commission, Councillor Queenan acknowledged that his conduct in the course of his dealings with the individual, purporting to be a representative of a potential investor but in fact an undercover reporter, was an error and fell short of his standards. He stated in evidence:

“Chairman I put up my hands. I did get into, I don't know was it the chocolate biscuits or what it was but I diverted for a minute because I seen this invest, I got the impression in me head that this, this woman with all this investment could also invest in other, other things rather than the wind farms. I diverted myself that way and I am sorry I shouldn't have. It isn't me form but I was caught and maybe it's all the things that was going on in me mind at the time but I've hands up.”
(Appendix 3, Transcript, p.158).

- 4.21 Councillor Queenan apologised for this conduct. He stated that he had not intended to breach ethical standards or seek any favours. He said that he was overenthusiastic about the prospect of an investor investing in Sligo. Although, in the legal submissions furnished on Councillor Queenan's behalf, it is asserted that there was no breach of standards or lack of integrity on the totality of evidence, the Councillor's admission of an error and apology for his conduct are significant.
- 4.22 Councillor Queenan gave evidence that, at the time of these events, he was under considerable pressure, both professionally due to business and Council duties and also personally. He said that he had other things on his mind at the time of the meeting, and in particular when he made reference to the potential of investment in his business in the course of the meeting.
- 4.23 Councillor Queenan said that he had gone to the meeting in good faith on the basis that he was meeting an individual with a serious interest in investing in Sligo and bringing jobs to the region. However, he believed that he had been entrapped as the individual transpired to be an undercover reporter from RTÉ. Councillor Queenan said that he had been distracted and diverted by the undercover reporter's appearance and alleged flirtation. At the same time, he said that he took pity on the undercover reporter because she appeared to be very weak on the detail of the meeting.
- 4.24 While he said that he had doubts about the undercover reporter from the very first conversation, Councillor Queenan also described himself as having walked into *“the trap”*. Following the meeting on 4 November, Councillor Queenan said that he felt that there was something not quite right about it and was stunned by the request for further information on the potential investment in the agri-feed business. He also gave evidence that the entire discussion around the potential investment in his agri-feed business was hypothetical.
- 4.25 Insofar as the issue of confidentiality was concerned, Councillor Queenan stated that it was his normal practice in engagements and representations on behalf of constituents and other parties to maintain confidentiality. He

denied that his insistence on confidentiality was because of a concern about the public knowing about his involvement with the potential investor.

- 4.26 Councillor Queenan also gave evidence that assistance with preplanning was a normal part of the role of a councillor and he had made it clear in the course of the meeting that the granting of planning permission was an executive function in respect of which no guarantees could be given.
- 4.27 In his statement to the Inquiry Officer dated 12 April 2017, Councillor Queenan had stated that, while he believed that he had acted correctly at all times in his conversation with the undercover reporter at the meeting on 4 November 2015, he sincerely regretted allowing himself to enter into a hypothetical conversation with this person about a potential future investment opportunity. He continued:

“As a business person and as a politician I am always happy to make new business and network connections and, if I am honest, I was also trying to impress the person in front of me who represented herself as a serious business person who was keen to invest in West Sligo.”

- 4.28 Councillor Queenan stated that he had allowed himself to be entrapped by the undercover reporter. He said that what he had offered to do was for the benefit of Sligo and that any potential future business would have been above board. Councillor Queenan stated that he had never sought, exacted or accepted any remuneration, fee, reward or other favour for anything done or not done by virtue of his office.

Evidence in respect of the Alleged Contravention of Section 171 of the Local Government Act

- 4.29 The evidence relied upon in relation to the alleged contravention of Section 171 of the Local Government Act are the annual declarations made by Councillor Queenan between 2012 and 2015 and, in particular, the three annual declarations submitted in the course of 2015 on 8 February 2015, November 2015 and December 2015.
- 4.30 Councillor Queenan submitted his Annual Declaration to the Ethics Registrar of Sligo County Council on 8 February 2015. This was blank.
- 4.31 In the Annual Declaration submitted in 2012, Councillor Queenan had declared interests in relation to his profession as farmer and land, his profession as an auctioneer and his directorships. In the Annual Declaration submitted in 2013, Councillor Queenan declared his interest relating to his profession as farmer and landowner. In the Annual Declaration submitted in

2014, Councillor Queenan again declared his interest in respect of his profession as farmer and land as well as a directorship.

- 4.32 Following receipt of correspondence from RTÉ, raising queries about his annual declarations, Councillor Queenan submitted an amended Annual Declaration to the Council on 20 November 2015. This declaration referred to interests in the profession of farming and land, an additional profession as business person, and directorships in a number of companies.
- 4.33 On 2 December 2015, Councillor Queenan's Solicitors wrote to the Council, enclosing a statement with further details of the Councillor's business interests.
- 4.34 According to this statement, due to the pressures of work arising from Councillor Queenan's role as first Cathaoirleach of the merged Sligo Borough Council and Sligo County Council in 2014, Councillor Queenan had neglected to complete his annual declaration as comprehensively as he should have. Councillor Queenan expressed his whole-hearted regret for this oversight. He also said that his business interests are well-known, both to fellow councillors and locally.
- 4.35 In his evidence, Councillor Queenan stated that, on the day he submitted the blank declaration, he was chairing the Council and the submission of the declaration in this form was inadvertent. While acknowledging his duties under the Local Government Act, Councillor Queenan's evidence was that this submission was a genuine error.

5. Findings and Determinations

5.1 The Ethical Framework for Councillors under Part 15 of the Local Government Act, and the Code of Conduct for Councillors adopted thereunder, play an important role in ensuring the public trust in members of local authorities in Ireland.

5.2 The Commission has had regard to the evidence presented to it in the form of documents and statements, oral evidence and video / audio recordings adduced at the Investigation Hearing. The Commission has also had regard to the written submissions made to it on behalf of the Commission and on behalf of Councillor Queenan, which are included in Appendix 5.

5.3 The Commission is required by section 24 of the Ethics Act to determine whether the contraventions were committed inadvertently, negligently, recklessly or intentionally. In submissions furnished on behalf of the Commission the following approach was laid out:

- (i) *Inadvertently*: where the Commission is satisfied that the breach was entirely accidental;
- (ii) *Negligently*: where in applying an objective test, the Commission is satisfied that no reasonable Councillor in the same position, acting properly, would have made the same error;
- (iii) *Recklessly*: where in applying a subjective test, the Commission is satisfied on the evidence that the Councillor must have foreseen the risk of the consequence of his conduct bringing about a breach of the relevant provisions and the Code of Conduct for Councillors but proceeded with his conduct nonetheless; and
- (iv) *Intentionally*: where the Commission is satisfied on the evidence that the Councillor proceeded with his conduct knowing that it involved a breach so that the act was done consciously with a view to the result intended.

5.4 The Commission considers a determination that an act was committed intentionally to be at the highest end of the spectrum with acts committed inadvertently at the lowest end.

5.5 Alleged Contravention 1

The first alleged contravention, relates to Section 168 of the Local Government Act, which requires every member of a local authority: “*to maintain proper standards of integrity, conduct and concern for the public interest*”. On his own admission, Councillor Queenan’s conduct in the course

of his dealings with the undercover reporter, purporting to represent “Vinst Opportunities”, fell short of the appropriate standards: *“I’m sorry, I did go down a small bit under the standard that I have kept”* (Appendix 3, Transcript pg. 176). While Councillor Queenan’s evidence was that he had not intended to breach ethical standards, he acknowledged in his evidence that he had made an error in raising the opportunity of investment in his personal business in the context of his offer to assist the purported investor in the development of wind farms in County Sligo.

- 5.6 In his evidence, Councillor Queenan confirmed that he was familiar with the requirements of the Ethical Framework for Councillors established under the Local Government Act and the Code of Conduct of Councillors. Indeed, in the course of his interactions with the undercover reporter, Councillor Queenan made explicit reference to the duties on members of local authorities in this regard. Notwithstanding this position, Councillor Queenan raised the prospect of investment in his business with the undercover reporter during the meeting on 4 November 2015. He provided specific details, including the nature of the business and the company name. He did so in circumstances where he was agreeing to assist and act on behalf of “Vinst Opportunities” in their efforts to obtain planning permission for wind farms in County Sligo. While, in the course of a subsequent telephone call on 4 November 2015, Councillor Queenan sounded caution in relation to this investment, he nonetheless provided further detail in relation to the possible form of this investment and maintained his willingness to assist and act on behalf of “Vinst Opportunities” in its dealings with the Council:

Councillor Queenan: *“The way I work, anything you ask me to do, I will do it for the benefit of Sligo that we will bring more wind farms to Sligo and we’ll bring more income for the council. And I don’t want any fee or nothing like that for anything I do for you. Right?”*

Nina Carlsson: *“Ok”.*

Councillor Queenan: *“If I go down the route of developing Nina, the business further, which I will know in the next month or six weeks, we will do it on a business... totally business nature, everything above board and em, if it is a loan, I will pay it back, we will come to an agreement and I will pay it back...or if you want to take a share in me business if we go that route, again we are talking hypothetically slightly now here. We will go that route also right”.* (Appendix 3, Transcript, pg. 199).

- 5.7 Councillor Queenan stated in direct evidence that he was under considerable pressure, personally and professionally, at the time of his interactions with the undercover reporter purporting to represent “Vinst Opportunities”. It is also submitted on behalf of Councillor Queenan that on six occasions he had refused anything in return for his assistance. However,

in the course of the meeting with the undercover reporter Councillor Queenan made reference to potential future investment opportunities *“And I will have some business project coming up, you might be, some of your clients might be interested, to invest with me in the project or maybe something like that, just talking off the top of my head”* (Appendix 3, Transcript pg. 194). In direct evidence Councillor Queenan stated *“what I said was hypothetical in the future. It wasn’t – I didn’t go in there looking for anything on the day”* (Appendix 3, Transcript pg. 158). The Commission does not accept Councillor Queenan’s assertions that the investment proposal was entirely hypothetical in nature.

- 5.8 The Commission is of the opinion that Councillor Queenan made a significant error in allowing the discussion in respect of assistance with a potential investment in County Sligo in his capacity as councillor to also develop into a discussion about potential investment in his business in his capacity as a private individual and business person. Councillor Queenan admitted this error in evidence: *“It isn’t me form but I was caught and maybe it’s all the things that was going on in me mind at the time but I’ve hands up”* (Appendix 3, Transcript, pg. 158).
- 5.9 Councillor Queenan has complained that he was the subject of entrapment in his dealings with the undercover reporter purporting to represent “Vinst Opportunities”. Councillor Queenan’s evidence in this regard was unclear. On the one hand, he gave evidence that he was distracted by this undercover reporter’s appearance and alleged flirtatious manner. On the other hand, he stated that he had doubts about the undercover reporter from the very first conversation. He also stated that he had pity for the undercover reporter because he considered her to be very weak in her responses. In his own words Councillor Queenan walked into *“the trap”* (Appendix 3, Transcript, pg. 165).

5.10 Decision in respect of Alleged Contravention 1

The Commission, having regard to the evidence before it, finds that Councillor Queenan agreed to provide assistance to the fictitious investment company in return for a financial reward in the form of possible future investment opportunities in ventures to which Councillor Queenan was personally involved in. The Commission finds that Councillor Queenan’s conduct in his meeting and telephone calls with the representative of the fictitious investment company interested in developing wind farms in County Sligo, amounted to a failure to maintain proper standards of integrity, conduct and concern for the public interest contrary to Section 168 of the Local Government Act. This is also demonstrated by Councillor’s Queenan’s eagerness to maintain discretion in respect of the investment opportunity:

Nina Carlsson: *“How would we be confidential?”*

Councillor Queenan: *“For me?”*

Nina Carlsson: *“No, with your business like?”*

Councillor Queenan: *“We will deal with that down the road. We will make it confidential if that ever happened if it ever happens”.*

5.11 Alleged Contravention 2

The second alleged contravention is that being a member of a local authority Councillor Queenan contravened the provisions of Section 170 of the Local Government Act, by seeking assurances of payment and indicating a willingness to provide assistance to the fictitious investment company as a member of local authority in return for payment. The Commission notes the following points.

5.12 Section 170 of the Local Government Act provides that a member of a local authority *“shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her [office]”.*

5.13 The Commission finds, as outlined in the Decision in respect of Alleged Contravention 1, that Councillor Queenan, of his own accord, raised the prospect of a financial reward, that being an investment opportunity in his personal business, in consideration for his willingness to assist the investment company. However, the Commission is of the opinion that no evidence was presented to suggest that Councillor Queenan sought payment for his assistance to the fictitious investment company in respect of the proposed wind farm project. Councillor Queenan states on a number of occasions during conversations with the undercover reporter that he was not looking for anything in return for his offer of assistance to the investment company *“The way I work, anything you ask me to do, I will do it for the benefit of Sligo that we will bring more wind farms to Sligo and we’ll bring more income for the council. And I don’t want any fee or nothing like that for anything I do for you. Right?”* (Appendix 3, Transcript, pg. 199).

5.14 Decision in respect of Alleged Contravention 2

The Commission is not satisfied, on the evidence before it that Councillor Queenan contravened Section 170 of the Local Government Act in the manner alleged in the Statement of Alleged Contraventions. The Commission is also of the opinion that there is no evidence to demonstrate that the complaint made was frivolous or vexatious or that there was no reasonable grounds for it.

5.15 Alleged Contravention 3

In relation to the third alleged contravention, relating to Section 169(3) of the Local Government Act, the Commission finds that Councillor Queenan failed to have regard to and be guided by the Code of Conduct for Councillors. Councillor Queenan has given evidence that he was familiar with the ethical obligations on Councillors and, indeed, in the course of the meeting with the undercover reporter, Councillor Queenan alluded to such obligations. While Councillor Queenan gave evidence that his general practice was to act on a confidential basis in representations on behalf of constituents and other parties, the invocation of confidentiality by Councillor Queenan, in relation both to his assistance with the wind farm project and to the potential for investment in his personal business, in the Commission's view calls into question the public trust and confidence placed in the office of the Councillor.

- 5.16 In his evidence to the Commission, Councillor Queenan apologised for his conduct and acknowledged that his conduct in the course of his dealings with the undercover reporter was an error and fell short of his standards.
- 5.17 The Commission has had regard to all relevant sections of the Code of Conduct for Councillors. In particular, it finds Councillor Queenan to be in breach of Section 3 of the Code of Conduct for Councillors, including specifically Section 3.9 which states that *"Councillors must not seek to use their official position so as to benefit themselves, their professional or business interests or others with who they have personal, family or other ties"*. The Commission finds that Councillor Queenan permitted his private and personal interests as a business person to come into conflict with his duties as a Councillor.
- 5.18 The Commission finds evidence that Councillor Queenan did not take extra care in order to avoid conflict between his public role and that of his private interests as required by Section 3.8 of the Code of Conduct *"where the nature of a councillor's occupation, profession or business is such that it interfaces to a significant degree with local authority functions (e.g. related to land development or property transactions)"* that there is then *"a special onus on the person concerned to take extra care in these circumstances"*.
- 5.19 The Commission has also considered Section 4 of the Code of Conduct for Councillors which requires that the *"consideration of planning matters by councillors is carried out in a transparent fashion"*. The Commission finds that Councillor Queenan's request for confidentiality of his communications with the investment company regarding his assistance in the wind farm project, does not equate to acting in a transparent manner.

5.20 Decision in respect of Alleged Contravention 3

The Commission finds that Councillor Queenan's conduct was contrary to Section 169(3) of the Local Government Act. In the Commission's opinion, Councillor Queenan permitted his private and personal interests as a business person to come into conflict with his duties as a Councillor. In doing so, Councillor Queenan carried out his functions in a manner which was not based solely on the consideration of the public interest. This conduct was liable to erode, rather than enhance, public trust and confidence and to bring the integrity of the office and of the local authority into disrepute. In these circumstances, Councillor Queenan, by his own admission, failed to observe the highest ethical standards in the performance of his role.

5.21 Alleged Contravention 4

In relation to the fourth alleged contravention, relating to Section 171 of the Local Government Act, Councillor Queenan acknowledged in his evidence to the Commission that the submission of the Annual Declaration on 8 February 2015 was an error. It was submitted on Councillor Queenan's behalf that once his attention was drawn to the discrepancies he took steps to correct the record, submitting an amended Annual Declaration on 20 November 2015 and furnishing additional information to Sligo County Council on 4 December 2015. Councillor Queenan's evidence is that the deficient Annual Declaration was an inadvertence on his part. However, the Commission is keenly aware that the submission of an accurate Annual Declaration is a statutory duty for a councillor, and its importance cannot be over emphasised in order to ensure transparency and maintain public trust.

5.22 Decision in respect of Alleged Contravention 4

The Commission finds that Councillor Queenan failed to comply in full with the requirements of Section 171 of the Local Government Act.

5.23 For convenience, the contraventions alleged against Councillor Queenan are now set out in full, followed by the Commission's findings and determinations.

- 1. That being a member of a local authority you contravened the provisions of Section 168 of the Local Government Act, 2001 by failing to maintain proper standards of integrity, conduct and concern for the public interest in that you met with a representative of a fictitious UK investment company ("the Company") interested in developing wind farms in County Sligo, in respect of which the Company was looking for information and assistance in dealing*

with issues such as planning permission and local opposition, and to whom you offered to provide assistance in return for financial reward.

The Commission is satisfied, on the evidence before it, that Councillor Queenan contravened section 168 of the Local Government Act in the manner alleged. The Commission is satisfied on the balance of probabilities that the contravention was committed recklessly and that it was, in all the circumstances, a serious matter.

2. That being a member of a local authority you contravened the provisions of Section 170 of the Local Government Act, 2001 by seeking assurances of payment and indicating a willingness to provide assistance to the Company as a member of the local authority in return for payment.

The Commission is not satisfied, on the evidence before it that Councillor Queenan contravened Section 170 of the Local Government Act in the manner alleged. The Commission is also of the opinion that there is no evidence to demonstrate that the complaint made was frivolous or vexatious or that there were no reasonable grounds for it.

3. That being a member of a local authority you contravened the provisions of Section 169(3) of the Local Government Act, 2001 in that you failed to have regard to and be guided by the Code of Conduct for Councillors insofar as you indicated a willingness to provide assistance with local landowners and with the planning application in the local authority on behalf of the Company in return for financial reward.

The Commission is satisfied, on the evidence before it, that Councillor Queenan contravened section 169(3) of the Local Government Act in the manner alleged. The Commission is satisfied on the balance of probabilities that the contravention was committed recklessly and that it was, in all the circumstances, a serious matter.

4. That being a member of a Local Authority you contravened the provisions of Section 171 of the Local Government Act 2001 by failing in the Annual Declaration form prepared and furnished by you to the Ethics Registrar of Sligo County Council for the year 2014 to set out full particulars of your declarable interests within the meaning of Section 175 of the Local Government Act 2001.

The Commission is satisfied, on the evidence before it, that Councillor Queenan contravened section 171 of the Local Government Act in the manner alleged. The Commission is satisfied on the balance of probabilities

that the contravention was committed negligently and that it was, in all the circumstances, a serious matter.

5.24 By their nature, the Commission finds that the contraventions are not continuing ones.

Good Faith

5.25 Where the Commission has determined that there has been a contravention, Section 24(3)(c)(iv) of the Ethics Act requires that the Commission also consider *“whether the person acted in good faith and in the belief that his or her action was in accordance with guidelines published or advice given in writing by...the Commission under Section 25”*.

5.26 As the Commission has found that Councillor Queenan has contravened provisions of the Code of Conduct for Councillors, as set out in Alleged Contravention 3, the Commission is required to consider whether or not he acted in good faith. Each year, councillors are required to complete and return a declaration of interests, including the following declarations:

“I hereby declare that I have received a copy of and read the Code of Conduct for Councillors and further declare that I understand its meaning, and I hereby undertake to have regard to and be guided by the Code of Conduct for Councillors in the exercise of my functions”

5.27 The Commission finds that Councillor Queenan did not act in good faith when he recklessly engaged in conduct in contravention of various provisions of the Code of Conduct for Councillors.

Appendices

1. Statement of Alleged Contraventions
2. Relevant extracts from legislation and the Code of Conduct for Councillors
3. Transcript of Investigation Hearing dated 10 September 2018
4. Preliminary Application Decision of the Commission dated 10 September 2018
5. (i) Written Submissions made by counsel on behalf of the Commission
(ii) Written Submissions made by counsel on behalf of Councillor Queenan

Appendix 1

Statement of Alleged Contraventions

Ethics in Public Office Act 1995
Standards in Public Office Act 2001
Local Government Act 2001

(Section 32(6)(b) of the Ethics in Public Office Act 1995)

STATEMENT OF ALLEGED CONTRAVENTIONS

Councillor Joe Queenan

1. That being a member of a local authority you contravened the provisions of Section 168 of the Local Government Act, 2001 by failing to maintain proper standards of integrity, conduct and concern for the public interest in that you met with a representative of a fictitious UK investment company (“the Company”) interested in developing wind farms in County Sligo, in respect of which the Company was looking for information and assistance in dealing with issues such as planning permission and local opposition, and to whom you offered to provide assistance in return for financial reward.

Particulars of Alleged Contravention

- (a) On 20 October 2015 you had a telephone conversation with the representative “Nina Carlsson” where you agreed to meet “Nina Carlsson” and discuss the company that she represented, Vinst Opportunities, and speak to you about potential investment in wind farms in Ireland.
- (b) During this telephone conversation you indicated to “Nina Carlsson” that you knew the planning process inside out and what was achievable. You further said you did not want anyone to know you were involved.
- (c) You agreed to meet “Nina Carlsson” on 4 November 2015.
- (d) On 4 November 2015 you met with the representative “Nina Carlsson” and during the course of that meeting you stated that you will lobby on her company’s behalf behind the scenes with the local authority and it will cost her nothing.
- (e) You further indicated you would go to the Council and get first-hand information from them on whether the proposal will be viable.
- (f) You indicated to “Nina Carlsson” that some of her clients might be interested in investing in you as you have some business projects coming up and you would be delighted to get her support that way.
- (g) You then agree that the investment should be confidential as being backed by businesses in the UK who you would be lobbying for as it would be illegal and a grey area.

- (h) “Nina Carlsson” asked you to name a business and you then indicate that you have businesses in Enniscrone and that an investment by “Nina Carlsson” would be to expand the business and create jobs.
 - (i) In a telephone conversation with “Nina Carlsson” on 4 November 2015 you indicate that the €200,000 potential investment in your company could either be a loan or stake in the company.
2. That being a member of a local authority you contravened the provisions of Section 170 of the Local Government Act, 2001 by seeking assurances of payment and indicating a willingness to provide assistance to the Company as a member of the local authority in return for payment.

Particulars of Alleged Contravention

- (a) The particulars set out at 1 (a)-(d) are repeated.
3. That being a member of a local authority you contravened the provisions of Section 169(3) of the Local Government Act, 2001 in that you failed to have regard to and be guided by the Code of Conduct for Councillors insofar as you indicated a willingness to provide assistance with local landowners and with the planning application in the local authority on behalf of the Company in return for financial reward.

Particulars of Alleged Contravention

- (a) Particulars set out at 1 (a)-(d) and 2 above are repeated.
- (b) The said conduct did not enhance public trust and confidence (Section 2.2 of the Code of Conduct for Councillors).
- (c) The said conduct amounted to a failure to ensure that your conduct did not bring the integrity of your office or of local government in to disrepute (Section 2.3 of the Code of Conduct for Councillors).
- (d) The said conduct was not based on a consideration of the public interest and the common good, and gave rise to a potential conflict of interest of the sort described at Section 3 of the Code of Conduct for Councillors.
- (e) The said conduct amounted to a failure to ensure your occupation, profession or business was such that it interfaced to a significant degree with local authority functions (Section 3.8 of the Code of Conduct for Councillors).
- (f) The said conduct indicated a willingness to use your official position to improperly benefit yourself (Section 3.9 of the Code of Conduct for Councillors).

- (g) The said conduct indicated a failure to maintain proper standards of integrity, conduct and concern for the public interest (Section 3.10 of the Code of Conduct for Councillors).
 - (h) The said conduct amounted to a failure to act in a transparent fashion as required by Section 4 of the Code of Conduct for Councillors.
 - (i) The said conduct indicated a seeking, exacting or accepting of a fee, reward or other favour for any act done by virtue of your office (Section 5 of the Code of Conduct for Councillors).
4. That being a member of a Local Authority you contravened the provisions of Section 171 of the Local Government Act 2001 by failing in the Annual Declaration form prepared and furnished by you to the Ethics Registrar of Sligo County Council for the year 2014 to set out full particulars of your declarable interests within the meaning of Section 175 of the Local Government Act 2001.

Particulars of Alleged Contravention

- (a) The Annual Declaration signed by you on 8 February 2015 and submitted to Sligo County Council in respect of the year 2014 was incomplete having regard to the provisions of section 175 of the Local Government Act 2001.
- (b) The fact that it was incomplete was acknowledged by you when you submitted an amended form to Sligo County Council on 20 November 2015.

Appendix 2

Relevant extracts from legislation and the Code of Conduct for Councillors

Appendix 2 - Legislation

1. Part 15 of the Local Government Act 2001

<http://www.irishstatutebook.ie/eli/2001/act/37/enacted/en/print#part15>

2. Code of Conduct for Councillors

<https://www.housing.gov.ie/local-government/governance/standards-public-life/code-conductcouncillors>

3. The Ethics in Public Office Act, 1995

<http://www.irishstatutebook.ie/eli/1995/act/22/enacted/en/html>

4. The Standards in Public Office Act, 2001

<http://www.irishstatutebook.ie/eli/2001/act/31/enacted/en/html>

Appendix 3

Transcript of Investigation Hearing dated 10
September 2018

STANDARDS IN PUBLIC OFFICE COMMISSION

INQUIRY INTO COMPLAINTS CONCERNING COUNCILLOR JOE QUEENAN

HEARD ON MONDAY, 10TH SEPTEMBER 2018

AT 18 LOWER LEESON STREET, DUBLIN 2

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

GWEN MALONE STENOGRAPHY
SERVICES

APPEARANCES

THE COMMISSION:

MR. JUSTICE DANIEL O'KEEFFE
MR. JIM O'KEEFFE
MR. MARTIN GROVES
MR. SEAMUS MCCARTHY
MR. PETER TYNDALL
MR. PETER FINNEGAN

FOR THE COMMISSION:

MR. JAMES DOHERTY SC
MS. KATE MCCORMACK BL

Instructed by:

MS. MADELINE DELANEY
SOLICITOR

FOR COUNCILLOR QUEENAN:

MR. MICHAEL O'CONNOR BL

Instructed by:

MS. SINÉAD DURKAN

CLIFF ROAD,
ENNI SCRONE,
CO. SLIGO

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1 THE HEARING COMMENCED ON MONDAY, 10TH SEPTEMBER 2018
2 AS FOLLOWS:

3
4 CHAIRMAN: Good morning Ladies and Gentlemen, I think
5 we're in a position to start. We propose to go, it is 09:48
6 now a quarter to ten or twenty to ten, we'll go until
7 around, some time around eleven, we can have a short
8 break, that will bring us up to lunchtime, and if
9 there's still more to be done in the afternoon we'll
10 deal with it. So if I could have the various 09:48
11 appearances? You see our identities are revealed here
12 so could we have any --

13 MR. DOHERTY: Yes, Chairman, James Doherty with Kate
14 McCormack, instructed by Madeleine Delaney and Mark
15 Shanahan for the Commission. 09:49

16 CHAIRMAN: Okay, thank you.

17 MR. O'CONNOR: Michael O'Connor, barrister, instructed
18 by Sinéad Durkan, solicitor, for Councillor Queenan and
19 I would advise I've a preliminary application as well.

20 CHAIRMAN: Pardon? 09:49

21 MR. O'CONNOR: I've two preliminary applications to
22 make.

23 CHAIRMAN: Grand, we can deal with those. Anything
24 else, anybody else, no? So you've two preliminary
25 applications? 09:49

26
27 LEGAL SUBMISSION BY MR. O'CONNOR AS FOLLOWS:

28
29 MR. O'CONNOR: Yes. One is, one is I suppose a matter

1 of somewhat housekeeping. There is a third party
2 mentioned in the evidence that's proposed to call.
3 There's a [REDACTED] who has no connection
4 at all with this and I'd be somewhat concerned that
5 certain of his dealings which are totally unrelated to 09:50
6 any of this are mentioned in the transcript on a number
7 of occasions, a transcript that's proposed to be
8 called. So I'd just ask the Commission to consider
9 that as to how that's going to be approached, whether
10 that means it has to be in private or if there is any 09:50
11 other way around it? But I certainly don't --
12 CHAIRMAN: where are you directing me to look at?
13 MR. O'CONNOR: It's the transcript that's proposed to
14 be opened, which I think in the hearing booklet is at
15 Tab B of the, sorry, Tab C of the hearing booklet, and 09:50
16 you'll see at internal page 3 of Tab C, I think it's
17 internal, it's Tab C and it's internal page 3.
18 MR. McCARTHY: There are subdivisions, is it one of
19 the subdivision?
20 MR. O'CONNOR: No, it's not. The first one -- 09:51
21 MS. DURKAN: It's subdivision 3, page 3.
22 MR. McCARTHY: Division 3, page 3.
23 MR. O'CONNOR: well in, in my booklet it just appears
24 after the blue Tab C. I don't know if I have the same
25 booklet as everybody else but this came from the 09:51
26 Commission I understand, but in mine it's Tab C and
27 then when you open Tab C the first page is internal
28 page 1 and then there's page 2 and page 3.
29 MR. McCARTHY: Is it item C2? On the side there's

1 initials....

2 MR. O'CONNOR: It's the second....

3 MR. McCARTHY: ..."NC" and "C2".

4 MR. O'CONNOR: It is.

5 MR. McCARTHY: Is it the fourth item down from the top 09:52

6 of the page?

7 MR. O'CONNOR: It is and it mentions --

8 MR. McCARTHY: Starting "he wouldn't, he wouldn't get

9 away with it today"?

10 MR. O'CONNOR: Exactly, yeah. 09:52

11 MR. McCARTHY: Okay.

12 MR. O'CONNOR: And following on from that I think that

13 that man is discussed I think on a few locations and

14 I'm not so sure that, that's in order to have that

15 dealt with? 09:52

16 CHAIRMAN: How does it impact on you?

17 MR. O'CONNOR: well it impacts on me in that my client

18 is speaking in connection with this third party from

19 knowledge that he has not realising that he's being

20 taped, so he discusses a third party's business that 09:52

21 has no beef here, nothing to do with any of this.

22 CHAIRMAN: But nobody is representing the third party

23 here or is there?

24 MR. O'CONNOR: well I'm representing Councillor

25 Queenan as the -- 09:52

26 CHAIRMAN: well should we confine it to that at the

27 moment?

28 MR. O'CONNOR: well even if it is confined to that I

29 think that if Councillor Queenan mentions a completely

1 separate party with nothing to do with this on the
2 basis that it's a private conversation he's, he's
3 entitled to object to that being brought out in public
4 about somebody who has nothing at all to do with this.
5 CHAIRMAN: well at the moment, at the moment is it 09:53
6 necessary to go into all of that?
7 MR. O'CONNOR: It may not be if my next application is
8 successful?
9 CHAIRMAN: well will we leave that to one side for the
10 moment then? 09:53
11 MR. O'CONNOR: That's, I'm happy enough with that. I
12 just wanted to flag it.
13 CHAIRMAN: Yeah, and we've made no order now in
14 relation to it but at the moment I don't see the
15 relevance of, of you breaking the sequence of the 09:53
16 hearing on that point.
17 MR. O'CONNOR: well it's a matter for the Commission.
18 I mean I think, I think it is a serious matter if A
19 third party --
20 CHAIRMAN: Oh well we are but I'm not going to deny 09:53
21 you the opportunity to make any other submissions in
22 relation to it.
23 MR. O'CONNOR: I accept that. The second point is a
24 more substantive point in that I'm saying that the
25 whole premise on which we're here is that evidence 09:54
26 which is anonymous, and I am saying and relying on
27 English and Irish case law to say that the rule against
28 anonymous evidence is a very strong rule, both at
29 common law and constitutionally, and I'm making the

1 point that my client is here today, obviously if this
2 proceeds, he's exposed to cross-examination, and that's
3 how it should be, but the person who is effectively our
4 accuser and on whose so-called evidence, he is here and
5 cannot be cross-examined, her fake name, as we know, is 09:54
6 Nina Carlsson, we don't even know her real name, so the
7 person that signs herself as Nina Carlsson wants this
8 Commission, and I accept that there's a complaint has
9 been made by the County Council but even so the case
10 law on this, and I say the most relevant case which was 09:55
11 given in the English courts is R -V- Davis, and that is
12 a decision of the House of Lords from 2008, 3ER, and
13 it's in the booklet of authorities. The principles set
14 out therein are that, at page 10 of that report, even
15 talking about common law even before we start, 09:55
16 forgetting about the Constitution for a minute, even at
17 common law the House of Lords in that case at paragraph
18 5 of the decision said:

19
20 "'The other side ought not be deprived of the 09:55
21 opportunity of confronting the witnesses and examining
22 them publicly, which has always been found the most
23 effectual method of discovering the truth'".

24
25 Now we can talk about tapes and we can talk about 09:55
26 recorded telephone calls but the reality is I cannot
27 cross-examined the person who describes herself fakely
28 or falsely as Nina Carlsson. I cannot ask her
29 anything, I cannot ask any of the questions that would

1 normally be asked in cross-examination.

2
3 Now the House of Lords in that case discussed a
4 Northern Ireland case, that we'd all probably remember,
5 and that was the one of R -V- Murphy, which was the 09:56
6 case where two British Army corporals were murdered
7 live on television, which a lot of us, including
8 myself, watched in horror. In that case the TV
9 journalists were key witnesses and they wanted their
10 evidence anonymous, they wanted their identities kept 09:56
11 secret, and it was Sir Brian Hutton, and that was found
12 to be a very rare exception to the general rule that
13 anybody who comes in here to any court or any tribunal
14 to make allegations, serious allegations and to give
15 evidence has to be identified. Now in that case the 09:56
16 defence team accepted that there was a threat to the
17 life of the TV journalist who filmed the two British
18 Army corporals being murdered. The House of Lords
19 considered that case and they considered the risk to
20 life and they considered it a very narrow exception. 09:57
21 Lord Carswell in the R -V- Davis case commented on it
22 at page 23 or paragraph 50, said:

23
24 "The extent of the inroad in the present case was
25 substantial". 09:57

26
27 Now R -V- Davis concerned A murder case as well where
28 an undercover police agent, policeman gave evidence but
29 he says:

1 "The extent of the inroad in the present case was
2 substantial. The identity of the witnesses in question
3 was withheld from the defence and the Defendant's
4 counsel was not permitted to ask questions which might
5 lead to that being disclosed. The witnesses were 09:57
6 screened in such a way that although the judge and jury
7 could see them neither the Defendant nor his Counsel
8 could, nor could any member of the public. Their
9 voices were purposely distorted by the amplifying
10 equipment so they could not be recognised by the 09:57
11 Defendant. Their antecedent histories and records of
12 any convictions were supplied to the defence but edited
13 so as to conceal their identities.

14
15 It is indisputable that this would have had a hampering 09:58
16 effect on the conduct of the defence, which was that
17 the Appellant was falsely accused of the victim's
18 murder for oblique reasons of the witnesses".

19
20 It goes, he goes on later in the judgment, and it's all 09:58
21 relevant but at paragraph 59 he says:

22
23 "It is possible to distil some propositions from this
24 review:

25 (a) There is a presumption in favour of open justice 09:58
26 and confrontation of a defendant by his accuser.

27 (b) It is possible in principle to allow departures
28 from the basic rule of open justice to some extent but
29 a clear case of necessity should be made out", so

1 necessity is the test.

2 "(c) The Court should be sufficiently satisfied that
3 the witness's reluctance to give evidence in the
4 ordinary manner is genuine and the extent of his or her
5 fear justifies a degree of anonymity. 09:58

6 (d) Anonymising expedients may include the withholding
7 of the witness's name and address, screening of the
8 witness.

9 (e) The more of these expedients the Court might
10 consider adopting, the stronger the case must be for 09:59
11 invading the principle of open justice. If it
12 constitutes the sole --

13 (f) An important consideration is the relevant
14 importance of the witness's testimony in the
15 prosecution case. If it constitutes the sole or 09:59
16 decisive evidence against the Defendant, anonymising
17 which prevents unusually, or unduly hinders the
18 Defendant and his advisors from taking steps to
19 undermine the credit of the witness is most likely to
20 operate, operate unfairly. It is a question of fact of 09:59
21 any given case what, if any, measures would be
22 compatible with sufficient fairness of the trial".

23
24 In effect the exceptions to the rule for open justice
25 have to be very narrow and very limited. Now this is a 09:59
26 tribunal or a Commission, as far as I can understand I
27 have never been before it before, but my estimation of
28 your role is that you are both investigative and
29 adjudicative, so you are a hybrid Commission or

1 tribunal and that puts a bigger onus on you than even
2 on a normal court, in my submission, because an
3 adjudicative hybrid tribunal or Commission is one which
4 has to be very careful about its own procedures because
5 you have that dual role. So there is a huge 10:00
6 presumption in favour of open justice.

7
8 Then there are two Irish cases on it; one is called
9 Roe -V- The Blood Transfusion Service Board. That is
10 where a haemophiliac wanted to remain anonymous in 10:00
11 litigation. That is a decision of our High Court on
12 the 14th February 1996, Ms. Justice Laffoy. She
13 refused the application to litigate anonymously even by
14 somebody in that position who wouldn't want to be
15 identified as a haemophiliac for obvious reasons, that 10:00
16 she refused to grant the relief sought pursuant to
17 Article 34(1) of the Constitution:

18
19 "The administration of justice must be in public save
20 in such special limited circumstances as may be 10:00
21 prescribed by-law. This required that the doors of the
22 court must be open so that the members of the public
23 could see that justice was done.

24
25 2. Article 34(1) removed any judicial discretion to 10:01
26 have proceedings heard otherwise than in public",
27 removed any discretion to have proceedings heard
28 otherwise than in public, "except where expressly
29 conferred by Statute".

1 Now I am not aware of any statute which entitles RTÉ to
2 put forward, or the Commission for that matter, to rely
3 on and to put forward anonymous evidence by somebody
4 whose name is fake, who isn't here to be
5 cross-examined. For all I know she could have 10:01
6 convictions, she could have anything, her credibility
7 could be absolutely in tatters but I'll never know that
8 and neither will my client. He is here and he has
9 other witnesses here all exposed to cross-examination.

10
11 Now Ms. Justice Laffoy went on to say: 10:01

12
13 "That where the true identity of a Plaintiff in a civil
14 action was known to the parties and to the Court but
15 was concealed from the public, members of the general 10:01
16 public couldn't see for themselves that justice was
17 being done".

18
19 So in that case the Court knew who the party was, the
20 lawyers knew but the public didn't know and the Courts 10:02
21 are saying that, Ms. Justice Laffoy that that's not
22 constitutional. So here the lawyer don't know so it's
23 getting into I say, without being unduly dramatic about
24 it, it's getting into a situation where ye' re being
25 drawn into a kind of a Star Chamber situation where the 10:02
26 main and only real evidence in this is from somebody
27 whose name is being withheld.

28
29 Now there is another case called Doe -V- The Revenue

1 Commissioners, where again somebody tried to litigate
2 under a false name or an anonymous name because they
3 didn't want their Revenue affairs to be public and they
4 said the penalties the Revenue imposed on them were
5 unfair. That was Mr. Justice Clarke, as he then was 10:02
6 now of course the Chief Justice. That was in 2008,
7 18th January 2008 and it appears in a number of
8 reports, including the Irish Tax Reports and I think
9 also in the Irish Reports, but again he held that an
10 intending Plaintiff has to reveal their identity and 10:03
11 that:

12
13 "save in special and limited circumstances justice has
14 to be administered in public, and that includes an
15 obligation that all parts of the court proceedings must 10:03
16 be available to the public", all parts not just some of
17 the parts. "Accordingly, the identity of the parties
18 to the proceedings, amongst other things, must be made
19 public.

20 10:03
21 In the absence of expressed statutory provision the
22 only, express statutory provision", which doesn't exist
23 here, "in which a court may restrain full publication
24 of what's transpired", there's only in orders even
25 allowed where the Statute, "where there's a real risk 10:03
26 of an unfair trial. Parties to proceedings may not
27 call in aid the constitutional right to a good name or
28 privacy except where there was no other means of
29 achieving that determination".

1 So the right to litigate all parts, and that includes
2 oral evidence, pleadings, everything, in public is a
3 constitutional right and it's a right that Councillor
4 Queenan has, like anybody else, and he has a right to
5 confront his accusers. Even if you're to -- My Friend 10:04
6 will say these are criminal cases or these are
7 different cases. This is a tax case, the one that I've
8 just referred to, the other one is to do with
9 haemophiliacs. Before that Mr. Justice Hamilton
10 decided it in a case against Saint James's Hospital 10:04
11 where somebody wanted to remain anonymous. So this is
12 a long line of case law and it's very significant, I
13 say, that a huge part of what I would normally do in my
14 job as a barrister is denied to me here, and I say
15 that, yes, we can call a camera man, I'm not going to 10:04
16 insist on it, yes, you can look at a video but you may
17 as well be looking at a video, I say, with no
18 evidential value. You'd be as well off looking at a
19 video that videos the common areas of a management
20 company because what's on that video if you rely on it 10:05
21 even one percent you're denying my right, my client his
22 constitutional right to have open justice.

23
24 Now that has been reiterated again in the EU Charter on
25 fundamental freedoms and the right to have good 10:05
26 administration, and all of that. It is all there in EU
27 law as well. I'm not going to get into it, we don't
28 have to because it's in the Constitution, it's in
29 common law. I'm afraid that, while I understand and I

1 appreciate the Commission has invited us here and
2 intends to investigate this, that for a body which
3 particularly has a hybrid function of investigative and
4 adjudicative, and that is something the Supreme Court
5 as well has commented on recently in a fishing case 10:05
6 called the Crayden Fishing Company where the whole lot
7 of the fishing regulations fell as being
8 unconstitutional, that while it's not unheard of and
9 it's not unconstitutional per se to have those two
10 functions combined, the Supreme Court has said that 10:05
11 where those two functions are combined somebody in the
12 position of the Commission has to be extremely careful,
13 and to rely on anonymous evidence and to expect this
14 even to get off the ground, I say, or to allow the
15 evidence in at all, I'm not one for dramatics, but I 10:06
16 really can't see how this can proceed at all on any
17 kind of a constitutional basis? You know I'm not going
18 into the technical rules of evidence in relation to
19 criminal law or anything else; there is the whole
20 business about recording telephone calls when people 10:06
21 don't know they're being recorded, there is the right
22 to privacy and all of that but I say I don't even have
23 to go there. If I can't confront my accusers in an
24 administrative tribunal where my reputation is at stake
25 as a politician and where I'm open to be destroyed, if 10:06
26 indeed I can be destroyed any further by virtue of
27 publication, that if I'm exposed to that and I can't
28 confront the meat of it and the person who is really
29 behind it, sorry, this person could be a convicted

1 criminal, you know there is a lot to come out in
2 evidence if we, if it moves on past this, I don't think
3 it can proceed on any constitutional basis and I would
4 urge the Commission to make that ruling because I can't
5 see how it can proceed? That is my submission. 10:07

6
7 END OF SUBMISSION BY MR. O'CONNOR

8
9 CHAIRMAN: All right, well what about a response to
10 all of that? 10:07

11
12 LEGAL SUBMISSION BY MR. DOHERTY AS FOLLOWS:

13
14 MR. DOHERTY: Yes, thank you, Chairman. Firstly, as I
15 understand Mr. O'Connor's application it's for the 10:07
16 entire investigation to halt now on the basis that a
17 particular witness that he would like to be called,
18 namely the undercover reporter who conducted telephone
19 conversations and an interview with Councillor Queenan
20 which gave rise to an RTÉ programme, is not available 10:07
21 to give evidence and her identity hasn't been made
22 known but, in my respectful submission, that isn't a
23 proper basis to halt this inquiry and this
24 investigation at all. There are a couple of reasons
25 why that is so; firstly, and most fundamentally, the 10:08
26 undercover reporter who uses the name Nina Carlsson in
27 the context of this particular interview which gave
28 rise to the complaint by Sligo County Council is not
29 Mr. Queenan, Councillor Queenan's accuser. She is not

1 the person who instigated the complaint that gave rise
2 to the Inquiry Officer's report, the finding of prima
3 facie breach of the provisions of the Local Government
4 Act and the Code of Conduct or this Commission's
5 investigation. She is not his accuser. Secondly, it is 10:08
6 not evidence that she would give that forms the basis
7 of the investigation.

8 CHAIRMAN: Say that again, sorry.

9 MR. DOHERTY: It is not evidence that this putative
10 witness would give that forms the basis of this 10:08
11 investigation, and that is so because there is a video
12 recording and audio recordings of the precise
13 interactions between Councillor Queenan and this
14 individual which are available to the Commission. Not
15 only are they available to the Commission but they have 10:09
16 been available to Councillor Queenan and his legal team
17 for some considerable time. They were invited to raise
18 any preliminary issue they wished to in relation to
19 those video and audio recordings but chose not to do so
20 until the morning of this hearing. They have been 10:09
21 provided with witness statements from RTÉ witnesses who
22 confirm the accuracy and authenticity of the recordings
23 and you have heard Mr. O'Connor, just a moment ago,
24 indicating that he doesn't require those RTÉ witnesses
25 to give evidence because he doesn't challenge the 10:09
26 authenticity or the accuracy of the recordings. The
27 recordings speak for themselves.

28
29 The second broad proposition is this; this is not a

1 criminal trial. The criminal standard of proof does
2 not apply nor do the criminal rules in terms of
3 admissibility or inadmissibility apply with the same
4 rigor before this Commission. The position in terms of
5 this Commission's ability to take evidence which might 10:10
6 not otherwise be available in criminal trials is well
7 set out in the authorities, the judgment of Mr. Justice
8 Fennelly in The Law Society -V- Kennedy, Number three,
9 recognises, as do all of the authorities in this area,
10 the inherent flexibility that should be approached by a 10:10
11 Commission in a regulatory investigation of this kind
12 to the question of the admissibility of evidence.

13
14 I do accept that there can arise in certain
15 circumstances, not in this case, but there can arise in 10:10
16 certain circumstances an issue whereby a fair trial or
17 a fair investigation may be compromised or there may be
18 an issue about that but this is not such a case, in my
19 respectful submission, and it is not such a case
20 because not only do we have the actual recordings of 10:11
21 the interviews and the telephone calls but Councillor
22 Queenan has repeatedly in his correspondence, firstly,
23 with Sligo County Council, in his correspondence with
24 the Commission, the Inquiry Officer and in public
25 interviews he has given he has repeatedly himself made 10:11
26 reference to the contents of the telephone calls and
27 the interview that he had with Nina with a view to
28 giving his version of events. I am surprised that
29 Mr. O'Connor should suggest that this hearing can't

1 take place at all particularly in circumstances, I am
2 going to bring you to two pieces of correspondence, if
3 I may, just to highlight this? In the hearing booklet
4 before the Court, before the Commission, I beg your
5 pardon, the Commission will see that the complaint from 10:11
6 Sligo County Council appears behind Tab B, the second
7 of the tabs, and it is a short letter of the 20th April
8 2016. It attaches over the page a report in accordance
9 with the Local Government Act and then over the page
10 again you'll see, at the very back you'll see that 10:12
11 Sligo County Council, Councillor Rosaleen O'Grady and
12 Ciaran Hize, Hayes, should I say, have for completeness
13 attached a number of documents for the purposes of the
14 complaint to the Commission. So they include a series
15 of correspondence between RTÉ and Councillor Queenan 10:12
16 and then the very last thing that you'll see:

17
18 "Also attached at Appendix 2 is documentation, the
19 inclusion of which was requested by Councillor
20 Queenan's legal advisors following exchange of 10:12
21 correspondence in the matter".

22
23 So they were particular letters that Councillor
24 Queenan's legal advisors wanted the Commission to see
25 as part of its investigation. 10:13
26

27 If the Commission turns over the Tab you'll see
28 Appendix 1 and then a further divider to Appendix 2.
29 Hopefully behind that further divider in Appendix 2 the

1 first letter is a letter of the 20th November 2015 from
2 S. Durkan Solicitors, who are Councillor Queenan's
3 solicitors, to Deirdre Kelly of RTÉ, and it is RTÉ's
4 solicitor's office. There is a very detailed letter
5 setting out Councillor Queenan's initial response to 10:13
6 RTÉ in respect of the footage of the meeting of the 4th
7 November 2015, you'll see a reference to that on the
8 first page, and he goes into some considerable detail
9 about that. There is a further response to
10 correspondence that Councillor Queenan had from an RTÉ 10:13
11 reporter, Conor Ryan. A point is made on the fourth
12 page of the letter about the identity of the undercover
13 reporter but over the page, on the fifth page of the
14 letter just after point number five, you'll see the
15 following being said by Councillor Queenan: 10:14
16
17 "under no circumstances in our view could you in any
18 way give an honest and fair account of what transpired
19 between these two people without showing the entirety
20 of the footage and the entirety of the audio, and any 10:14
21 attempt to edit it or to use snippets of it could only
22 result in a distortion of the facts, the context in
23 which responses were given by my client".
24
25 They go on to make a point about Ms. Carlsson's face 10:14
26 not being shown on camera. So the complaint at that
27 stage at the earliest point is if this is going to be
28 aired you must show the full footage and you must show
29 the full audio recording. There's no suggestion in

1 that particular complaint that this particular reporter
2 should be made available for cross-examination, I will
3 come to that point in a moment, but the very reason why
4 her cross-examination is unnecessary is because the
5 video and audio footage speak for themselves. They 10:15
6 record the interaction that gives rise to the alleged
7 contravention.

8
9 The second piece of correspondence I wanted to bring
10 the Commission to briefly by way of response appears as 10:15
11 an appendix to the Inquiry Officer's report. The
12 Inquiry Officer's report is behind Tab D. We are
13 jumping the gun somewhat but, as the Commission will be
14 aware, in the context of conducting a report of this
15 kind the Inquiry Officer would generally give the 10:15
16 person against whom the complaint is made an
17 opportunity to respond to the complaint and to set out
18 their position. Such an opportunity was afforded to
19 Councillor Queenan and both he and his solicitor took
20 up that opportunity to respond to the complaint and the 10:15
21 alleged breaches, and they did so in April 2017. So
22 behind Tab E of the Inquiry Officer's report you will
23 see a series of appendices and the very last of those,
24 number six, is:

25 10:16
26 "Statement from Councillor Queenan in response to the
27 complaint made against him by the Council and
28 accompanying letter from his solicitors".
29

1 Then are numbered tabs, I hope the Commission can
2 follow me, and it's Tab 6 of those numbered tabs?
3 Hopefully behind that Tab you will find a letter of the
4 12th April 2017, again from S. Durkan solicitors on
5 this occasion to the Inquiry Officer, in response to 10:16
6 the request to respond. It is a reasonably lengthy
7 letter firstly from the solicitor and then immediately
8 after that is Councillor Queenan's personal response. I
9 wanted to bring you to the final paragraph of the
10 solicitor's response to the complaint, which is the 10:16
11 fourth page of the letter, because it references
12 Councillor Queenan's own response, and it states:

13
14 "In his attached response my client freely admits his
15 failures with regard to his obligations under the Local 10:17
16 Government Act and would ask that the Commission have
17 due regard to his responses therein in consideration of
18 the complaint before them. My client holds the office
19 of Councillor of Sligo County Council in the very
20 highest regard and is keenly aware of his obligations 10:17
21 and duties thereunder and trusts that the Commission
22 will have due regard to all of the information before
23 it and the circumstances herein in making its final
24 determination".

25 10:17
26 So a couple of points arise about that; firstly, there
27 is an admission of failures with regard to the
28 obligation to the Local Government Act but a response
29 given in respect of those failures that are admitted

1 and a request that the Commission take those into
2 account. Secondly, a statement that Councillor Queenan
3 takes his position as Councillor in the very highest
4 regard and is keenly aware of his obligations and
5 duties, and he again asks that the Commission will have 10:17
6 due regard to all of the information before it which
7 comprises of the video and audio recordings.

8
9 A similar position is to be found in Councillor
10 Queenan's own personal response of the 12th April 2017, 10:18
11 because he goes through both the Annual Declaration
12 that he made in 2015, the contents of the telephone
13 call and he gives his own explanation for the breaches.
14 So we have this slightly unusual situation, in my
15 respectful submission, of Mr. O'Connor urging upon the 10:18
16 Commission that there should be no investigation
17 whatsoever because his client has been fundamentally
18 prejudiced against the backdrop of an admission of
19 breaches on foot of the complaint and an invitation to
20 the Commission to have due regard to all of the 10:18
21 material that's available but without any complaint
22 that this material is somehow compromised or tainted or
23 his right to a fair hearing or fair procedures is
24 undermined by the unavailability of the reporter. In
25 my respectful submission there is a good reason why 10:18
26 that complaint isn't made and the good reason is it's
27 not a well-founded complaint. What is it that
28 Councillor Queenan wishes to ask the undercover
29 reporter that could assist his case? Certainly it

1 can't assist his case in deciding whether or not there
2 have been breaches because he admits there have been
3 breaches? The only issue it could potentially go to is
4 his explanation as to why he said what he said and did
5 what he did, but he is in a perfectly good position to 10:19
6 give that evidence himself and, in fact, is in a better
7 position to give that evidence without the undercover
8 reporter here to defend her position in the matter so
9 there'd be no question, in my respectful submission,
10 there could be no question at all of Councillor Queenan 10:19
11 being in any way prejudiced by the unavailability of
12 this witness. The best evidence available of what took
13 place is here before the Commission, isn't challenged
14 by Councillor Queenan and in due course I will be
15 inviting the Commission both to listen to, there were 10:20
16 three telephone recordings and one meeting and I will
17 invite the Commission to listen to the audio recordings
18 of the two telephone conversations that took place to
19 set up the meeting, to watch the video of the meeting
20 itself and then there was one follow-up call after the 10:20
21 meeting, none of which are in issue. So, in my
22 respectful submission, there is no deficit, there is no
23 prejudice that could possibly hit Councillor Queenan
24 here and his application is not well-founded.

25
26 I'll just say something very briefly about the cases
27 that he has brought to the Commission's attention.
28 None of those, in my respectful submission, are of the
29 least assistance to Councillor Queenan. The first 10:20

1 case, the UK case, the R -V- Davis case is a classic
2 example of a criminal prosecution where, firstly, much
3 more strict rules apply in terms of being able to
4 challenge your accusers because of your inherent right
5 to a fair trial. That doesn't apply here, for all of 10:21
6 the reasons I have already given, and in circumstances
7 where the principal evidence that is available to the
8 Commission in terms of the complaint from Sligo County
9 Council, the video and audio recordings and Councillor
10 Queenan's own declaration are not in issue. 10:21

11
12 Secondly, the Irish cases that have been opened to the
13 Commission, the Roe -V- The blood Transfusion Board and
14 Doe -V- The Revenue Commissioners are specific
15 instances of applications that trials before the Courts 10:21
16 would be heard, and civil trials before the Courts
17 would be heard otherwise than in public and because of
18 the constitutional bar to the administration of justice
19 other than in public, save where expressly prescribed,
20 that creates a unique difficulty; you cannot create an 10:21
21 exception unless it is being provided for by law. That
22 is what those cases are concerned with because of the
23 constitutional prohibition of the administration of
24 justice in public. There are two points to make about
25 that; firstly, no issue about the administration of 10:22
26 justice in public implicates the hearing before this
27 Commission because the hearing is in public. The
28 evidence will be aired in public. The only issue that's
29 raised is whether or not a particular witness is

1 necessary, and for the reasons I've given I
2 respectfully say she is not so no question arises at
3 all about a hearing otherwise than in public, but even
4 if it did this Commission actually does have a
5 statutory power to proceed with the hearing otherwise 10:22
6 than in public. That's a power that's provided for
7 under Section 32(9) of the Ethics in Public Office Act
8 that the Commission can direct a hearing in private,
9 and it's also reflected in the Commission's own
10 standing procedures but, in my respectful submission, 10:22
11 it doesn't arise at all because that's not what's at
12 issue on Mr. O'Connor's application. What is at issue
13 on Mr. O'Connor's application is a request that the
14 Commission not proceed at all even though the video and
15 audio evidence is not in issue, even though Councillor 10:23
16 Queenan has widely given public interviews, both in the
17 immediate aftermath and more recently, about these
18 video and audio recordings, and even though in his own
19 response to the Inquiry Officer he has admitted and
20 freely admitted breaches but wishes to give his own 10:23
21 version of events.

22
23 So for all of those reasons, in my respectful
24 submission, this is an application which shouldn't be
25 acceded to by the Commission and we should proceed in 10:23
26 the ordinary way to open the matter fully before the
27 Commission so the Commission can carry out its
28 investigation. Thank you.

29 END OF SUBMISSION BY MR. DOHERTY

1 REPLYING SUBMISSION BY MR. O'CONNOR:

2
3 MR. O'CONNOR: If I could very briefly respond to
4 that, if I may? Just myself and Mr. Doherty did speak
5 on a number of occasions last week with a view to 10:23
6 seeing how we could agree matters between us? I've
7 made it clear to Mr. Doherty since late last week that
8 the anonymous evidence point would be a point that was
9 going to be made strongly, I put the R -V- Davis case
10 and it was sent to his solicitor, so the idea that we 10:24
11 kind of came here this morning and ambushed him on that
12 is just not right, and I couldn't sit here and listen
13 to that being said that I came here and ambushed him
14 because he knows that the anonymous evidence point was
15 going to be made. I may not have said I was going to 10:24
16 raise it preliminary but I certainly made it known that
17 I was going to be raising it strongly in the course of
18 the day. That is the first point.

19
20 The second point is Mr. Doherty is correct insofar as, 10:24
21 as regards the Annual Declaration goes my client does
22 accept that there was, that there was a failure there
23 and will be asking that he be heard in relation to that
24 on the basis that it was an inadvertent and careless
25 situation. He had all his assets declared the previous 10:24
26 year in 2014. His evidence on that will be that at a
27 Council meeting these forms were circulated, he signed
28 the front page of it, nothing is ticked at all on the
29 inside of it and it clearly wasn't, wasn't a good

1 performance by him on that but we will be asking the
2 Commission to hear his evidence in relation to that. So
3 insofar as the Annual Declaration goes that isn't being
4 contested other than we say it was an inadvertent and
5 carelessness and not in any way devious because the 10:25
6 previous year he had declared everything.

7
8 Now other than that what My Friend, in relation to My
9 Friend keeps saying that the audio is admitted, the
10 video is admitted, it's not admitted. The camera, I 10:25
11 don't want, I don't need the camera man to give
12 evidence if the Commission doesn't hold with me. I
13 don't want to waste time listening to the camera man,
14 if he filmed it he filmed it, but what I'm saying is
15 that no more than a medical report in a trial that's 10:25
16 admitted into evidence without the contents being
17 admitted, that if we get past this point and if for
18 some reason the Commission, hopefully it won't happen,
19 don't agree with me, well fine, I'm not going to insist
20 on the man getting into the box to say I sat there 10:25
21 filming it but that doesn't mean I accept the contents
22 of it or that I'm admitting what is in it.

23 Mr. Doherty, I think I've made that point to him, and
24 the same goes for the audio call. To try and say that
25 the statutory power of this Commission to hear 10:26
26 something in private somehow authorises an anonymous
27 situation is complete nonsense because in any body, be
28 it a hearing in camera, be it a family law judge or be
29 it any body that has power to hear anything in private,

1 the parties still know who the witnesses are, it can't
2 be reported but everybody still knows who they're
3 dealing with, I don't know who I'm dealing with here.
4

5 You know we can refer to all of this and say these 10:26
6 criminal cases are not relevant but I stand on the
7 Re Haughey case and the Re Haughey rights. It's a very
8 basic right; the right to confront the basis of the
9 people who are accusing you and it's not new. I say
10 it's just a problem that maybe, I don't know how that 10:26
11 problem can be overcome and I don't believe it can be
12 overcome? Again for My Friend to go back into
13 correspondence on that in the investigation stage
14 that's fine but my correspondence with RTÉ is at a time
15 when this complaint wasn't even made. This was a 10:27
16 situation where Councillor Queenan was hoping that RTÉ
17 could be shown the error of their ways, that didn't
18 prove to be the case, so it is what it is and the
19 correspondence it what it is but the Commission have to
20 be careful, this is a de novo situation. We're here to 10:27
21 deal with it on oral evidence and, you know, it can't
22 blur the line between the investigation phase and the
23 hearing phase. I'm here and I'm asking, and I'm not
24 ashamed to ask on behalf of my client that I'd be given
25 full constitutional fair procedures to challenge this 10:27
26 woman and to ask her, by the way, why she can be seen
27 on camera buttoning up her blouse towards the end of
28 the film after the Councillor has left, and why she is
29 saying on the camera to the reporter, who's also in the

1 room or to the person who's there, the camera man,
2 somebody who she is communicating with, "oh I think he
3 fancied me". I want to ask her about those things.
4 I'm entitled to ask her about those things and you're
5 entitled to hear the answers. Her credibility. 10:28

6 CHAIRMAN: Is there anything else?

7 MR. O'CONNOR: No.

8
9 END OF SUBMISSION BY MR. O'CONNOR

10
11 CHAIRMAN: I think we should deal with [REDACTED], do you
12 want to say anything? 10:28

13 MR. DOHERTY: In relation, oh sorry in relation to the?

14 CHAIRMAN: The first application.

15 MR. DOHERTY: Yeah, sorry. Well I can understand why 10:28
16 Mr. O'Connor has raised that issue. I can understand
17 Councillors, Councillor Queenan's desire not to bring
18 third parties into a matter that really relates to a
19 complaint against him and his conduct. If there is a
20 particular concern about that name being used, and it 10:28
21 does appear in the video recording and in the
22 transcripts, in my respectful submission, it is
23 something that the Commission has a power to deal with,
24 if needs be under its standing procedures, it can make
25 a direction that there'd be no reporting of that name 10:29
26 in the context of a public hearing. It doesn't warrant
27 a private hearing for the entirety of the investigation
28 or complaint. It's an unusual application since it
29 raises the potential rights and interests of a third

1 party not before the Commission but, as I say, I can
2 understand why Councillor Queenan wishes to raise it
3 before the Commission but, as I say, there is a
4 perfectly pragmatic and practical way it can be dealt
5 with under the standing procedures under the general 10:29
6 powers that the Commission has to order its own
7 procedures, and particularly under paragraph 4.16 which
8 allows part of the hearing to be in private and which,
9 in my respectful submission, must extend to the making
10 of a direction that there'd be a reporting restriction 10:29
11 in respect of that name, if needs be, to protect the
12 interests of that party.

13 CHAIRMAN: It would be confined just to that one
14 identity?

15 MR. DOHERTY: Absolutely, Chairman. 10:30

16 CHAIRMAN: All right, half past. Well we better deal
17 with this. I think we'll rise now and we'll deal with
18 it as quickly as we can. I should say that there was,
19 that people here that may be unfamiliar with what the
20 background to all of this, there was an opportunity 10:30
21 given to people on a particular day, that you have
22 referred to Mr. O'Connor, and it wasn't availed of but
23 we'll take all these matters into account. We'll say
24 our break, our coffee break can be utilised also.

25
26 THE COMMISSION ADJOURNED TO CONSIDER THE MATTER. 10:30

27
28 CHAIRMAN: Ladies and Gentlemen, we're in a
29 position now to give a ruling in relation to the

1 application. "At the outset of today's hearing". I
2 think the parties have received a copy of it?

3 MR. DOHERTY: Yes, Chairman.

4 CHAIRMAN: And for the benefit of those who haven't
5 received a copy of it I think I should perhaps just
6 open it? 12:06

7
8 RULING OF THE COMMISSION DELIVERED AS FOLLOWS:

9
10 CHAIRMAN: "Counsel on behalf of Councillor Queenan 12:06
11 made two preliminary applications to the Commission
12 which we will now address in turn.

13
14 The first application relates to certain references to
15 a named third party in the transcripts and recordings 12:06
16 which are to be put before the Commission in evidence.
17 The name of the third party has no connection with the
18 matters under investigation and, in those
19 circumstances, Counsel requested that those parts of
20 the transcript or recordings not be dealt with in 12:07
21 public sitting. In reply, Counsel on behalf of the
22 Commission submitted that the matter be dealt with by
23 way of a reporting restriction rather than the
24 Commission sitting in private session.

25 12:07
26 Having considered the application, the Commission
27 considers that, in circumstances where the named third
28 party has no connection with the matters currently
29 under investigation, it is appropriate that there'd be

1 a reporting restriction in respect of the third party's
2 name.

3
4 Accordingly, the Commission directs that there would be
5 no reporting or other publication of the name of the 12:07
6 third party referred to in the relevant transcripts and
7 recordings.

8
9 The second application on behalf of Council or Queenan
10 is that the Commission should not proceed with the 12:07
11 investigation today on the basis of anonymous evidence
12 and to do so would be a breach of Council or Queenan's
13 rights.

14
15 Counsel on behalf of Council or Queenan submitted that 12:07
16 the whole premise on which the hearing was taking place
17 was anonymous, was anonymous evidence and that there
18 was strong rule, both in the common law and under the
19 Constitution, against such anonymous evidence. He
20 submitted that his client should be afforded an 12:08
21 opportunity to cross-examine the undercover reporter
22 who used the fake name of Nina Carlsson. In making
23 this submission, Counsel relied on a number of
24 authorities; the judgment of the House of Lords in
25 R -V- Davis relating to the admission of evidence of 12:08
26 anonymous witnesses in a criminal trial; and judgments
27 of the High Court and the jurisdiction, in this
28 jurisdiction in the case of Roe -V- The Blood
29 Transfusion Board and Doe -V- The Revenue Commissioners

1 which concerned the entitlement of parties to civil
2 litigation to bring proceedings otherwise than in their
3 own name. Counsel submitted that, without the
4 undercover reporter being called as a witness, the
5 Commission could not proceed on a constitutional basis. 12:08

6
7 Counsel on behalf of the Commission submitted that it
8 was not a proper basis for halting the inquiry. He
9 said that the undercover reporter was not Councillor
10 Queenan's accuser and it was not evidence of the 12:09
11 reporter that formed the basis of the investigation.

12 The video and audio recordings of the precise
13 interactions were available to the Commission and had
14 been made available to the Councillor and his legal
15 representatives for some time. He submitted that the 12:09

16 witness statements before the Commission confirmed the
17 accuracy and authenticity of these recording which
18 speak for themselves. Counsel submitted this was not a
19 criminal trial and referred to the judgment, Supreme
20 Court judgment in Law Society -V- Kennedy, that there 12:09

21 was an inherent flexibility in a regulatory
22 investigation in relation to the rules of evidence.
23 Counsel referred to certain correspondence from the
24 Councillor's solicitor. He submitted that there was no
25 prejudice or deficit to the Councillor in the reporter 12:09

26 not being available to give evidence. For these
27 reasons, he submitted that the application was into a
28 proper basis for halting the investigation.

29

1 The Commission has carefully considered the submissions
2 made in relation to this preliminary application. At
3 the outset, it is important to observe that the
4 Commission is conducting this investigation in
5 accordance with its power under the Ethics in Public 12:10
6 Office Act 1995 (as amended), the Standards in Public
7 Office Act 2001 and Part 15 of the Local Government
8 Act.

9
10 The Commission's investigation is not a criminal trial 12:10
11 and the Commission is not engaged in a criminal
12 process. Accordingly, the rules applicable to evidence
13 in criminal proceedings do not strictly apply in these
14 circumstances. The investigation takes place in very
15 different circumstances to those at issue in the case 12:10
16 of R -V- Davis upon which Counsel for Councillor
17 Queenan places reliance. It is not intended to call
18 the undercover reporter and there is, therefore, no
19 question of the Commission relying on the evidence of
20 an anonymous witness in this investigation. 12:10

21
22 Councillor Queenan's representative has submitted that
23 the Councillor is not being afforded an opportunity to
24 cross-examine his accuser. In this regard, it must be
25 noted that the Commission's investigation takes place 12:11
26 on foot of a complaint referred to it by the Chief
27 Executive and Cathaoirleach of Sligo County Council.
28 The undercover reporter is not therefore Councillor
29 Queenan's accuser in the context of this investigation.

1 The evidence to be put before the Commission is the
2 video recording of the meeting and the audio recordings
3 of the telephone calls that took place between the
4 undercover reporter and Councillor Queenan. It does
5 not appear that Councillor Queenan is taking issue with 12:11
6 the accuracy and authenticity of the recordings as
7 such. Indeed, Counsel indicated that if the Commission
8 were to proceed with this investigation today he did
9 not intend to challenge the evidence of the RTÉ camera
10 man who had made the recordings. The video and audio 12:11
11 recordings are available and Councillor Queenan will be
12 afforded an opportunity to give evidence and call any
13 witnesses on his behalf.

14
15 It will be a matter for the Commission in due course to 12:11
16 consider the weight to be afforded to the recordings.
17 So the application will be --

18
19 However, the Commission has concluded that the mere
20 fact that the undercover reporter is not being called 12:12
21 to give evidence does not provide a sufficient basis
22 for closing the investigation at this stage.

23
24 The Commission rejects the application and now, will
25 now proceed with its investigation". 12:12
26

27 So Ladies and Gentlemen I think it is coming up to
28 12:15 and we shall do our best to start and get some
29 movement on this. In this area it will be very

1 difficult to get, to get lunches, et cetera, at 1:00
2 sharp and therefore I think we should continue on until
3 about 1:30 and then break for lunch. So if we could
4 start then please?

12:13

5
6 OPENING SUBMISSION BY MR. DOHERTY AS FOLLOWS:

7
8 MR. DOHERTY: Yes, Chairman. As the Commission is
9 aware it is here today to investigate four alleged
10 contraventions by Councillor Queenan of the Local
11 Government Act 2001. Perhaps it's appropriate that I
12 read out each of them in public so that everyone may
13 know what's being inquired into? Councillor Queenan
14 has been provided with a statement of the alleged
15 contraventions and they are to be found in the
16 Commission's booklet behind Tab A. The first of the
17 alleged contraventions is:

12:13

12:13

18
19 "That being a member of a local authority you
20 contravened the provisions of Section 168 of the Local
21 Government Act 2001 by failing to maintain proper
22 standards of integrity, conduct and concern for the
23 public interest in that you met with a representative
24 of a fictitious UK investment company ('the Company')
25 interested in developing wind farms in County Sligo, in
26 respect of which the Company was looking for
27 information and assistance in dealing with issues such
28 as planning permission and local opposition, and to
29 whom you offered to provide assistance in return for

12:13

12:13

1 financial reward".

2
3 The particulars of that alleged contravention are as
4 follows:

5
6 "(a) On the 20th October 2015 you had a telephone
7 conversation with the representative Nina Carlsson
8 where you agreed to meet Nina Carlsson and discuss the
9 company that she represented, Vinst Opportunities, and
10 speak to you about potential investment in wind farms
11 in Ireland. 12:14

12 (b) During the telephone conversation you indicated to
13 Nina Carlsson that you knew the planning process
14 inside-out and what was achievable. You further said
15 you did not want anyone to know you were involved. 12:14

16 (c) You agreed to meet Nina Carlsson on the 4th
17 November 2015.

18 (d) On the 4th November 2015 you met with
19 representative Nina Carlsson and during the course of
20 that meeting you stated that you will lobby on her
21 company's behalf behind the scenes with the local
22 authority and it will cost her nothing. 12:14

23 (e) You further indicated you would go to the Council
24 and get first-hand information from them on whether the
25 proposal would be viable? 12:14

26 (f) You indicated to Nina Carlsson that some of her
27 clients might be interested in investing in you as you
28 have some business projects coming up and you would be
29 delighted to get her support that way.

1 (g) You then agreed that the investment should be
2 confidential as being backed by businesses in the UK
3 who you would be lobbying for as it would be illegal
4 and a grey area.

5 (h) Nina Carlsson asked you to name a business and you 12:15
6 then indicate that you have businesses in Enniscrone
7 and that an investment by Nina Carlsson would be to
8 expand the business and create jobs.

9 (i) In a telephone conversation with Nina Carlsson on
10 the 4th November 2015 you indicate that the €200,000 12:15
11 potential investment in your company could either be a
12 loan or stake in the company".

13

14 **Alleged contravention number two:**

15

16 "That being a member of a local authority you 12:15
17 contravened the provisions of Section 170 of the Local
18 Government Act 2001 by seeking assurances of payment
19 and indicating a willingness to provide assistance to
20 the Company as a member of the local authority in 12:15
21 return for payment".

22

23 Particulars 1(a) to (d) of the previous paragraph are
24 repeated.

25

26 **Contravention three:**

27

28 "That being a member of a local authority you
29 contravened the provisions of Section 169(3) of the

1 Local Government Act 2001, in that you failed to have
2 regard to and be guided by the Code of Conduct for
3 Councillors, insofar as you indicated a willingness to
4 provide assistance with local land owners and with the
5 planning application in the local authority on behalf
6 of the Company in return for a financial reward".

12:16

7
8 The particulars of the previous offences are repeated
9 with the following additional pictures, particulars:

10
11 "That said conduct did not enhance public trust and
12 confidence in contravention of Section 2.2 of the Code
13 of Conduct for Councillors.

12:16

14 (c) That said conduct amounted to a failure to ensure
15 that your conduct did not bring the integrity of your
16 office or of local government into disrepute, breach of
17 Section 2.3 of the Code of Conduct.

12:16

18 (d) That said conduct was not based on a consideration
19 of the public interest and the common good, and gave
20 rise to a potential conflict of interest of the sort
21 described at Section 3 of the Code of Conduct for
22 Councillors.

12:16

23 (e) That the said conduct amounted to a failure to
24 ensure your occupation, profession or business was such
25 that it interfaced to a significant degree with local
26 authority functions, Section 3.8 of the Code of Conduct
27 for Councillors.

12:16

28 (f) The said conduct indicated a willingness to use
29 your official position to improperly benefit yourself,

1 Section 3.9 of the Code of Conduct for Councilors.

2 (g) The said conduct indicated a failure to maintain
3 proper standards of integrity, conduct and concern for
4 the public interest, Section 3.10 of the Code of
5 Conduct for Councilors. 12:17

6 (h) The said conduct amounted to a failure to act in a
7 transparent fashion as required by Section 4 of the
8 Code of Conduct for Councilors, and;

9 (i) The said conduct indicated a seeking, exacting or
10 accepting of a fee, reward or other favour for any act 12:17
11 done by virtue of your office, Section 5 of the Code of
12 Conduct for Councilors".

13
14 **Contravention four alleged:**

15 12:17
16 "Is that being a member of the local authority you
17 contravened the provisions of Section 171 of the Local
18 Government Act 2001, by failing in the Annual
19 Declaration", sorry, "by failing in the Annual
20 Declaration Form prepared and furnished by you to the 12:17
21 Ethics Registrar of Sligo County Council for the year
22 2014 to set out full particulars of your declarable
23 interests within the meaning of Section 175 of the
24 Local Government Act 2001".

25 12:17
26 **The particulars are as follows:**

27
28 "(a) The Annual Declaration signed by you on the 8th
29 February 2015 and submitted to Sligo County Council in

1 respect of the year 2014 was incomplete having regard
2 to the provisions of Section 175 of the Local
3 Government Act 2001, and;

4 (b) The fact that it was incomplete was acknowledged by
5 you when you submitted an amended form to Sligo County 12:18
6 Council on the 20th November 2015".

7
8 Those are the alleged contraventions. I think, as the
9 Commission is aware, the circumstances giving rise to
10 the investigation here today arise from a complaint 12:18
11 made by Sligo County Council on the 20th April 2016.
12 Subject to the Commission I propose to open that
13 complaint very briefly. It is behind Tab B, the first
14 divider at Tab B of the Commission's booklet. It is
15 addressed to the then Secretary of the Standards in 12:18
16 Public Office Commission, dated the 20th April 2016:

17
18 "A Chara,

19
20 In accordance with Section 174(8)(a)(iii) of the above 12:19
21 Act, we refer a matter for your consideration and
22 attention.

23
24 The matter has been brought to our attention in
25 accordance with Section 147", sorry, "174(7)(e) by the 12:19
26 Council's Ethics Registrar and refers to a member of
27 Sligo County Council, Councillor Joe Queenan, who;

28
29 - Made a Declaration in accordance with Section 171 on

- 1 the 8th February 2015.
- 2 - Made a revised Declaration on the 20th November 2015
- 3 whereby significant interests omitted from the
- 4 original declaration were added.
- 5 - Made further additions to the Declaration on the 4th 12:19
- 6 December 2015 in the form of statement e-mailed by
- 7 his solicitor.

8

9 A report on the matter has been drafted in accordance

10 with Section 174(8)(b)(i) and submitted to Councillor 12:19

11 Queenan for comment prior to being finalised.

12

13 Included in the report is a transcript of a meeting

14 between the said member, Councillor Joe Queenan and a

15 Ms. Nina Carlsson held on the 4th November 2015, 12:19

16 together with transcripts of a number of telephone

17 conversation both before and after the meeting provided

18 by Councillor Queenan.

19

20 It transpired that extracts from the meeting, which was 12:19

21 secretly filmed, were used in a programme made by the

22 RTÉ Investigations Unit and subsequently screened by

23 RTÉ on the 7th December 2015.

24

25 Having regard to the circumstances of this case, a 12:20

26 number of issues arise:

27

28 (1) While the initial Declaration of the 8th February

29 2015 appears to be in breach of the Act and Code of

1 Conduct for Councillors, we are not in a position to
2 determine, having regard to the other circumstances,
3 whether the submission of a subsequent Declaration and
4 statement is sufficient to remedy the original
5 omissions?

12:20

6 (2) The screening of the RTÉ programme appears to
7 indicate further breaches of the Code of Conduct for
8 Councillors. However, we are not in a position to
9 determine whether:

10
11 (i) The manner in which the meeting and scenario was
12 set up was itself in accordance with appropriate
13 ethical standards and was a contributory factor in any
14 breach?

12:20

15 (ii) The selective use of extracts from the meeting was
16 a true and fair reflection of Councillor Queenan's
17 behaviour and conduct at the meeting and whether it
18 warrants any other course of action under Section
19 174(8) of the Act?

12:20

20
21 Following consultation with Councillor Queenan and his
22 legal advisor in this matter we have been requested to
23 submit additional documentation for your information
24 and attention. The documentation comprises a cover
25 letter from Councillor Queenan's legal advisor and
26 copies of five letters of correspondence and is
27 attached at Appendix 2.

12:20

12:21

28
29 Given the circumstances outlined above and attached, it

1 is deemed appropriate that the matter be referred to
2 the Standards in Public Office Commission for
3 consideration and determination".
4

5 Then appended to that is the report prepared by the 12:21
6 Ethics Registrar. Subject to the Commission, I
7 understand from Mr. O'Connor that the contents of that
8 report are accepted in the sense of he takes no issue
9 with it being opened to the Commission it not being
10 evidence in and of itself. I am happy to open it in 12:21
11 full to the Commission but perhaps in ease of time it
12 might be better to move on to the substance of the
13 complaint as opposed to dealing with that report at
14 this stage, but I am in the Commission's hand in that
15 regard? 12:21

16 CHAIRMAN: I think we'll proceed.

17 MR. DOHERTY: May it please the Commission. I think
18 perhaps in those circumstances I'll open the report
19 briefly and then just make some observations about it
20 before identifying how I propose to proceed in 12:22
21 evidence. The report provides:

22
23 "On or about the 12th November 2015, Councillor Joe
24 Queenan made contact with senior staff of the Corporate
25 Services Department in Sligo County Council regarding a 12:22
26 letter he had received from RTÉ.

27
28 The letter made references to a report being compiled
29 by the RTÉ Investigations Unit that was examining

1 adherence by elected public representatives to the law
2 governing ethical standards, including the Ethical
3 Framework for the Local Government Service (Part 15 of
4 the Local Government Act 2001) and the Ethics in Public
5 Office Act which imposes a statutory duty on public 12:22
6 representatives to maintain proper standards of
7 integrity, conduct and concern for the public interest.
8 In their letter they referred to meetings that had
9 taken place with a Ms. Nina Carlsson who was purporting
10 to go represent a company called Vinst Opportunities 12:22
11 but was, in fact, an undercover RTÉ reporter.

12
13 Attached to the letter was extracts of Councillor
14 Queenan's conversation with Ms. Carlsson whereby RTÉ
15 alleged that an offer in return for payment for 12:22
16 assistance in respect of planning permission for a
17 fictitious wind farm was 'corrupt'.

18
19 Further, the letter alleged breach of Section 171 of
20 the 2001 Act by reason of a failure to disclose various 12:23
21 interests in Councillor Queenan's Annual Declaration
22 submitted on the 8th February 2015.

23
24 Following his initial contact with the Council in this
25 matter, Councillor Queenan submitted a revised 12:23
26 Declaration Form on the 20th November 2015. A further
27 statement from Councillor Queenan was e-mailed by his
28 solicitor on the 4th December 2015 with details of his
29 business interests. Councillor Queenan also provided a

1 copy of the transcript of his meeting and telephone
2 conversations with Ms. Carlsson.

3
4 The purpose of Councillor Queenan's engagement with the
5 Council was to seek advice and direction as to how to 12:23
6 deal with the matter and in this regard he was advised
7 to seek legal advice.

8
9 RTÉ subsequently transmitted the programme on the 7th
10 December 2015. Following transmission Sligo County 12:23
11 Council's Ethics Registrar was requested to undertake a
12 review of Declarations of Interest in respect of
13 elected members and the Senior Management Team.

14
15 The Ethics Registrar conducted the review as requested. 12:24
16 Arising from the review a report has been submitted to
17 us in respect of Councillor Queenan from which a number
18 of issues now arise:

19
20 (1) While the initial Declaration of the 8th February 12:24
21 2015 appears to be in breach of the Act and Code of
22 Conduct for Councillors we are not in a position to
23 determine, having regard to the other circumstances,
24 whether the submission of a subsequent declaration and
25 statement is sufficient to remedy the original 12:24
26 omissions?

27 (2) The screening of the RTÉ programme appears to
28 indicate that further breaches of the Code of Conduct
29 for Councillors, however we're not in a position to

1 determine whether:

2 (i) The manner in which the meeting and scenario was
3 set up was itself in accordance with appropriate
4 ethical standards and was a contributory factor in any
5 breach? 12:24

6 (ii) The selective use of extracts from the meeting was
7 a true and fair reflection of Councillor Queenan's
8 behaviour and conduct at the meeting, and whether it
9 warrants any other course of action under Section
10 174(8) of the Act? 12:24

11

12 While extensive information is available to us insofar
13 as it relates to Councillor Queenan we are conscious
14 that our remit does not extend to the activities and
15 behaviour of RTÉ in this matter. As a decision on 12:22
16 Councillor Queenan's actions cannot be determined in
17 isolation of the actions of RTÉ, we consider it
18 appropriate to refer the matter to the Standards in
19 Public Office Commission for consideration and
20 determination. 12:25

21

22 For the purpose of completeness we have attached at
23 Appendix 1 the following documents to this report:

24

25 (1) Letter from RTÉ to Councillor Queenan dated 12th 12:25
26 November 2015.

27 (2) Transcript of phone call between Councillor Queenan
28 and Ms. Nina Carlsson dated the 20th October 2015.

29 (3) Transcript of phone call between Councillor Queenan

1 and Ms. Nina Carlsson dated the 20th October 2015.

2 (4) Transcript of meeting between Councillor Queenan
3 and Ms. Carlsson dated the 4th November 2015.

4 (5) Transcripts of telephone call between Ms", sorry,
5 "between Councillor Queenan and Ms. Carlsson post
6 meeting dated the 4th November 2015. 12:25

7 (6) Ethics Declaration as submitted by Councillor
8 Queenan dated the 8th February 2015.

9 (7) Revised Ethics Declaration as submitted by
10 Councillor Queenan dated the 20th November 2015. 12:25

11 (8) Statement as e-mailed by solicitor on behalf of
12 Councillor Queenan on the 2nd December 2015 regarding
13 his Ethics Declaration.

14 (9) Report from this Ethics Registrar dated the 15th
15 January 2016. 12:26

16 (10) Code of conduct for Councillors.

17
18 Also attached at Appendix 2 is documentation, the
19 inclusion of which was requested by Councillor
20 Queenan's legal advisors following an exchange of
21 correspondence in this matter". 12:26

22
23 Again all of that material is appended to the letter
24 from the Sligo County Council. I don't propose to open
25 that material before the Commission at this stage. 12:26

26 CHAIRMAN: Yes.

27 MR. DOHERTY: But as the Commission will have seen from
28 the complaint, before the RTÉ programme was aired on
29 the 7th December 2015, Councillor Queenan himself wrote

1 to the Council on the 12th November 2015 regarding the
2 RTÉ letter. Following on from that, and by reference
3 to his obligations to make disclosure of declarable
4 interests for 2015, Councillor Queenan submitted a
5 revised Declaration Form to Sligo County Council on the 12:26
6 20th November 2015, so that's before the programme was
7 aired, with a further e-mail from his solicitor on the
8 4th December 2015. Subject to Mr. O'Connor my
9 understanding is that Councillor Queenan admits a
10 breach of the provisions of the Local Government Act 12:27
11 2001 in respect of the Declaration made by him on the
12 8th February 2015 but intends to give evidence that
13 that was inadvertent and has given some explanation as
14 to the circumstances giving rise to that inadvertence,
15 to which I will return in due course. 12:27

16
17 As the Commission will also have seen from the report
18 the local authority, Sligo County Council, has
19 expressed the view, following the airing of the
20 programme, that it appears to indicate further breaches 12:27
21 may have been committed by the Councillor but it did
22 not feel it was in a position to determine whether the
23 manner in which the meeting and scenario were set up,
24 or whether the use of extracts from the meeting were a
25 true and fair reflection of Councillor Queenan's 12:28
26 behaviour and conduct at the meeting? That does touch
27 upon something that I addressed earlier in response to
28 Mr. O'Connor's submissions that for the purposes of
29 this investigation we propose, subject to leading some

1 short evidence from RTÉ witnesses, to play the entirety
2 of the audio recording of the two telephone calls
3 setting up the meeting, the full video of the meeting
4 itself and a video, sorry, an audio recording of a
5 follow-up telephone conversation on the 4th November. 12:28
6 It appears to us, subject to any observation and
7 submission that Counsel, Councillor Queenan may have
8 through his legal representatives, that that is the
9 only way in which the Commission will see the entire
10 picture, so to speak, and be able to determine for 12:28
11 itself whether the totality of Councillor Queenan's
12 interaction with the undercover reporter indicates the
13 breaches of the Local Government Act and the provisions
14 of the Code of Conduct that are alleged against him in
15 the Statement of Alleged Contraventions today? It 12:28
16 will, of course, also give the Commission an
17 opportunity to view Councillor Queenan's demeanour in
18 the context of the video, at least, and to be able to
19 see the nature of the interaction with the undercover
20 reporter because as we will see, and I'll come to this 12:29
21 in just a moment, in correspondence between Councillor
22 Queenan's solicitors and RTÉ, and to a certain extent
23 with the Commission in dealing with the Inquiry
24 Officer, a case is made on behalf of Councillor Queenan
25 that he had attended the meeting in good faith and had 12:29
26 somehow been encouraged or lured into making statements
27 that appear to indicate a breach of the Code of Conduct
28 that he wouldn't otherwise have made. The reference to
29 "entrapment" is something one will see in the context

1 of his solicitor's letters and that will be an issue
2 that the Commission will have to consider in the
3 context of the video and audio recordings and any
4 submissions Councillor Queenan has to make, but will be
5 the subject of a legal submission from this side of the 12:30
6 table after the evidence has been lead.

7
8 In the normal way the complaint was referred to an
9 Inquiry Officer and Ms. Elaine Laird was appointed as
10 Inquiry Officer by the Commission. Under Section 6 of 12:30
11 the Standards in Public Office Act 2001 she carried out
12 her functions, including carrying out a preliminary
13 inquiry and producing her report. A copy of
14 Ms. Laird's report is to be found at Tab D of the
15 booklet of materials. Again, subject to the 12:30
16 Commission, I understand from Mr. O'Connor, acting on
17 behalf of Councillor Queenan, that no issue is taken
18 with the contents of Ms. Laird's report, it can be
19 opened to the Commission, although he does have some
20 questions to pose to Ms. Laird in respect of that 12:30
21 report.

22 MR. O'CONNOR: well I certainly have no difficulty
23 with it being submitted without her giving direct
24 evidence, and I wouldn't go so far as I have no issue
25 with the content but I will have a few questions for 12:31
26 her but I'm not requiring her to go through a whole
27 load of direct evidence.

28 MR. DOHERTY: In those circumstances what I propose to
29 do is, rather than opening the report, I will call the

1 Inquiry Officer in a moment just to give evidence of
2 the report briefly, to ask some brief questions about
3 the report and then leave it to Mr. O'Connor to
4 cross-examine Ms. Laird. I would just identify the
5 following matters in the report, just if I may, for the 12:31
6 purposes of the Commission? It's broken down into ten
7 sections. As the Court will see from page one of the
8 report there's an "Executive Summary" which gives a
9 background to the RTÉ documentary and the materials
10 that were provided to the Inquiry Officer. At section 12:31
11 2 on page 4 the Inquiry Officer identifies the making
12 of the complaint by Sligo County Council, which we have
13 just seen, and she recounts the details of what that
14 complaint provides. At section 3, starting on page 6,
15 the Inquiry Officer sets out the relevant legislation 12:31
16 that appears to apply to the complaint, and I don't
17 propose to open that to the Commission at this stage,
18 but it touches upon many of the provisions that are
19 identified both by the local authority in their
20 complaint and in the Statement of Alleged 12:32
21 Contraventions, and largely reflects the obligations
22 identified in Part 15 of the Local Government Act 2001
23 and to the Code of Conduct for Councillors that we have
24 already touched upon. At section 4 of her report the
25 Inquiry Officer, on page 8, indicates the steps that 12:32
26 she took in the conduct of the inquiry, and this
27 involved engaging with RTÉ to get full unedited
28 transcripts of the telephone conversations between the
29 RTÉ reporter and Councillor Queenan, the full unedited

1 transcripts of the meeting that took place, and RTÉ
2 also provided a USB with audio files of the phone
3 calls, and unedited footage of the meeting and a copy
4 of the RTÉ documentary as aired.

5
6 I should say to the Commission that I have two
7 witnesses from RTÉ who are present today who, if
8 required, are in a position to give evidence that both
9 the video recording of the meeting and the audio
10 recording of the telephone calls that have been
11 provided to the Commission are accurate, complete and
12 authentic recordings of what actually took place on
13 those occasions. Their evidence will be quite short.
14 Statements of their proposed evidence have been
15 provided to Councillor Queenan's legal representatives
16 and again I understand, subject to anything
17 Mr. O'Connor said, that he doesn't take any issue with
18 those statements but may have some questions for those
19 witnesses?

20
21 The Commission will also see that apart from engaging
22 with RTÉ and reviewing the material that had been
23 provided by it to her the Inquiry Officer, in
24 accordance with the provisions of section 62(b) of the
25 Ethics Act, gave Councillor Queenan the opportunity to
26 provide a statement on the complaint made against him
27 relating to possible contraventions of the provisions,
28 and provided him with a copy of the unedited
29 transcripts of the phone calls and the transcripts of

1 the unedited recording of the meeting generated by RTÉ,
2 providing him with copies of the Annual Declarations
3 submitted by him for the three years 2012 to 2015,
4 seeking clarification with regard to certain
5 information that appeared to be inconsistent with 12:34
6 information he referred to in the RTÉ programme. The
7 Inquiry Officer then gives a more detailed background
8 to the complaint and the circumstances of the RTÉ
9 investigation. She gives some information about
10 Councillor Queenan, which I think is pertinent from the 12:34
11 Commission's perspective. He was first elected to
12 Sligo County Council in 1999 on behalf of Fianna Fáil.
13 He was successful in being elected in the following
14 three local elections, most recently in 2014. He was
15 Cathaoirleach of the County Council from 2014 to 2015. 12:34
16 He is a former Chairman of the Board of IT Sligo and a
17 former Co-Chair of the Sligo GAA County Board.
18 Following the broadcast of the RTÉ programme in
19 December 2015 he resigned from Fianna Fáil, and
20 certainly as of the date of the Inquiry Officer's 12:35
21 report he was an independent member of Sligo County
22 Council following that.

23
24 There is then a recounting of the facts of the case as
25 found by the Inquiry Officer by reference to the 12:35
26 materials available. The court, the Commission will
27 then see on page 17, at section 8 of the report, a
28 reference to Councillor Queenan's response through his
29 solicitor Ms. Durkan. I will be coming to that

1 response in some further detail but it is summarised by
2 the Inquiry Officer at section 8 of the report before
3 turning on to the Annual Declarations and further
4 correspondence that has been submitted by Councillor
5 Queenan's solicitors to RTÉ.

12:35

6
7 At section 9 of the report the Inquiry Officer conducts
8 an analysis of the complaint and the Commission will be
9 aware that the purpose of the analysis is with a view
10 to the Inquiry Officer forming an opinion as to whether 12:36
11 or not the materials provided to her demonstrate a
12 prima facie case of breach of the relevant provisions?
13 That finding of a prima facie breach is one that the
14 Inquiry Officer does make and gives rise to the further
15 investigation before this Commission but is not 12:36
16 evidence of itself of the breach, that being entirely a
17 matter for the Commission here today.

18
19 I mentioned that Councillor Queenan had been given the
20 opportunity to make a response to the contraventions 12:36
21 and I touched upon this briefly before. It's behind
22 Tab E and the numbered tabs, the last of which is Tab
23 6, Appendix 6. I think it is appropriate that I open
24 the letter from Ms. Durkan and Councillor Queenan's
25 lengthy response. It's slightly out of turn in this 12:37
26 sense, if I may suggest to the Commission, it touches
27 upon the transcripts that have been provided, which the
28 Commission haven't yet seen, and it touches upon the
29 contents of the audio and videoing recording but I do

1 think it's important that the correspondence be opened
2 in full. I am either happy to do it now or after the
3 audio and video recording have been shown to the
4 Commission so you have a better context for the
5 responses given by Councillor Queenan. I would suggest 12:37
6 the latter, namely the Commission see the audio and
7 video, and then we consider Councillor Queenan's
8 response because then the full contents of the response
9 becomes more apparent. Obviously it has been written
10 by Councillor Queenan's solicitor and by Councillor 12:37
11 Queenan himself in the knowledge of the transcripts and
12 what took place so it would put the Commission on a
13 parity of knowledge and understanding if they saw, if
14 the Commission sees the audio and video first.

15 MR. O'CONNOR: I don't have any particular objection 12:38
16 to either course or indeed the Commission simply
17 reading the correspondence in its own time, I mean it
18 is open solicitors correspondence but I mean --

19 CHAIRMAN: Yes, okay.

20 MR. DOHERTY: what I proposed, subject to the 12:38
21 Commission, was as follows; the evidence, as the
22 Commission knows from our earlier submissions,
23 comprises in large part of the audio and video
24 recordings, the RTÉ witnesses who can authenticate
25 those audio and video recordings and the Inquiry 12:38
26 Officer's report, including the provision of the Annual
27 Declaration signed by Councillor Queenan on the 8th
28 February 2015. That comprises the bulk of the
29 evidence. Because of an observation Mr. O'Connor made

1 earlier I think it is important that I do call the RTÉ
2 witnesses because, as I understand, the position is
3 that Mr. O'Connor is happy for the audio and video
4 recordings to be played but is "reserving" his position
5 about the content of those audio/video recordings. That 12:39
6 is a phrase he used earlier. I have to say I don't
7 quite understand what he means by "reserving" his
8 position about the content of it? The RTÉ witnesses
9 can give evidence, and propose to give evidence, that
10 the recordings that have been provided and which we 12:39
11 propose to play are accurate and complete authentic
12 recordings of what took place so the content will speak
13 for itself. So I propose to call those two witnesses
14 first and then to call Ms. Laird, the Inquiry Officer,
15 briefly and then to play the audio and video 12:39
16 recordings, subject to the Commission if that's
17 acceptable?

18 CHAIRMAN: Yes, I think so.

19
20 END OF OPENING SUBMISSION BY MR. DOHERTY 12:39

21
22 MR. DOHERTY: So if I could ask Mr. Cedric Culliton?

23
24 MR. CEDRIC CULLITON, HAVING BEEN SWORN, EXAMINED BY
25 MR. DOHERTY AS FOLLOWS: 12:39

26
27 Q. MR. DOHERTY: Mr. Culliton you kindly prepared a
28 statement for this investigation and you provided a
29 signed copy of that statement on the 3rd September

1 authenticity of the recording that has been provided to
2 the Commission in respect of the meeting?
3 A. Well I would say that they are exactly as I recorded
4 them, they are authentic and they are complete, yes.
5 7 Q. Yes, and I think you indicate in your witness statement 12:41
6 that there were two video recorders in respect of the
7 meeting of the 4th November 2015, is that correct?
8 A. Three.
9 8 Q. Three?
10 A. There are, there were two different types of cameras 12:42
11 and video recorders; two of them were miniature Lumix
12 cameras, one of which was concealed in a box of tissues
13 and the other was concealed in a garment which was
14 hanging over the pull handle of a suit case. They were
15 both very wide angle lenses. There was a different 12:42
16 type of camera with its own recorder put in like a file
17 beside me here, a lever arch file, and there was a lens
18 with a long focal length on it and that was further
19 back in the room to get a different shot.
20 9 Q. Okay, and I think you confirm in your witness statement 12:42
21 that you were present in Sligo when the recordings took
22 place, isn't that correct?
23 A. I was, yes.
24 10 Q. Would you answer any questions Mr. O'Connor has?
25 A. Sure, certainly. 12:42
26

27 END OF EXAMINATION OF MR. CEDRIC CULLITON BY
28 MR. DOHERTY
29

1 MR. CEDRIC CULLITON WAS CROSS-EXAMINED BY MR. O'CONNOR
2 AS FOLLOWS:

- 3
- 4 11 Q. MR. O'CONNOR: Mr. Culliton can I ask you for an
5 operation like this is there any code or ethical code 12:43
6 within RTÉ that ye have to comply with when you go
7 about conducting an operation like this?
- 8 A. There is, yes, we have our own standards.
- 9 12 Q. And --
- 10 A. And our own protocols and I have to be satisfied that 12:43
11 they have been met before I proceed to do anything.
- 12 13 Q. Is there a written code or protocol?
- 13 A. There is, yes, yeah.
- 14 14 Q. I presume that includes having respect and showing some
15 respect for the dignity of the people that you're 12:43
16 reporting on?
- 17 A. Absolutely, yes.
- 18 15 Q. Do you accept that at 17:36 on your own camera you were
19 caught yourself recorded saying that my client was a
20 sleazeball? 12:43
- 21 A. Did I? I don't recall saying that, I may have said it.
22 If it's on the tape it's true.
- 23 16 Q. Well you're here under sworn evidence, Mr. Culliton,
24 and you're the man who recorded it, and you're the
25 technical man and we're all relying on you so do you 12:43
26 accept?
- 27 A. I accept what's on the tape, anything that was heard or
28 seen.
- 29 17 Q. Had you any basis for calling my client a sleazeball?

1 A. Not really, no, no.

2 18 Q. Would that be in accordance with your code of ethics?

3 A. It was a flippant remark, it was, it was nothing to do
4 with ethics at all.

5 19 Q. Why would it not have anything to do with ethics? Do 12:44
6 you not accept my earlier premise that everybody is
7 entitled to respect, particularly given RTÉ is a
8 publicly funded body?

9 A. Well I totally respect Mr. Queenan but I didn't mean to
10 cause any offence and it was a private conversation 12:44
11 between myself and this other person in the room.

12 20 Q. So the respect you showed my client was to call him a
13 sleazeball, that's your definition of respect?

14 A. It's not my definition of respect, no.

15 21 Q. Do you accept that after Mr. Queenan had left that Nina 12:44
16 buttons up her blouse on camera?

17 A. She could well have been because I, there was a radio
18 mic placed underneath her blouse and a transmitter
19 placed underneath her skirt, at the rear of her skirt,
20 yes. 12:44

21 22 Q. At 18:28 she's seen on the camera with the buttons open
22 and then by 19:16 she closes the buttons, isn't that
23 correct?

24 A. That's --

25 23 Q. Have you looked at this? 12:45

26 A. Of course.

27 24 Q. Even before this hearing?

28 A. Of course, of course I've looked at it, yes, that's,
29 that is correct, yeah.

1 25 Q. Well then why are you having difficulty answering me?
2 A. I don't have any difficulty in answering that
3 whatsoever. I mean it's normal procedure when one
4 wears a radio mic to have it concealed underneath one's
5 blouse or some part of one's garment and then -- 12:45

6 26 Q. Part of this operation, wasn't it, to show that she'd
7 show cleavage. She's a very attractive lady and this
8 was part of the operation, Mr. Culliton let's be fair,
9 we're all here, we're all grown ups?

10 A. And who is suppose to be looking at the cleavage, me? 12:45

11 27 Q. I'm asking you was it part of the modus operandi that
12 this lady would have a low open blouse for this
13 operation?

14 A. It was part of the operation for her to undo a button
15 to adjust the microphone for its placing. 12:45

16 28 Q. Only for undoing the microphone?

17 A. Well I can't think of any other reason for it, yes.

18 29 Q. So were you there when she made the comment that "he
19 fancied me"?

20 A. I think I was, yeah, I think I just heard that, yes. 12:45

21 30 Q. So that's nothing at all, that's complete, we're to
22 treat that and the Commission is to treat that in
23 complete splendid isolation to the low blouse, is it,
24 all of that interaction?

25 A. The low blouse issue is, like I said, it's just 12:46
26 adjusting a microphone, which can be quite
27 uncomfortable for one to wear.

28 31 Q. Did you hear her laughing at my client after he had
29 left?

1 A. I think she was laughing because she has a nervous
2 laughter, it was an awkward situation for her to be in.

3 32 Q. Ah it was, it was a hearty laugh, it was a laugh like
4 you'd laugh at somebody that you thought was a fool,
5 and you heard it as good as I heard it Mr. Culliton. 12:46

6 A. I didn't interpret it that way.

7 33 Q. Did you hear Nina saying at 17, shortly after, I think
8 it was 19:30 on the tape she queried "but did he hang
9 himself, did he hang himself?", that's what she said
10 Mr. Culliton? 12:46

11 A. Did she say that, yeah.

12 34 Q. Well did she you?

13 A. Well, it's on the tape, yes, she did say it.

14 35 Q. You haven't even looked, when did you listen, look at
15 this last? 12:46

16 A. I looked at it last, last week.

17 36 Q. Well did you not see this on it? Why are you having
18 difficulty remembering this?

19 A. I don't, I have no difficulty whatsoever remembering
20 any of that. I do -- 12:46

21 37 Q. Well did she?

22 A. I do remember it and she did say that, yes.

23 38 Q. "Did he hang himself?".

24 A. That's what she said, yes.

25 39 Q. You laughed and you said "no, I think he did"? 12:47

26 A. Yeah.

27 40 Q. I put it to you, Mr. Culliton, that it's a very
28 po-faced performance by RTÉ and a very disingenuous
29 performance to accuse anybody of any kind of ethical

1 breach given the complete disregard for any kind of
2 humanity or dignity that anyone else had in this room,
3 particularly my client.

4 A. I have the utmost respect for your client and this
5 room. I think any remarks that were made by Nina were 12:47
6 in respect of what she considered Mr. Queenan had said
7 during the course of the interview.

8 41 Q. But she, she was preceptive enough to know that he
9 hadn't hung himself, to use her words, isn't that
10 correct? 12:47

11 MR. DOHERTY: I object to that. The question was "did
12 he hang himself?", she didn't express a view.

13 MR. O'CONNOR: She had enough of a doubt to ask well
14 did he hang himself?

15 MR. DOHERTY: You don't know whether she had a doubt? 12:48

16 MR. O'CONNOR: I'm entitled to put, in this
17 cross-examination I'm entitled to put suppositions to
18 this man.

19 A. I can't interpret what her thoughts were, I know what
20 she said. 12:48

21 42 Q. Well was that the reason for the follow up phone call
22 to see would you get him to hang himself a bit more?

23 A. I'd nothing to do with the follow up phone call.

24 43 Q. Isn't that the reason for it because you weren't
25 satisfied that he'd hung himself enough? 12:48

26 A. I'd nothing to do with the follow up phone call. I
27 didn't make the recording of the follow up phone call,
28 I know nothing about it.

29 44 Q. Thank you Mr. Culliton.

1 CHAIRMAN: Okay, thank you.

2 MR. DOHERTY: unless the Commission have any questions
3 that's all I have for Mr. Culliton?

4 CHAIRMAN: No questions here.

5 MR. DOHERTY: Thank you Mr. Culliton. 12:48

6 A. Thank you.

7

8 THE WITNESS WITHDREW

9

10 MR. DOHERTY: I'd ask Mr. Conor Ryan to give evidence. 12:48

11

12 MR. CONOR RYAN, HAVING AFFIRMED, EXAMINED BY

13 MR. DOHERTY AS FOLLOWS:

14

15 45 Q. MR. DOHERTY: Mr. Ryan I think you've also produced a 12:49
16 written statement for the Commission?

17 A. Yeah.

18 46 Q. On the 6th September 2018?

19 MR. O'CONNOR: I'm not sure if we have that? Yeah, I
20 think we have it. 12:49

21 MR. McCARTHY: Tab 3, G3.

22 MR. O'CONNOR: There's no three in my G,
23 unfortunately.

24 MR. O'KEEFFE: The very last sheet.

25 MR. DOHERTY: It was sent to you last week. In any 12:49
26 event we can provide copies if My Friends don't have
27 that written statement in front of them?

28 MR. O'CONNOR: If you could?

29 47 Q. MR. DOHERTY: Perhaps, without reference to the

1 statement, in the first instance Mr. Ryan could you
2 indicate to the Commission what your position is now
3 and what involvement, if any, you had with the RTE
4 Investigates programme from 2015?

5 A. I hold a position of reporter with RTÉ News and Current 12:50
6 Affairs, specifically with the RTÉ Investigations Unit
7 and, as I was in December 2015, I was the reporter
8 assigned to the programme and to the project that is
9 under discussion today.

10 48 Q. You've heard reference this morning Mr. Ryan to a 12:50
11 number of audio recordings of telephone conversations
12 between Councillor Queenan and an undercover reporter
13 posing as Nina during the course of this operation in
14 October/November 2015. Do you have any direct
15 knowledge of those telephone conversations and 12:50
16 recordings?

17 A. I was present for all of the telephone recordings when
18 they took place.

19 49 Q. I think it is common case that there were three
20 telephone calls, one on the 20th October 2015 making 12:50
21 initial contact with Councillor Queenan, were you
22 present for that call?

23 A. I was, yes.

24 50 Q. Were you present for the recording of that call?

25 A. I was, yes. 12:51

26 51 Q. Could you indicate to the Commission why that call was
27 recorded?

28 A. It was recorded for the purposes of that if it was ever
29 questioned that it would be there as, that it would be

1 there to be used so that we would be able to have it as
2 back-up, yeah.

3 52 Q. Then that was a second call with Councillor Queenan
4 setting up the meeting for the 4th November 2015, isn't
5 that correct? 12:51

6 A. That's correct, yeah.

7 53 Q. Were you present for that call?

8 A. I was, yes.

9 54 Q. And were you present for the recording of that call?

10 A. I was, yes. 12:51

11 55 Q. Again could you indicate what the reason for the
12 recording was?

13 A. The same, so that we would have a recording of all, so
14 if there was any, any question or any doubt that there
15 would be a recording of the event. 12:51

16 56 Q. Then, finally, there is a phone call with Councillor
17 Queenan on the 4th November 2015 after the meeting that
18 took place in Sligo, after the videoing, and do you
19 have any direct knowledge of that telephone call?

20 A. I was present for that phone call and for the 12:52
21 recording.

22 57 Q. Okay, and where did that telephone call take place?

23 A. It took place beside a breach in Ballyshannon, in a
24 car.

25 58 Q. And were you present for the recording of that 12:52
26 telephone call?

27 A. I was, yes.

28 59 Q. And, again, what was the purpose of recording that
29 telephone call?

1 A. The purpose of recording the telephone call was for
2 that we would have for evidence if required in the
3 future.

4 60 Q. In your written statement you finish your statement by
5 saying that you confirm that:

12:52

6
7 "The copy of the recordings given to the Commission are
8 the calls as they were recorded and in their entirety"?

9

10 A. Yes.

12:52

11 61 Q. Have you had an opportunity to listen to those calls in
12 the recent past?

13 A. I'm, I'm aware of the calls, I haven't listened to
14 them, I only made the statement last week but I would
15 have listened to them, I'm familiar with them so I know
16 them to be true. 12:52

17 62 Q. Okay, if you'd answer any questions My Friend will
18 have?

19 A. Yeah.

20

12:52

21 END OF EXAMINATION OF MR. CONOR RYAN BY MR. DOHERTY

22

23 MR. CONOR RYAN CROSS-EXAMINED BY MR. O'CONNOR

24 AS FOLLOWS:

25

12:52

26 63 Q. MR. O'CONNOR: Mr. Ryan are you the man speaking to
27 had fictitious person, Nina, in her ear piece?

28 A. There would have been, I would have been one of the
29 people, yes.

1 64 Q. Yeah, and why haven't we a transcript of what was being
2 said in the ear piece?
3 A. That wasn't recorded.

4 65 Q. Right. So Nina was being told what to ask and when to
5 ask it and being prompted remotely by you and probably 12:53
6 the last witness, or you or others anyway, you didn't
7 bother recording that or keeping any record of that?
8 A. I don't see the relevance of it.

9 66 Q. Well the relevance, with the greatest respect Mr. Ryan,
10 isn't for me or Mr. Doherty or for you, it'll be for 12:53
11 the Commission to decide, your job is to answer the
12 questions?
13 A. I didn't hear a question in that, I just heard you made
14 a statement.

15 67 Q. All right, well I'll have to refocus so. Why did you 12:53
16 not record what was being said on the ear piece?
17 A. The focus of the programme was in relation to
18 Councillor Queenan's actions.

19 68 Q. I thought you were, told your own Counsel in evidence a
20 minute ago that you were recording these things in case 12:53
21 they were ever challenged or to have a record, isn't
22 that what you told the Commission a few minutes ago
23 under oath?
24 A. Yeah, and in relation to Councillor Queenan's actions.

25 69 Q. How does it change now from a few minutes ago you were 12:54
26 recording to protect everybody and now we know that we
27 have remote control people who are beyond the scope of
28 this completely and you're one of them?
29 A. I don't see how I'm beyond the scope of it, I'm sitting

1 here.

2 70 Q. well what were you saying in the ear piece? I mean you
3 can say anything because there is nothing to contradict
4 you now.

5 A. If there is something of concern just tell me. I 12:54
6 don't, I, genuinely I don't see, I don't see the
7 relevance? Like obviously if I didn't fill out the
8 sentence a couple of moments ago I apologise but in
9 terms of the recordings as they were made it was so
10 that we would know, that we would have Mr. Queenan's 12:54
11 interactions down and our interactions with him down.
12 That's the bit that we would be challenged on. We
13 never foresaw a situation where our own interactions
14 with each other would be challenged.

15 71 Q. Now Mr. Ryan you're an intelligent man and without 12:54
16 knowing the details I suspect you're far more educated
17 than my client but my client was being set up in an
18 operation and this is, we all know this, and you were
19 one of the people in the ear piece telling this lady
20 what to say. For all I know you could have been saying 12:55
21 things to her like no, no, no, you have to trap him a
22 bit more, you have to, you have to go a bit harder on
23 that. You could have been going, you could have been
24 saying any of those things. You could have been
25 saying, you know, I want you to open the blouse a bit, 12:55
26 I don't know because you haven't kept a transcript of
27 that, you've kept that obscured from view, that's the
28 problem and I want to know why?

29 A. Because it wasn't relevant, it is your client's

1 relevance and I have to say the suggestion that, and
2 just because this will be recorded down, I find the
3 suggestion that you would think that anybody in a
4 professional capacity would tell a woman to undo her
5 blouse in a professional job role to be offensive and I 12:55
6 don't see what relevance that line of inquiry has right
7 here?

8 72 Q. Well you see again relevance isn't for you Mr. Ryan.
9 The issue is this lady is heard on tape commenting
10 about her thoughts that my client fancied her. There 12:56
11 was a flirtation going on here from this lady and you
12 were in her ear. I am not going to labour the point,
13 the Commission can draw their own views, but you're not
14 going to tell us what was being said in that ear piece.
15 what was being said, what were you saying to her? 12:56

16 A. In terms of that it would have just been in terms of
17 clarification. I cannot remember the specifics of what
18 I said, genuinely I don't, there was nothing of any
19 particular import.

20 73 Q. Well how do we know? 12:56

21 A. I --

22 MR. DOHERTY: With the greatest respect My Friend is
23 able to cross-examine Mr. Ryan here and can ask him.

24 74 Q. MR. O'CONNOR: Well I'm asking him and he doesn't
25 remember what was said. But sure Councillor Queenan 12:56
26 wouldn't remember any of it either if it wasn't
27 recorded.

28 A. With respect if you can clarify for me and I might be
29 able to help you a bit more? If -- regardless of what

1 was said to Nina I assume what is at issue here is what
2 Nina said to your client and what was recorded because
3 I wasn't in direct communication with, so everything
4 that I would have said that would have had any
5 relevance to the, to the interaction would have been 12:57
6 uttered by Nina and that would have been recorded.
7 There is nothing that I would have said if it had
8 relevance.....

9 75 Q. You see Mr. Ryan.
10 A.wouldn't have been recorded. 12:57

11 76 Q. There's a thing in Irish called the modh coinníollach
12 and it's not great when you're in the witness box to be
13 "would have, could have, should have", and that's what
14 you're doing because you don't remember because there
15 was no record kept of this important part of the 12:57
16 operation. All you are able to say is "I would have, I
17 could have and I should have", and that suits you fine
18 because we don't know what was being said or at what
19 level my client was being entrapped?

20 A. Your client wasn't. 12:57

21 77 Q. We do know that you complained to Nina that, you know,
22 she didn't follow some of your instructions and she
23 said well but he whispered, I couldn't hear some of
24 them, he should have spoken up. So it was relevant. Do
25 you remember that? 12:58

26 A. I'm struggling to see the relevance, genuinely I don't
27 --

28 78 Q. Forget about relevance, do you remember it?
29 A. Do I remember it? If you're saying it I've, I've no

1 doubt that it happened.

2 79 Q. No, it's not about that. You've taken an attestation
3 and you either --

4 A. In relation to the telephone calls.

5 80 Q. If you don't remember it you don't remember it? 12:58

6 A. In relation to the telephone calls I've no doubt about
7 it but you're asking me a very, very....

8 81 Q. A very, very.

9 A. ...specific things that weren't recorded so I'm taking
10 you at your word and I'm saying I'm not doubting you. 12:58

11 82 Q. Can I come back to the first question? why wasn't what
12 was going on in the ear piece recorded?

13 A. We didn't consider it relevant to what we were doing.

14 83 Q. Were you aware of this code of ethical behaviour in
15 RTÉ? 12:58

16 A. The code of the, the journalism guidelines.

17 84 Q. Everything that Nina said on the telephone call was,
18 more or less everything was made up, wasn't it, it was
19 all false?

20 A. Nods head yes. 12:59

21 85 Q. who is Nina?

22 A. who is Nina?

23 86 Q. who is she?

24 A. well I think we've already dealt with, that's a --

25 87 Q. No, no, no, you're in the witness box. 12:59

26 A. Yeah.

27 88 Q. You, you need to start understanding that you have to
28 answer questions unless your Counsel has some basis to
29 interrupt or....

1 A. My basis is.
2 89 Q. ...the Commission has some basis?
3 A. My basis is journalistic privilege in order to protect
4 her.
5 90 Q. So you're refusing to give her name? 12:59
6 A. Yes.
7 91 Q. Does she work for RTÉ?
8 A. I'm not saying anything in relation that would give any
9 indication as to the identity of the person involved.
10 92 Q. Does she have any criminal convictions? 12:59
11 A. As I'll just give my previous answer, let that stand.
12 93 Q. Thank you Mr. Ryan.

13

14 END OF CROSS-EXAMINATION OF MR. RYAN BY MR. O'CONNOR

15

12:59

16 CHAIRMAN: Oh, yes, we've just some questions.

17

18 MR. CONOR RYAN QUESTIONED BY THE COMMISSION AS FOLLOWS:

19

20 94 Q. MR. McCARTHY: Just to understand better the location 13:00
21 where the recordings were made of the telephone
22 conversations and the ear piece. I don't understand
23 where you were relative to the journalist making the
24 call, were you in two different cars or...

25 A. No, I -- 13:00

26 95 Q. MR. McCARTHY:....in the same car.

27 A. Sorry, I think Counsel for Mr. Queenan was speaking to
28 something different in relation to, I think he was
29 actually speaking about the video recordings in

1 relation to things he might have picked up in her ear
2 piece. In relation to the telephone calls.

3 96 Q. MR. McCARTHY: Oh, right.

4 A. They would have been done on speaker phone so they
5 would have been, I would have been present for those 13:00
6 whereas --

7 97 Q. MR. McCARTHY: And listening but not engaging or not
8 whispering or --

9 A. No.

10 98 Q. MR. McCARTHY: No. 13:00

11 A. Obviously it would have been on speaker phone so...

12 99 Q. MR. McCARTHY: Okay.

13 A.there would have been complete silence in the
14 background whereas the ear piece was worn for, she
15 wouldn't have been wearing an ear piece for the phone 13:00
16 calls.

17 100 Q. MR. McCARTHY: Okay, so that, that was in association
18 with the meeting which you could observe at the time.

19 A. That was in association with the meeting but obviously
20 I was, the statements that I made in relation to that 13:00
21 was about the phone call, so I think we're slightly at
22 cross purposes here.

23 MR. McCARTHY: Okay, that's fine, thanks.

24 CHAIRMAN: Thank you.

25 13:01

26 END OF QUESTIONING OF MR. RYAN BY THE COMMISSION

27

28 MR. DOHERTY: That's my evidence from Mr. Ryan, thank
29 you very much.

1 CHAIRMAN: Thank you Mr. Ryan.

2

3 THE WITNESS WITHDREW

4

5 MR. DOHERTY: Subject to the Commission I propose 13:01
6 calling Ms. Laird briefly just to give evidence in
7 relation to the Inquiry Officer report.

8 CHAIRMAN: Yes.

9

10 MS. ELAINE LAIRD, HAVING BEEN SWORN, EXAMINED BY 13:01

11 MR. DOHERTY AS FOLLOWS.

12

13 101 Q. MR. DOHERTY: Ms. Laird can I ask you just to open
14 divider D of the booklet of papers that the Commission
15 has for this investigation? Hopefully that should be a 13:01
16 copy of the report that you prepared as part of your
17 involvement as the Inquiry Officer. Can you confirm
18 that to be the case?

19 A. That's correct.

20 102 Q. I think, subject to the Commission, Mr. O'Connor has 13:02
21 some questions for Ms. Laird in relation to her report,
22 I don't propose to bring her through it in detail, I've
23 brought before the Commission through the sections of
24 the report. The evidence will be the evidence of the
25 recordings and video recordings as opposed to 13:02
26 Ms. Laird's conclusions in respect of it but she is
27 available to answer any questions Mr. O'Connor has.

28

29 END OF EXAMINATION OF MS. ELAINE LAIRD BY MR. DOHERTY

1 MS. ELAINE LAIRD CROSS-EXAMINED BY MR. O'CONNOR

2 AS FOLLOWS:

3

4 103 Q. MR. O'CONNOR: It is probably good afternoon at this
5 stage Ms. Laird. Thank you for your report, which is 13:02
6 very well laid out I must say and easy for me to
7 follow. Just in connection with the analysis section
8 of your report, which I think is at paragraph 9 onwards
9 on page 20?

10 A. Yeah. 13:02

11 104 Q. I am just going to run through a few things there. I
12 think at 9.2 you say that:
13
14 "The main evidence to be considered in this case
15 relates to the unedited written transcripts of the full 13:02
16 verbal exchange between Councillor Queenan and", this
17 false person, "Nina".

18
19 so I think it was your view looking at this as an
20 independent person looking from the outside in that 13:03
21 that was the main evidence?

22 A. Well, sorry, it continues on.

23 105 Q. I know, we will come to the other parts.

24 A. Okay.

25 106 Q. But just would you agree with me in general terms that 13:03
26 leaving aside maybe the Declarations, which is a
27 different day's work which we're not making a huge deal
28 about, we're asking for maybe the context to be
29 considered, but that that was the main evidence, the

1 Nina tapes, this was the evidence that was before you?

2 A. Yes, it was.

3 107 Q. Yeah, and no more than me you didn't, you weren't
4 favoured with an interview with Nina or she didn't make
5 herself available? 13:03

6 A. No.

7 108 Q. I think then if we move on to paragraph 9.4 you outline
8 there that Councillor Queenan, a lot of what he's
9 talking about in that interview when you sit back and
10 look at it is the preplanning process, isn't that fair, 13:04
11 I think that's what you said and an awful lot of --

12 A. That's what the main discussion was around the
13 preplanning, yes.

14 109 Q. The preplanning and the whole idea that, I think it's
15 under the Planning and Development Act, you mightn't 13:04
16 have said this but there is a process called the
17 preplanning process which he was describing, maybe
18 sometimes not very well, but he repeatedly described
19 the preplanning process that he could bring a proposal
20 to the planners for their preliminary view? 13:04

21 A. That's correct, yeah.

22 110 Q. That was a lot of what the man was talking about and I
23 think you took the view that he had a considerable
24 knowledge of the planning process and I think that's
25 fair. That he went so far, you know for somebody, he 13:04
26 has been a Councillor for a long time but he, but
27 having said that he was able to articulate to this lady
28 that planning was an Executive function, in other words
29 it wasn't a function for elected members?

1 A. That's correct, yeah.

2 111 Q. To be fair to him, wouldn't you agree, that was fairly
3 impressive from the point of view that he was very
4 clear that he wasn't trying to pretend that he had more
5 power than he had, he did make it clear that it was an 13:05
6 Executive function?

7 A. He did, yeah.

8 112 Q. And wasn't a matter for elected members per se, that
9 they would have some influence but you know that I
10 think he, what he was describing to her really was the 13:05
11 preplanning process? I think you very fairly, as well,
12 point out that he was adamant that he could not give,
13 that he could give no guarantees that planning
14 permission would be granted, you say that at paragraph
15 9.5? 13:05

16 A. That's correct.

17 113 Q. So he's not kind of selling the idea that he's God and
18 he can get the planning permission, even though he is
19 lead in that direction. They tell him, this lady tells
20 him he's the only person in Sligo they're talking to 13:05
21 and there's an element of building him up, isn't there,
22 in the, in the video?

23 A. Well I think he's, just in explaining he said there was
24 no guarantees he could give them.

25 114 Q. There was no guarantees, yes. That he would need to 13:06
26 get a map and then he would approach to get a
27 preliminary view which, would you agree with me, that
28 is the role? One of the roles of a County Councillor
29 is to conduct and facilitate a preplanning meeting,

1 that it's, it's a role that councillors often
2 participate in?

3 A. It's my understanding, I don't know the full.

4 115 Q. Yeah, and like that, you know, other than that they --
5 he was, he was very clear that he wasn't, it wasn't his 13:06
6 role ultimately, that, that he could be, I think at one
7 stage, a kind of a go between or a link person?

8 A. Certainly that's the view, the view he expressed in
9 parting.

10 116 Q. I think you also very fairly at paragraph 9.5 says 13:06
11 that:

12
13 "I note that Councillor Queenan also refers to the
14 financial benefits of the wind farm development for the
15 Council, which I believe shows his public interest in 13:06
16 the matter"?

17

18 A. That's correct.

19 117 Q. Because he does talk about money that would come for
20 the Council from turbines, doesn't he? 13:07

21 A. Eh-hmm, he does.

22 118 Q. From the rate, the rate base would be expanded?

23 A. He does.

24 119 Q. I mean in his evidence one of the things he will be
25 saying is that was in his mind because that Sligo more 13:07
26 than anywhere had suffered hugely, and the Council was
27 under pressure for a lot of reasons down there
28 financially.

29 A. Eh-hmm.

1 120 Q. And certainly was one of the things in his mind. He
2 will be saying that the area even yet, you know, is
3 desperately in need of development compared to other
4 parts of the country, that the return of the economy
5 hasn't even happened yet in Sligo. Now you, I think, 13:07
6 then at paragraph 9.7 say:
7
8 "On a number of occasions throughout the meeting this
9 woman Nina", as she is called, "asked Councilor
10 Queenan how he could help them and what he would need 13:07
11 in return? He said it would cost them nothing and he
12 was not looking for anything out of it. He was not
13 asking for money because he would be out on his ear
14 straightaway and he suggested down the road he might
15 have a business project that people might be interested 13:08
16 in or that investigators might",
17
18 and he talks about a loan that would be repaid over a
19 number of years, if that ever happened in a
20 hypothetical situation? 13:08
21 A. That's correct.
22 121 Q. That is a summary of what went on. Now I earlier on
23 tried to work out how many times she asked him or tried
24 to lead him down the kind of corruption road, if you
25 want to call it that, before he even made the slightest 13:08
26 error and I came that I think it was on his, on the
27 tenth time that he brings up possibility of this
28 investment?
29 A. Sorry, I didn't count the number of times.

1 122 Q. Yes. Now I'm counting questions which would say start
2 on page 5, particularly where she says to him at a
3 certain point "are we speaking to the wrong guy
4 maybe?". His demeanour on the video, and we will all
5 see it again, but he comes across as somebody who is 13:09
6 kind of eager to please, isn't that right, and eager to
7 get investment into Sligo? He is certainly open and
8 honest I think you said, or open and direct I think you
9 commented in your report in his interaction with her?

10 A. Yes. 13:09

11 123 Q. Yeah. So then she goes on on page 6 and she says:
12 "You can do that?", and it kind of takes up from there:
13
14 "what would you need to do that for us? What would you
15 need do that for us?". 13:09
16
17 That is where it starts. Around there I count a few
18 questions which are leading up to that.

19 MR. DOHERTY: I am very slow to interrupt Mr. O'Connor's
20 questions and obviously he is perfectly free to 13:09
21 cross-examine the Inquiry Officer in relation to her
22 report as he sees fit, but the question of the views
23 formed by the Inquiry Officer that there is a prima
24 facie breach is a precondition to this investigation
25 taking place. The issues surrounding Councillor 13:10
26 Queenan's demeanour and the conduct of the interview
27 are matters exclusively for this Commission to
28 determine, and the views of this Inquiry Officer are
29 not germane to that save as the precondition to the

1 investigation taking place. So while, of course,
2 Mr. O'Connor can ask these questions the views of
3 Ms. Laird really are neither here nor there one way or
4 the other. It will be for this Commission to make its
5 determination having considered the transcript and the 13:10
6 video evidence together rather than anything Ms. Laird
7 may believe about it. I simply make that observation
8 just having allowed Mr. O'Connor to ask a couple of
9 questions down this line. Ms. Laird, no more than this
10 Commission, is coming to the situation secondhand, she 13:10
11 wasn't in the room. It'll be for this Commission to
12 determine, based on the video and audio evidence, what
13 the appropriate demeanours and inferences are to be
14 drawn from the questions as asked and the answers as
15 given. 13:11

16 MR. O'CONNOR: Oh I accept, I'm not going to try and
17 ask Ms. Laird to trespass on, on your function in any
18 way but at the same time I think in cross-examination,
19 particularly in circumstances --

20 CHAIRMAN: But Ms. Laird has a particular statutory 13:11
21 function to deal with, to express an opinion and she
22 does it in the last paragraph.

23 MR. DOHERTY: Yes.

24 CHAIRMAN: The second last paragraph.

25 MR. O'CONNOR: I'm not going to labour the points but 13:11
26 I do think at the same time she's somebody who has
27 looked at this, she is the investigator. She is, you
28 know she is in the same position as, if this was a
29 criminal situation, as maybe a superintendent would be

1 in the witness box and I think that a lot of the cases
2 that touch on this where there's anonymity might be in
3 a situation where a superintendent gives an opinion
4 somebody might be a member of a certain organisation
5 and certainly you're entitled to -- 13:12

6 CHAIRMAN: well that's not what the Act says and she
7 has to express an opinion of whether there is prima
8 facie evidence to sustain the complaint? That's the
9 role rather than an analysis of our function.

10 MR. O'CONNOR: well I mean I'm in the hands of the 13:12
11 Commission. At the end of the day if there's a ruling
12 being made against me that I cannot continue with my
13 cross-examination, you know, there is nothing I can do
14 about that but I would like to continue for a little
15 while? 13:12

16 CHAIRMAN: well you've heard what I said.

17 MR. O'CONNOR: so if there is a ruling that I can't
18 ask any more questions.

19 CHAIRMAN: well if they're particularly relevant to
20 what the, to what she has been requested to do? 13:12

21 124 Q. MR. O'CONNOR: All right, I will endeavour to keep on
22 track. Ms. Laird who instigated, in your investigation
23 who would you say instigated the suggestion that there
24 might be some, something in this for Mr. Queenan?

25 A. I believe, sorry, I'm trying to recall exactly. I mean 13:13
26 I don't have the transcript in front of me now. Sorry,
27 I don't recall exactly who, who brought it up first?

28 125 Q. well could I put it to you it was this woman Nina who
29 instigated it?

1 A. If that's what the transcript says.

2 126 Q. I mean I don't want to be unfair to you but it is kind
3 of an important point as to who instigates this? I
4 would put it to you that not alone did she instigate it
5 but it was a proactive series of questions? 13:13

6 A. Well again, as I say, my, my role was to gather the
7 evidence and put it forward, it wasn't to pull it apart
8 line by line and to put forward a view on that, which
9 is the Commission's role.

10 127 Q. Yes. 13:13

11 A. As I say in terms of if I, if I looked at the
12 transcript I could confirm one way or the other but --

13 128 Q. Now I think that in your report at paragraph 9.8 in
14 connection with this talk of an investment that
15 eventually was mentioned by my client that you used the 13:14
16 word "possibly"?

17 A. Eh-hmm.

18 129 Q. Would you agree that my client at all stages talked
19 about hypothetical future opportunity?

20 MR. DOHERTY: Again, with the greatest respect to 13:14
21 Mr. O'Connor, these are really matters for the
22 Commission reading the transcript and watching the
23 video themselves as opposed to Ms. Laird. Ms. Laird's
24 view on this, one way or the other, isn't evidence
25 that's being relied upon as part of the investigation. 13:15
26 CHAIRMAN: It can't be relied upon.

27 MR. DOHERTY: Absolutely, Chairman.

28 130 Q. MR. O'CONNOR: At paragraph 9.10 of your report you
29 say that:

1 "While I note that Councillor Queenan does respond to
2 Nina's question about his personal business venture, it
3 is my opinion that at this point he appears to be
4 trying to keep his business opportunity separate to be
5 discussed at some future date". 13:15
6
7 A. That's correct.
8 131 Q. That was your opinion as the investigator?
9 CHAIRMAN: No, the Inquiry Officer.
10 132 Q. MR. O'CONNOR: Sorry, as the Inquiry Officer. 13:15
11 A. Correct.
12 133 Q. That he was trying to keep it separate. Did you look
13 at his Annual Declaration for the previous year, 2014?
14 A. I did.
15 134 Q. And that was a more fulsome account of his assets? 13:15
16 A. It was.
17 135 Q. Yeah. Did you, did you meet with Councillor Queenan in
18 respect of this or --
19 A. No, it's not generally a requirement.
20 136 Q. Were you given, certainly we were not given but were 13:16
21 you given a transcript of what happened after he left
22 the room between the camera man and Nina?
23 A. No.
24 137 Q. Because we weren't given that either. I take it you
25 didn't get any recording or any record of what went on 13:16
26 in the ear piece?
27 A. No. I think, I understand that you've received
28 everything that we have, that I had access to.
29

1 138 Q. Yes, thanks very much Ms. Laird.

2

3

END OF CROSS-EXAMINATION OF MS. LAIRD BY MR. O'CONNOR

4

5

CHAIRMAN: Thank you.

13:16

6

7

THE WITNESS WITHDREW

8

9

CHAIRMAN: we will keep going.

10

MR. DOHERTY: Yes, subject to the Commission, I am just

13:17

11

raising a logistical issue. There are obviously the

12

three telephone calls and the meeting, so the audio of

13

the three telephones calls and then the video. Given

14

the time I think we would probably be able to listen to

15

the two introductory telephone calls before the lunch

13:17

16

break that's being proposed by you, Chairman, at 1:30

17

and then perhaps have the video recording immediately

18

after that after lunch, followed by the final telephone

19

call, to deal with them chronologically if that's

20

acceptable to the Commission?

13:17

21

CHAIRMAN: Yes.

22

MR. DOHERTY: I should just say to the Commission in

23

the materials that the Commission have been provided

24

with, RTÉ have produced their own transcripts of the

25

telephone conversations which the Inquiry Officer had

13:17

26

listened to and checked against the audio recordings

27

and expressed the view that they were largely accurate.

28

The Commission has separately engaged Gwen Malone

29

Stenographers and so, subject to My Friend, what we

1 were going to propose to the Commission is that those
2 transcripts be provided to the Commissioners now so
3 that you have them in front of you while the audio is
4 being played and can gauge for yourself the accuracy or
5 otherwise of the record.

13:18

6
7 (Two phone calls played to the Commission)

8
9 MR. DOHERTY: I think, subject to the Commission I think
10 it is appropriate to break there? The video itself is
11 45 minutes or so, so it's quite lengthy.

13:29

12 CHAIRMAN: All right.

13 MR. O'CONNOR: I am in the hands of the Commission.
14 There was one error in the transcript at page 2 where
15 it said, it attributed a significant amount of stuff to
16 Councillor Queenan that was actually the --

13:29

17 MR. McCARTHY: It's line 23.

18 MR. O'CONNOR: Line 23, I'm sure the Commission are
19 aware of that?

20 MR. McCARTHY: Yeah, we've -- yeah.

13:29

21 MR. O'CONNOR: But I'm --

22 CHAIRMAN: So we will try to be back in an hours time.

23 MR. O'CONNOR: That's fine with us, Chair.

24 CHAIRMAN: And the other side?

25 MR. DOHERTY: Yes.

13:29

26 CHAIRMAN: Thank you all.

27
28 THE HEARING ADJOURNED FOR LUNCH

29

1 THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:

2
3 CHAIRMAN: Now Mr. Doherty.

4 MR. DOHERTY: Yes, Chair.

5 CHAIRMAN: Good afternoon. So are we ready to do the 14:35
6 next phase?

7 MR. DOHERTY: Yes, Chairman. We -- what we propose,
8 just if I can explain? As the Commission will be aware
9 from Mr. Culliton's evidence there is more than one
10 video angle taken of the interview, and I discussed 14:35
11 this with Mr. O'Connor, we propose to just show that
12 once, rather than have the same thing shown from two
13 different angles, from one of the cameras which has
14 quite clear audio. Mr. O'Connor and his solicitor have
15 identified some footage from I think the other cameras, 14:36
16 or one of the cameras, that they want to show after the
17 interview has terminated which touch upon issues that
18 were raised in cross-examination with Mr. Culliton, so
19 we will do that afterwards if that is acceptable to the
20 Commission? 14:36

21 CHAIRMAN: Yes.

22 MR. DOHERTY: But in the first instance we will just
23 play the camera of the video interview with Councillor
24 Queenan.

25 CHAIRMAN: Right. 14:36

26 MR. DOHERTY: It is on the screen behind you, Chairman.
27 Again I should say just for the record the transcript
28 is available from Gwen Malone in relation to this
29 recording as well.

1 (Video recording played to the Commission)

2
3 MR. DOHERTY: There that is the video recordings I
4 think that I wanted to show to the Commission. There is
5 one further audio recording of the telephone 15:25
6 conversation, again you should have the transcript of
7 that final audio recording.

8
9 (Phone call audio played to the Commission).

10 15:30
11 MR. DOHERTY: Now that concludes the audio and video
12 recordings taken by RTÉ in terms of their interaction
13 with Councillor Queenan and, as the Commission knows,
14 edited excerpts of the video were played in the RTÉ
15 documentary which ultimately lead to the Council's 15:30
16 complaint.

17
18 In opening the application this morning or earlier
19 today, should I say, I did indicate to the Commission
20 that I would open in full Councillor Queenan's response 15:30
21 to the Inquiry Officer in respect of the complaint, I
22 think it is appropriate that I should do that now, now
23 that the Commission have seen the interview and heard
24 all of the audio and read the transcripts so that's
25 properly contextualised. In the folder before the 15:31
26 Commission the relevant correspondence is to be found
27 behind divider E and Tab 6. It commences with a letter
28 of the 12th April 2017 from S. Durkan solicitor on
29 behalf of the Councillor Queenan. I propose opening

1 that and the subsequent letter from Councillor Queenan
2 himself in full to the commission. So the first letter:

3
4 "Dear Ms. Laird, I refer to the above matter and
5 confirm that I act on behalf of Councillor Joseph 15:31
6 Queenan of Lackensleva, Enniscrone, County Sligo who
7 has forwarded me a copy of your letter dated the 21st
8 March 2017. I am attaching herewith my client's
9 response to the specific issues raised by you in your
10 letter. In addition, I would also ask that you 15:31
11 consider the following matters which have been
12 repeatedly raised by this office in correspondence both
13 with RTÉ and with the Sligo County Council in relation
14 to the circumstances which gave rise to the allegations
15 against my client. 15:32

16
17 I believe that RTÉ has a serious question to answer
18 with regard to the methods employed by them in their
19 so-called 'investigation'. I believe that RTÉ has
20 behaved in a manner which is disingenuous and deceptive 15:32
21 and which has as its clear design the entrapment and
22 misrepresentation of my client. The demeanour of the
23 undercover reporter, Nina, in the filmed footage was
24 very arguably flirtatious and stooped to a level of
25 innuendo and flirtation which was in my view designed 15:32
26 to elicit specific responses. My client at all times
27 believed he was meeting this person in the foyer of
28 Sligo Park Hotel for a quick cup of coffee as a
29 courtesy to a potential investor in West Sligo who had

1 travelled from London. On arriving at the hotel on
2 that day he then discovered that the meeting was set to
3 take place in a private room which had already been set
4 up by the undercover reporter. The tone and manner of
5 the conversation with the person posing as Nina was 15:32
6 therefore predesigned and it is clear to me that this
7 person was highly skilled in her ability to entrap my
8 client. I believe that the written transcripts of the
9 meeting cannot be read in isolation but should be read
10 in conjunction with a viewing of the filmed footage of 15:33
11 the meeting, where the demeanour and tone of the
12 respective parties are clearly at odds.

13
14 The issue of confidentiality between my client and the
15 undercover reporter was at all times instigated by 15:33
16 Nina, who then sought to elicit a reference to
17 confidentiality from my client in order to make him
18 appear as if he was acting in a disreputable manner. I
19 attach herewith copy typed transcript of the initial
20 telephone conversation of the 20th October 2015 15:33
21 (provided by RTÉ which has not been independently
22 verified) and refer you to page 2 thereof where Nina
23 first makes mention of her purported intention when she
24 states that 'it is strictly confidential'. My client
25 makes no such reference to confidentiality at this 15:33
26 point. On page 2 of the transcript of the follow up
27 conversation of the 20th October 2015 Nina again raises
28 the issues by stating 'but we want to be strictly
29 confidential about that', and again on page 6 asks our

1 client to confirm 'and it is strictly confidential of
2 course, you know?'. On page 11 of the transcript of
3 the filmed meeting of the 4th November 2015 after our
4 client has specifically stated 'I am not looking for
5 anything, I am not looking for anything" and later 15:34
6 'forget about me for a second, concentrate on your
7 project. I'm not looking for anything out of it', Nina
8 clearly attempts to entrap and mislead my client in
9 stating 'we would keep it confidential, that
10 investment'. I refer you to the attached typed 15:34
11 transcript of the meeting of the 4th November and the
12 follow up telephone call of the same day (which said
13 transcripts were provided by RTÉ and have not been
14 independently verified) whereon I have underlined in
15 red the nine times Nina either alluded to or directly 15:34
16 referred to money to my client and underlined in green
17 the 14 times my client confirmed that he expected no
18 payment for his efforts in assisting Nina, and
19 underlined in yellow the 13 times my client referenced
20 the objective nature of the planning decision process. 15:34
21
22 On each occasion when my client insisted that he simply
23 wanted to do his job and had no interest in any reward
24 of any nature the undercover reporter insistently and
25 repeatedly sought to distort and sidetrack the 15:35
26 conversation and insisted on referencing reward or
27 money and sought to induce and connive in wrongful acts
28 which my client at all time rejected. It was in
29 response to these attempts and to the specific

1 requirements about investment that my client mentioned
2 a potential business opportunity he had identified.
3 This conversation was clearly one where my client was
4 talking off the top of his head in view of the fact
5 that he had had a woman in front of him who presented 15:35
6 herself as an agent on behalf of London based investors
7 interested, interesting in investing in the West Sligo
8 area. In protracted correspondence with RTÉ I have
9 repeatedly asked them to confirm the following matters
10 for me in relation to their undercover reporter: 15:35
11
12 (1) The true identity of the person posing as Nina
13 Carlsson.
14 (2) Confirmation if the person posing as Nina Carlsson
15 is an employee of RTÉ? 12:22
16 (3) Confirmation of the nationality of the person
17 posing as Nina Carlsson.
18 (4) Confirmation that the person posing as Nina
19 Carlsson had been fully vetted prior to her employment,
20 including her employment background. 15:35
21 (5) Confirmation as to whether or not the person posing
22 as Nina Carlsson has any criminal convictions wither in
23 this or in any other jurisdiction?
24
25 RTÉ has repeatedly failed, refused and neglected to 15:35
26 provide this information. It is in my view therefore
27 highly dangerous to seek to rely on material gathered
28 against my client in circumstances where the methods
29 employed were themselves at the very least suspect. I

1 believe the maxim of 'he who comes into equity must
2 come with clean hands' must certainly preclude any
3 reasonable person from over reliance on evidence gained
4 in such a dubious manner and where the control was
5 always in the hands of RTÉ. My client essentially 15:36
6 walked into a trap which RTÉ designed in a specific
7 manner in order to elicit preordained responses from
8 him.

9
10 From my own knowledge of the circumstances which have 15:36
11 given rise to the referral to your office I make the
12 following assessment of my client's actions against the
13 Code of Conduct for Councillors using the numeration
14 contained therein as follows:

15 15:36
16 (2) General conduct and behaviour:

17 At all times in conversation with Nina my client
18 reiterated he would assist her in any way he could in
19 the preplanning process and that this is something he
20 would do for anyone and something which he did not ask 15:36
21 any favours or remuneration for. His decision to
22 assist Nina was based solely on consideration of the
23 public interest and common good and in doing so he
24 believed he was serving the local authority and its
25 people conscientiously, honestly and impartially. He 15:37
26 never promised to do anything he wasn't entitled to do
27 as a County Councillor. He never promised to deliver
28 any results or be in a position to exert any influence
29 over the planning process. He promised no more or no

1 less than any other County councillor could. That he
2 would take a proposal to the planning office and get
3 their initial view on the viability of that proposal.
4

5 (3) Conflict of personal and public interest: 15:37
6 My client never sought to influence or seek to
7 influence a decision of the local authority in any
8 matter and, in fact, at all times reiterated that he
9 could not influence this process as it is an Executive
10 function. 15:37

11
12 As set out in my client's attached statement, my client
13 made some minor errors in completing his annual written
14 Declaration for 2014 and 2015. His original annual
15 written Declaration was clearly submitted in error as 15:37
16 the entire Part 2 thereof has been left blank. My
17 client regrets this oversight, which was a mistake and
18 not in any way intended to mislead the Council or the
19 public in relation to his declarable interests. My
20 client's profession as an auctioneer and his retail 15:37
21 interests are well known locally to his constituents
22 and to his fellow councillors and he is fully tax
23 compliant with regard to all his business interests.
24 Given the workload undertaken by councillors it might
25 have been wise to ensure that a structure was put in 15:38
26 place by the County Manager to ensure that all
27 councillors are thoroughly instructed as to how to
28 correctly complete the annual written Declaration.
29

1 My client is keenly aware of the trust placed in him as
2 an elected official and he does not take that duty in
3 any way lightly. My client never sought to use his
4 official position to benefit himself improperly.

15:38

6 (4) Planning:

7 My client at all times when dealing with planning
8 matters and in particular as communicated to Nina that
9 the decisions in relation to planning were not matters
10 which he has any influence over as they are executive
11 functions.

15:38

13 (5). Gifts:

14 My client never sought, exacted or accepted any
15 remuneration, fee or reward or other favour for any act
16 done or not done by virtue of his office in these
17 matters.

15:38

19 (6) Hospitality:

20 My client was never influenced in the discharge of his
21 official functions as a result of hospitality accepted
22 by him and believes that it could not be said of him
23 that he ever accepted any hospitality which could be
24 held to have influenced him in the said discharge of
25 his duties.

15:38

15:39

27 (7) Personal dealings with Local authority:

28 My client has never sought preferential treatment from
29 the local authority in relation to any personal

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dealings.

(8) Regard for Council resources:

At all times my client uses reasonable care for local authority property, resources and funds and does not use them or permit their use for unauthorised or non-official purposes.

15:39

(9) Satisfactory working relationships:

My client aims at all times to conduct himself in a courteous and professional manner with others.

15:39

(10) General:

The contents of this section are accepted by my client.

15:39

In his attached response my client freely admits his failures with regard to his obligations under the Local Government Act and would ask that the Commission have due regard to his response therein in consideration of the complaint before them. My client holds the Office of Councillor of Sligo County Council in the very highest regard and is keenly aware of his obligations and duties thereunder and trusts that the Commission will have due regard to all of the information before it, and the circumstances herein, in making its final determination.

15:39

15:39

We await hearing from you in due course".

1 Then Councillor Queenan's personal response is as
2 follows. Having referred to Ms. Laird's letter of the
3 21st March he says:

4
5 "I note that you have requested that I respond to the 15:40
6 specific items of enquiry as set out in your letter of
7 the 21st ult and your inquiry into possibly
8 contraventions of Sections 168, 169, 170 and 171 of the
9 Local Government Act 2001, that you intend to focus on
10 the annual Declarations submitted by me to Sligo County 15:40
11 Council, together with copy documentation furnished to
12 you by RTÉ in relation to recordings and transcripts
13 generated by RTÉ for broadcast of a programme by them
14 on the 7th December 2015. I would therefore be obliged
15 if you would kindly consider the following matters: 15:40

16
17 Annual Written Declarations:

18 2012 - My annual written Declaration for 2012 is a full
19 declaration of all my interests for the period February
20 2011 to February 2012. At Section 1 and 2 my 15:40
21 professions as a farmer and an auctioneer are disclosed
22 and at Section 6 my directorship in the company known
23 as Waterpoint, Enniscrone is disclosed. My
24 directorship in Waterpoint is as a result of my
25 nomination to the Board of Directors of Enniscrone 15:40
26 Leisure Limited (trading as Waterpoint, Enniscrone) by
27 Sligo County Council, who are one of the nominating
28 bodies for that Board of Directors. My directorship is
29 not", sorry, "is non-remunerated.

1 2013 - My annual written Declaration for 2013 lists my
2 profession as 'farmer' but I note that in error I have
3 not recited my occupation as auctioneer thereon. This
4 was an oversight on my behalf, for which I sincerely
5 apologise. My profession as an auctioneer is well 15:41
6 known to all my constituents and to my fellow
7 councillors. My auctioneering profession is recited on
8 all my electioneering media and my omission on the
9 Declaration for 2013 was an oversight, which I regret,
10 but was in no way intended to mislead anyone. 15:41

11
12 2014 - My annual written Declaration for 2014 lists my
13 profession as 'farmer' and 'business person'. In the
14 middle of 2013 I opened a small minimarket on Main
15 Street, Enniscrone from which I currently operate both 15:41
16 my retail business and my auctioneer business. The
17 business known as Lackensleva Limited was registered on
18 the 24th May 2013 and is the company through which I
19 operate all of my retail business interests.

20 15:41
21 2015 - On the 8th February 2015 I submitted my annual
22 written Declaration but completely omitted to fill in
23 Part 2 thereon in relation to declarable interests. On
24 the 8th February I was chairing a meeting of the
25 Council and it is clear to me now that this one was 15:42
26 caught up in correspondence and taken off my desk
27 before it was completed by me. As I was Chairman of
28 Sligo County Council at the time I was under genuine
29 work pressures and did not realise that this had been

1 submitted in error. This was clearly an error and one
2 for which I apologise most sincerely. As of the 8th
3 February 2015 my declarable interests were the same as
4 they had been in my previous written Declaration
5 submitted on the 27th January 2014. On the 20th 15:42
6 November 2015 I submitted an amended annual written
7 Declaration to Sligo County Council after it was
8 brought to my attention that the Declaration submitted
9 by me on the 8th February had not been fully completed.
10 This was a mistake and oversight on my part and was in 15:42
11 no way an attempt to mislead anyone or withhold
12 information in relation to my declarable interests. The
13 Declaration submitted by me on the 27th January 2014
14 sets out my description as a 'farmer' and 'business
15 person' and also recites my company directorship in the 15:42
16 business I operate as a supermarket on Main Street,
17 Enniscrone, County Sligo. In addition to my submission
18 of an amended annual written Declaration for 2015 I
19 issued a statement on the 2nd December 2015 setting out
20 a full list of all of my business interests which set 15:43
21 out:

22
23 (a) My retail premises on Main Street, Enniscrone from
24 which I operate an auctioneering and retail shop known
25 as 'Checkout' and a rented shed across the road which 15:43
26 housed the agricultural feeds sold in the Checkout
27 stop. This declarable interest had been included in
28 previous written declarations, including the
29 Declaration submitted on the 27th January 2014.

1 (b) A new business which I had set up since the 8th
2 February 2015 which involved the renting of a retail
3 unit in Strandhill, County Sligo from which I opened a
4 Gala shop on the 26th July 2015. This declarable
5 interest was a new interest and was therefore not 15:43
6 required to be declared by me on the 8th February 2015.
7 (C) My interest in approximately 170 acres of lands as
8 a dairy and livestock farmer, which farming interests
9 are now operated by my son on a full time basis. This
10 declarable interest had been included in previous 15:43
11 written declarations, including the Declaration
12 submitted on the 27th January 2014.
13 (d) My profession as an auctioneer. This declarable
14 interest had been included in previous written
15 declarations, including the Declaration submitted on 15:43
16 the 27th January 2014 which recites my profession as
17 'business person' with a business address at Main
18 Street, Enniscrone. You might note that in my statement
19 of the 2nd December 2015 I refer to the fact that I
20 earn commission as a managing agent acting on behalf of 15:44
21 owners of long term rental properties which are rented
22 out under the Local Authority Residential Accommodation
23 Scheme. For the sake of clarity, I confirm that the
24 commission earned by me in this regard does not exceed
25 €6,348.69 and therefore was not required to be declared 15:44
26 by me under Section 8 of the Annual Written Declaration
27 Local Authority Contracts.
28
29 I can only apologise for the mistakes made by me in not

1 filling in my annual written Declaration for 2015
2 correctly in February 2015 as I was obliged to do. By
3 way of explanation for my oversight I would ask that
4 you consider in June 2014 Sligo Borough Council and
5 Sligo County Council were merged and that I was the 15:44
6 first Chairman of the amalgamated Council on the date
7 of the submission of my annual written Declaration on
8 the 8th February 2015. In addition, in early 2015
9 Sligo County Council was getting ready to welcome the
10 state visit of the Prince of Wales and the Duchess of 15:44
11 Cornwall that May. As a result of the extreme level of
12 added work duties and pressures upon me I neglected my
13 obligation to submit a comprehensive written
14 declaration as I should have done and I sincerely
15 regret this. 15:45

16
17 I repeat the contents of my written statement of the
18 2nd December 2015 that I take my role as an elected
19 representative very seriously and am most conscious of
20 the requirement to maintain standards of transparency 15:45
21 in all of my business interests. My business interests
22 are well known to my fellow councillors, as well as
23 locally, and I'm fully tax compliant with regard to all
24 of those interests.

25
26 I note that in your letter dated the 21st March you
27 make specific references to (i) shares held in
28 Lackensleva Limited and (ii) business referred to as
29 "Queenan Agri-feeds". You might note that Lackensleva 15:45

1 Limited is the company through which all of the
2 accounts for my retail businesses operate. Lackensleva
3 Limited was incorporated on the 24th May 2014. Part 1
4 of the annual written Declaration refers to
5 'profession, occupation et cetera, relating to dealing 15:45
6 in or developing land'. I note that on my annual
7 written Declaration dated the 27th January 2014 at Part
8 2, section 1 I've given my description as 'farmer' and
9 'business person' and my addresses are given as
10 Lackensleva, Enniscrone, County Sligo (where my farm is 15:45
11 located) and Main Street, Enniscrone, County Sligo,
12 from which I operate my retail minimarket and
13 auctioneering business. At Part 2, Section 6 of the
14 annual written Declaration entitled "Directorships" I
15 have recited the business address of Lackensleva 15:46
16 Limited but I note that in error I have not stated the
17 number of shares held by me in that company at Part 2,
18 section 5 'Shares'. Lackensleva Limited is the company
19 through which I operate my retail businesses and was
20 established in order to separate my retail interests 15:46
21 from my auctioneering income. I have never failed to
22 disclose my retail interests in my two minimarkets in
23 Enniscrone, and Strandhill and this oversight was not
24 intentional but was a genuine mistake by me in failing
25 to realise that even though I had already declared my 15:46
26 retail interests that I also need to declare the number
27 of shares held in the company through which my retail
28 interests operate. The amended annual written
29 Declaration submitted by me on the 20th November 2015

1 includes my occupation as business person and at Part
2 2, section 6 thereof recites my directorships in
3 Lackensleva Limited and Waterpoint, Enniscrone (as
4 nominee of Sligo County Council to that Board of
5 Directors). I note that Part 2, section 5 of this 15:46
6 amended annual written Declaration has been left blank
7 and I now understand that despite the fact that I had
8 already declared my directorship in Lackensleva Limited
9 and fully declared my retail businesses, that for the
10 sake of completeness I should also have set out at Part 15:47
11 2, section 5 the number of shares held me by in the
12 company through which I operate my retail businesses.
13 I don't accept that there are discrepancies in my
14 declaration in relation to Lackensleva Limited as you
15 suggest as the company is not a separate and solitary 15:47
16 company but is essentially the vehicle through which I
17 operate my declared retail businesses. What I do
18 accept is that I failed to fully comprehend that even
19 though I have declared this company in my retail
20 business at Part 2, Section 6 of the Declaration, for 15:47
21 the sake of completeness I should also have stated the
22 number of shares held by me in this company.

23
24 At no stage did any present or previous County Manager
25 provide any guidance to councillors in the proper 15:47
26 execution of annual written declarations. I don't
27 believe I am alone in my belief that perhaps if
28 guidance had been provided by the County Manager in
29 this matter less genuine mistakes of this nature would

1 be made.

2
3 In relation to your reference to "Queenan Agri -feeds"
4 you might note that no such separate business exists. I
5 currently sell agricultural feeds from my Checkout shop 15:47
6 in Enniscrone but for practical purposes rent a shed
7 directly across the road from my retail shop where the
8 stock is stored. The conversation with the fictitious
9 posing as Nina included reference to a 'potential
10 future business' and I note that the transcripts 15:48
11 provided by RTÉ recite me as stating 'I am starting an
12 agri-feed business in Enniscrone where I know there is
13 a market'. Again I am at a loss to understand how this
14 can be stated by you to be a discrepancy? The annual
15 written declaration is for declaring current interests, 15:48
16 not potential future interests and I am, therefore,
17 unsure as to why this matter has been specifically
18 highlighted by you? My statement of the 2nd December
19 specifically sets out that 'I rent a shed across the
20 road from the Checkout shop in order to house fuel and 15:48
21 agricultural feeds sold in the shop'. I would,
22 therefore, be obliged if you would kindly confirm in
23 what manner there has been any omission or discrepancy
24 by me in this regard.

25
26 Part 15 of the Local Government Act 2001:

27 I note that you have received unedited transcripts and
28 unedited recordings of media generated by RTÉ. I do
29 not have the benefit of having an unedited copy of

1 recordings, although I have repeatedly requested
2 through my solicitor that RTÉ provide me with same, or
3 in the alternative that they would broadcast the full
4 unedited recordings, which they have failed and refused
5 to do. A Freedom of Information request was made to 15:49
6 RTÉ on the 24th November for a copy of all audio and
7 video footage they told, they hold about me but my
8 request for access to this information was refused",
9
10 and he attaches correspondence in that regard. 15:49

11
12 "Given the contents of this letter it is surprising to
13 me that unedited film footage has been furnished to you
14 without a copy also being forwarded to me when the
15 information relates to me and is now being used as a 15:49
16 means to judge whether or not I have acted in
17 contravention of the provisions of the Ethical
18 Framework? I believe that if that information has been
19 provided to you then as it is footage of me and it is
20 being used as a means upon which to judge me then in 15:49
21 the interest of fairness, balance and allowing me to
22 fully defend myself against any allegations being made
23 against me I should also be provided with a copy of the
24 audio and video footage held by you".

25
26 That was duly done. 15:49

27
28 "Without prejudice to the foregoing, the actions of RTÉ
29 in broadcasting highly edited covertly filmed footage

1 and one sided allegations against me without allowing
2 me a platform for a concurrent right of reply has
3 resulted in loss, injury and damage to myself and to my
4 family and this is still ongoing. In late September
5 2015 I spent two weeks in Canada where my brother was 15:49
6 very sick and was undergoing a bone marrow transplant
7 operation in Calgary. During the period of my time in
8 Canada, while he was recovering and during the months
9 after his operation, my brother's health was a major
10 cause of concern for me and for the entire family. My 15:50
11 brother subsequently passed away on the 26th December
12 2015. I was not too long back from Canada in October
13 2015 when I received the first phone call from a person
14 calling herself Nina. I agreed to meet Nina on the
15 basis that she represented a company who were looking 15:50
16 to invest money in West Sligo, in the West Sligo area
17 and were looking for assistance in relation to the
18 preplanning process. In my role as a County
19 Councillor one of the functions I performed is I can
20 take information to the planning office and get their 15:50
21 preliminary view on whether or not the proposed
22 development would be viewed favourably or not? In all
23 my conversations with Nina I repeated stated that this
24 was something that I could do for her, as any County
25 Councillor can do, but I could not guarantee that 15:50
26 planning permission would be granted as this was an
27 Executive function of the planning office. I told Nina
28 repeatedly that if she and her experts identified sites
29 and came to me with maps and plans that I would present

1 them to the planning office in order to get their
2 preliminary view. I repeated over and over in
3 conversation with this person that no one could
4 guarantee her planning permission and that all I could
5 do was what I could do for anyone, that is to present 15:51
6 her plans to the planning office, get a preliminary
7 view and then let her know what that preliminary view
8 was, and that all of this was something that I would do
9 without requiring any remuneration from her or from
10 anyone. I refer you to copy letters from S. Durkan 15:51
11 Solicitor to RTÉ dated 20th and 25th November, which I
12 understand have been furnished to you and which set out
13 my defence and concerns with regard to the allegations
14 levelled against me by RTÉ and the contents of which I
15 repeat herein. 15:51

16
17 I thought when I met this person Nina that I was
18 meeting someone with a genuine interest in investing in
19 West Sligo and for that reason I was keen to meet her
20 and to help her, if I could. It would be clear to you, 15:51
21 having viewed the filmed footage, that I did not attend
22 this meeting in business mode. On the morning of the
23 meeting I was severely under pressure and was running
24 20 minutes late. My brother's failing health was a
25 major concern and I was not at all focussed on the 15:51
26 meeting that morning and was very much distracted, but
27 having promised to meet with this person, who I
28 understood was coming from London, I felt like I had no
29 option but to meet her. I was casually dressed as we

1 had arranged to meet in the lobby of the hotel for a
2 coffee and so I was surprised when the meeting then
3 took place in a private room. The issue of
4 confidentiality in these conversations was at all times
5 instigated by this Nina person. I believe that I acted 15:52
6 correctly at all times in conversation with this person
7 when we spoke about the planning process, and I
8 repeatedly informed her that there was no way that I
9 could influence the process and that in helping her I
10 was only doing what I would do for anyone else and, 15:52
11 therefore, I did not seek any form of monetary gain,
12 despite her repeated attempts to bring up the matter of
13 what she could do for me? What I do sincerely regret
14 is that I allowed myself to enter into a hypothetical
15 conversation with this person about a potential future 15:52
16 investment opportunity that I had identified. In my
17 opinion, the written transcripts of the conversation
18 with Nina do not give a fair assessment of the tone of
19 the conversation between us. Having viewed the filmed
20 footage once at a meeting in RTÉ I was extremely 15:52
21 embarrassed to see how easily I was manipulated and
22 induced into having this hypothetical conversation. I
23 have paid severely for this lack of awareness. It is
24 difficult to accuse RTÉ of wrongdoing in this matter
25 without it seeming like I'm looking to excuse myself. 15:52
26 I admit that for a brief moment I thought that in
27 meeting Nina I was making a good networking connection
28 as she stated that she represented foreign investors
29 and that they were persons who would be interested in

1 investing in viable business opportunities. As a
2 business person and as a politician I am always happy
3 to make new business and network connections and, if I
4 am honest, I was also trying to impress the person in
5 front of me who represented herself as a serious 15:53
6 business person who was keen to invest in West Sligo.
7 As a Sligo County Councillor and a business person it
8 was only natural to want to demonstrate by own
9 business", sorry, "my own business credentials to this
10 person. It is only on reflection that I now understand 15:53
11 that I was really not in the proper frame of mind to be
12 having this conversation with this person, given the
13 level of stress and worry I was going through at the
14 time as a result of my brother's illness. However, I
15 allowed myself led in the manner of entrapment by this 15:53
16 person and my gullibility in this regard as a source of
17 huge personal embarrassment and shame to me. I repeat,
18 however, that I stated over and over to Nina, both
19 during our meeting and in our subsequent conversation,
20 that anything I would do I would do for the benefit of 15:53
21 Sligo and that any potential future business would be
22 done above board.

23
24 I never sought, exacted or accepted payment from any
25 person, any remuneration, fee, reward or other favour 15:54
26 for anything done or not done by virtue of my office
27 and I wholeheartedly believe that in no way can it be
28 said that I was in contravention of Section 170 of the
29 Local Government Act 2001.

1 I take the role of County Councillor very seriously. I
2 take my duties and obligations to the people of West
3 Sligo very seriously and I am engaged with and involved
4 in the running of multiple community groups throughout
5 West Sligo on a voluntary basis. I give my time freely 15:54
6 and seek no acknowledgment or reward for my time and
7 effort. It is an honour to represent West Sligo and it
8 is one that I do not take at all lightly. I trust that
9 the Commission will fully consider all of the evidence
10 before it when it makes, when making its determination 15:54
11 on the allegations before it".

12
13 So that's Councillor Queenan's response to the Inquiry
14 Officer and I thought it appropriate to open that in
15 full to the Commission to reflect his position in terms 15:54
16 of the Statement of Alleged Contraventions that are
17 before the Commission.

18
19 The last thing I want to do before closing the
20 presentation of the case against Councillor Queenan, if 15:54
21 I may, is just to bring Commissioners just to the
22 legislation, on one more occasion, to the Code of
23 Conduct to identify the specific provisions? I
24 understand that, from Mr. O'Connor, that Councillor
25 Queenan intends to give evidence and obviously I will 15:55
26 seek to cross-examine him if he does do that and we'll
27 have a closing submission at the conclusion of
28 Councillor Queenan's evidence but I propose at this
29 instance simply to identify the legislative framework

1 for the contraventions and to leave that, the rest of
2 anything else I would say to submissions at the
3 conclusion of the investigation, if that's acceptable
4 to the Commission?

5 CHAIRMAN: Yes.

15:55

6 MR. DOHERTY: So hopefully the Commission have a book
7 of legislation? I'm sure Mr. O'Connor is familiar with
8 the provisions. In the first instance I wanted to
9 bring the Commissioners to the third Tab, which is Part
10 15 of the Local Government Act 2001. The Commission
11 will recall, obviously having opened the Statement of
12 Alleged Contraventions earlier today, that we are
13 primarily concerned with sections 168, 169, 170 and 171
14 as well as the Code of Conduct?

15:56

15 CHAIRMAN: Yes.

15:56

16 MR. DOHERTY: So section 168, and I appreciate the
17 Commission is well aware of this, provides as follows:

18
19 "In carrying out their functions under this or any
20 other enactment, it is the duty of every member and
21 every employee of a local authority and every member of
22 every committee to maintain proper standards of
23 integrity, conduct and concern for the public
24 interest",

15:56

25
26 And that provision that is referenced in the first
27 Statement of Alleged Contravention.

15:56

28
29 Under section 169 the Commission will be aware that a

1 provision is made for codes of conduct and under
2 subsection 3(a) of section 169 it provides as follows:

3
4 "Each member shall have regard to and be guided by the
5 relevant code of conduct in the exercise of his or her 15:57
6 functions".

7
8 Again one of the alleged contraventions that are
9 asserted against Councillor Queenan is by reference to
10 the specific Code of Conduct and the specific 15:57
11 provisions of that Code of Conduct. So if I can ask
12 the Commission just to turn to that Code of Conduct
13 briefly, which is behind Tab 4 of the booklet of
14 legislation? While, of course, the obligation that is
15 imposed by the section is one of general import the 15:57
16 Code of Conduct does itself provide some quite specific
17 obligations. The object of the Code being, as it says
18 on page 2:

19
20 "to set out principles and standards of conduct and 15:57
21 integrity for councillors, to inform the public of
22 conduct it is entitled to expect and to uphold public
23 confidence in local Government",

24
25 which of course is the general theme of the legislation 15:58
26 and the Code. If I can ask the Commission to look on
27 page 4 and to the "General Conduct and Behaviour"
28 provision set out at Section 2? There is a general
29 provision under Clause 2.1:

1 "The general conduct and behaviour of councillors in
2 carrying out their role is an important yardstick by
3 which the honesty, integrity, impartiality and
4 performance of Local Government is judged and public
5 trust maintained. It is important, therefore, that 15:58
6 these core values underpin all actions of councillors
7 affecting local authority business. As holders of
8 elected office they have a duty to keep faith with the
9 public trust placed in them. This is a personal
10 responsibility and requires them to observe the highest 15:58
11 ethical standards in the performance of their role".
12

13 Then specifically it provides:

14
15 "Councillor in carrying out their role should abide by 15:58
16 this Code and:
17 - act in a way which enhances public trust and
18 confidence.
19 - avoid conflicts of interests and never seek to use
20 improper influence. 15:58
21 - make decisions based solely on consideration of the
22 public interest and common good.
23 - serve their local authority and its people
24 conscientiously, honestly and impartially.
25 - promote equality and avoid bias 15:59
26 - perform their functions in a responsible and diligent
27 manner.
28 - treat their colleagues and local authority employees
29 with courtesy and respect".

1 I do place some significant emphasis in terms of the
2 Code on the general obligation, the duty to keep faith
3 with the public and this being a personal trust, a
4 personal responsibility requiring councillors to
5 observe the highest ethical standards, and also in the 15:59
6 first three bullet points of Clause 2.2.

7
8 Clause 2.3 is also relevant I believe:

9
10 "More generally, councillors should in all matters seek 15:59
11 to ensure that their conduct does not bring the
12 integrity of their office or of Local Government into
13 disrepute".

14
15 Then there are specific provisions dealt with in 15:59
16 Section 3 of the Code dealing with 'Conflict of
17 personal and public interest'. In the complaint the
18 Commission will have seen that Section 3 is quoted
19 generally but with particular reference to Clause 3.8
20 where it provides as part of the general obligation to 16:00
21 avoid potential conflicts of interest:

22
23 "This is all the more so where the nature of a
24 councillor's occupation, profession or business is such
25 that it interfaces to a significant degree with local 16:00
26 authority function (e.g. related to land development or
27 property transactions). There is a special onus on the
28 person concerned to take extra care in these
29 circumstances", and

1 3.9 "Councillors must not seek to use their official
2 positions so as to benefit improperly themselves, their
3 professional or business interests, or others with whom
4 they have personal family or other ties. Likewise they
5 must not seek to use or pass on for personal gain or 16:00
6 the personal gain of others, official information which
7 is not in the public domain, or information obtained in
8 confidence as a result of their public position".

9
10 We say that is engaged in the contraventions alleged 16:00
11 against Councillor Queenan in this case.

12
13 3.10 again seems to us to be relevant:

14
15 "The Act provides that it is the duty of every 16:00
16 councillor (and employee) to maintain proper standards
17 of integrity, conduct and concern for the public
18 interest. Councillors should base their conduct on a
19 consideration of the public interest and the common
20 good. They are individually responsible for being 16:01
21 alert to potential conflicts of interests, avoiding
22 such conflicts and for ensuring that their actions,
23 whether covered specifically or otherwise by this Code,
24 are governed by the ethical and other considerations
25 implicit in it". 16:01
26

27 Then the final provision I wanted to bring, the final
28 two provisions that I wanted to bring the Commission to
29 were four and five generally which deal with planning

1 matters and gifts. Those are both referenced in the
2 Statement of Alleged Contraventions in light of the
3 concern that arises from councillor Queenan's
4 interaction with Nina, the undercover reporter in this
5 case. If I could then bring the Commission just back 16:01
6 to Tab 3? As I say that Code of Conduct has, is
7 something that under Section 169(3)(a) each member is
8 obliged to have regard to and be guided by in the
9 exercise of his or her functions.

10
11 Section 170, which again covers similar factual 16:02
12 territory, is a specific prohibition in terms of
13 favours and rewards and provides:

14
15 "An employee or a member of a local authority or of a 16:02
16 committee or a local authority shall not seek, exact or
17 accept from any person, other than from the local
18 authority concerned, any remuneration, fee, reward or
19 other favour for anything done or not done by virtue of
20 his or her employment or office", 16:02

21
22 and again references the Code of Conduct.

23
24 Then the final provision that is relevant here is the
25 Annual Declaration Provisions which are provided at 16:02
26 Section 171. The Commission will be aware from the
27 correspondence that I've opened that councillor Queenan
28 acknowledges a breach of his obligations under Section
29 171 in terms of the 2015 Declaration completed by him

1 but offers his explanation for the circumstances in
2 which that came to pass. That will be a matter
3 ultimately for the Commission to make a determination
4 upon. I would just identify one aspect of that, the
5 undertaking that is acknowledged in the Declaration 16:03
6 though is, and the Commission will see this in
7 particular at Tab E(4) of the booklet of papers for the
8 hearing, which is the form of declaration that is
9 provided by Councillor Queenan in making his returns,
10 and there are a number of different returns there from 16:03
11 2012 to 2015. The formulation is the same in each
12 case. Just to take the 2012 Declaration for the, for
13 ease of reference, it specifically provides in the
14 typed script that the party completing the form
15 furnishes "the following particulars of declarable 16:03
16 interests" and then provides thereunder. But it is
17 paragraph 2 that I think is relevant here:

18
19 "I hereby undertake to have regard to and be guided by
20 the Code of Conduct for Councillors in the exercise of 16:04
21 my function. (The Code of Conduct for Councillors was
22 issued by the Minister under Section 169 of the Local
23 Government Act 2001)".

24
25 In my respectful submission that acknowledgment is 16:04
26 important because it reinforces the significance of
27 three important factors in public life for a person
28 such as Councillor Queenan in this case. One is the
29 obligation to make full and proper disclosures under

1 section 171 precisely so that the public, and those
2 dealing with Councillor Queenan, can know what
3 interests he has and can have confidence in his
4 ability to conduct himself in a public capacity in a
5 way that doesn't come into conflict with the Code.

16:04

6
7 The second point is this, is that the Code itself
8 deliberately imposes a high threshold on public
9 officers, councillors such as Councillor Queenan, and
10 does so as part of that bargain whereby public trust
11 and confidence can be maintained in Councillor Queenan
12 in the operation of his functions and duties in return
13 for his acknowledgment under the Code that he will
14 maintain the highest ethical standards as provided for
15 under the Code and will avoid conflicts of interest.

16:05

16:05

16
17 Then the third point, which is the over arching point I
18 suppose for all public officials, this is a legal
19 obligation. It's not just a question of a promise or
20 an assurance to the public but it is embodied in Part
21 15, and the other provisions that are before the
22 Council or before the Commission, because it is of such
23 significance in terms of maintaining public trust and
24 confidence.

16:05

16:06

25
26 For the reasons that have been identified in the
27 Statement of Alleged Contravention, having regard to
28 the evidence, we say there is more than prima facie
29 evidence of a breach of the provisions that have been

1 identified to the Commission in this case. So that is
2 the Commission's, our case in terms of presentation to
3 the Commission.

4 CHAIRMAN: Thank you Mr. Doherty.

5 MR. O'CONNOR: I just maybe seek the Commission's 16:06
6 guidance on something? I mean if this was more a case
7 along the lines of what I'd be use to I would at this
8 point apply for a direction on the basis of the
9 evidence, and if the direction succeeded that was the
10 end of the matter, if it didn't succeed I'd go into 16:06
11 evidence. I don't know whether that applies in this?
12 I don't want to waste time applying for direction if
13 I'm not entitled to apply for a direction in this
14 forum?

15 CHAIRMAN: Yeah, I know that is a tribunal of 16:06
16 investigation, it doesn't arise I think.

17 MR. O'CONNOR: Yes. I mean the --

18 CHAIRMAN: There are many matters stated on your
19 behalf in the correspondence which we have seen, I
20 don't know whether you want to rely on any of that? I 16:07
21 think you should adopt your course of action now to
22 reply to the issues.

23 MR. O'CONNOR: Yes, I mean I'll be guided. I mean I
24 think the Commission have power anyway to direct
25 attendance of witnesses and investigation of -- 16:07

26 CHAIRMAN: Yeah, well we hopefully don't get into that
27 area.

28 MR. O'CONNOR: Yes. I mean my client wants to give
29 evidence in any event it's just that I have a

1 particular view on it, but anyway. If I could, just
2 before I call my client, there is a Councillor McHugh
3 here whose evidence will be short and I might not, if
4 this isn't finished today I won't be able to get him
5 again so I'd like to call him, he won't be a long
6 witness, first? Councillor Tom McHugh please.

16:07

7
8 COUNCILLOR TOM MCHUGH, HAVING BEEN SWORN, EXAMINED BY
9 MR. O'CONNOR AS FOLLOWS:

10
11 139 Q. MR. O'CONNOR: Councillor McHugh I think that you're a
12 councillor from the Fine Gael party representing the
13 Tuam area, isn't that correct?

16:08

14 A. Correct.

15 140 Q. In Galway, and I think that you have some knowledge of
16 this person who gave her name, false name as Nina?
17 would you tell the Commission what your experiences
18 were with her and how you came to meet her?

16:08

19 A. Okay. Around about the middle of October 2015 I got a
20 call from a lady calling herself Nina Carlsson and
21 again asking me would I be in a position to meet her,
22 telling me she was based in London and she was
23 operating for a company called Vinst Opportunities who
24 had an interest in wind farming, and would I be in a
25 position to be of assistance to her in relation to the
26 planning process, and would I be able to meet her, so I
27 told her I would. So she said she would be coming to
28 Galway and would contact me, and she did and we
29 arranged a meeting for the 2nd December, sorry,

16:08

16:08

1 November in the Clayton Hotel in Galway. That was
2 fine, 5 o'clock in the afternoon. She sent me a text
3 earlier on in the day:
4

5 "Hi Councillor McHugh, 16:09
6 Nina Carlsson here. Just to say I have arrived in
7 Galway and I am working out of a meeting room in the
8 Clayton Hotel. See you around five. No rush if you
9 delayed, thanks".

10 16:09
11 That was the text. I presented myself at the Clayton
12 Hotel at 5 o'clock, as arranged. I met, I went to the
13 reception desk and I said to the receptionist "I have
14 an appointment here to meet a Nina Carlsson, I
15 understand she has a meeting room here". She checked up 16:09
16 the, her system, "no", she said, "I don't have that
17 name". So then I said "Vinst Opportunities is the
18 company she's representing, do you have that name?"
19 and she said "no, I don't", and having checked up the
20 system again, "I don't have that. God", said I, "I 16:10
21 don't know what I'm going to do now? She sent me a
22 text earlier on telling me she was here". Well she
23 said, "the only thing I can suggest to you is that you
24 know where the meeting rooms are down on the corridor
25 on the right, there's one meeting room that there isn't 16:10
26 any, any booking on unless she is there". So down I
27 go, knock on the door and there she was. I thought it
28 strange but I didn't take that much notice of it. I
29 went in, sat down, she welcomed me, thanked me for

1 coming, the usual. One of the first things she said to
2 me was that the nature of our conversation she wanted
3 it to be confidential, could I assure her of that? I
4 said "well, okay, I have no reason for it not to be
5 confidential". So she did harp on the planning process 16:10
6 in relation to wind farms. I told her the planning
7 process was set in statute and that she would have to
8 go down the road of preplanning consultation, there may
9 be a number of them. Thereafter make a planning
10 application. There was a statutory period of five 16:11
11 weeks for the general public to make submissions,
12 nothing would happen for that five weeks and within the
13 eight week period the local authority would be obliged
14 to either grant, refuse or look for further
15 information. I said to her "you will need a 16:11
16 consultant, you will need a consultant on board, do you
17 have one? well not really. I happen to know one", I
18 said, "who has, on my view would have considerable
19 experience in the field of environmental legislation
20 and town planning and if you want his name I'll be 16:11
21 happy to give you his name, if you want to make contact
22 with him?" So she again mentioned about the planning.
23 She said how could I help with the planning process? I
24 said, well I explained it again to her and she, I
25 explained it again to her and I said; "by the way you 16:12
26 mentioned East Galway, have you any interest in West
27 Galway because West Galway is Connemara and Connemara
28 is very, it is a very exposed area and it would have a
29 lot of very good wind speeds, albeit some of it would

1 be designated HSC, a lot of it would be free of HSC",
2 or not HSC, SSC, sorry my apologies. She said "no", it
3 was East Galway. So we went on a bit more talk about
4 it. She seemed to be, she seemed to be again was there
5 not something more I could do in relation to the 16:12
6 planning process? I said "no, I can deal with the
7 planning process in the same way as I deal with every
8 other constituent". I said "I can be a liaison officer
9 really between the planning authority and my
10 constituents, I don't have a role in the decision 16:13
11 making and I can assist you in the same way as I assist
12 others. More often than that that entails maybe
13 ironing out problems that have arisen, whether it be
14 with documentation not being sufficiently submitted or
15 whatever the case may be", and we went on and on like 16:13
16 that. Now that went on for quite a while and the
17 meeting lasted for approximately 15 to 20 minutes. In
18 the end I said to her "are you, you're based in
19 London?", she said "I am. Are you British?", she said
20 "no, I am Icelandic", she told me she was Icelandic. Oh 16:13
21 I said "very good, very good" and in the end I said to
22 her "look do you want me to make contact with the
23 consultancy firm that I talked about?" and she said
24 "well sure do". I said "okay" and I gave her the name,
25 I gave her the name of the company, McCarthy, McCarthy 16:14
26 Keville and I said "well, okay, I'll make contact with
27 them. If they have any interest in talking to you, if
28 they have anything, I will ring you back and I will
29 tell you" and with that I left. I went off out and I

1 rang Gus McCarthy, a gentleman whom I know well, he was
2 an official in Galway County Council at one time and
3 left the County Council and went into private practice.
4 He said as it happened he had two clients that had, who
5 were, had permission, grants of permission for two wind 16:14
6 farms and in addition they had grid connections from
7 Electric Ireland, well ESB Networks that's called now,
8 and I thought well this is great probably there is
9 something here for her and I rang her back and I got no
10 reply. I left a message for her to ring me back, 16:15
11 didn't get any, I didn't get any call back. I then
12 left it a day or so and I rang her again it was the
13 same story, no reply, leave her a message. I left the
14 message and I didn't bother after that. It wasn't
15 until three days before the programme was to be aired I 16:15
16 learned from a colleague, a councillor colleague that
17 there were going to be members of a number of local
18 authorities that were going to be interviewed and that
19 the findings wouldn't be good. I wondered was I one of
20 them but obviously I wasn't. 16:15

21 141 Q. If I could ask you --
22 A. That's it.

23 142 Q. I know that you've compressed a lot there into that
24 answer and that is very good but in relation to how
25 many times she came back around the whole planning 16:15
26 issue of it?
27 A. Oh she harped on the planning on a regular basis and I
28 would say she came around to the planning about six or
29 seven times.

1 143 Q. All right, and what were, what was going through your
2 mind I mean as these questions were being repeated?
3 A. Well as these questions were being asked I thought
4 having explained it in detail twice that that should be
5 sufficient for her, but I was kind of saying wherever 16:16
6 she has come from or wherever she has been before now
7 she must have had a bad experience with planning and
8 that she's so interested and she is looking for so much
9 detail. Of course when I think back on it if I
10 answered her questions in response to maybe the way she 16:16
11 were asking, she was asking them there was a
12 connotation there.

13 144 Q. Yes.
14 A. You know?

15 145 Q. You're a very experienced businessman and hotelier, 16:16
16 isn't that right?
17 A. I am, well I'm experienced, I don't know how well or
18 otherwise, anyway?

19 146 Q. You are a long time in business. Do you see it as part
20 of your role, and I take it from what you said, as a 16:16
21 councillor to try and, if you get an opportunity to
22 attract enterprise into the west of Ireland?
23 A. Absolutely.

24 147 Q. Do you think there is anything wrong with that?
25 A. No. 16:17

26 148 Q. Was that what you saw in front of you?
27 A. That's what I saw in front of me and I, I, I know and
28 knew then that anything to do with wind farming it was,
29 it was, it was a rather topic, a hot issue and it was

1 not simple. Because in my explanation to her I
2 explained that she had preplanning and there could be
3 more, a number of preplanning consultations. From
4 there submitting a planning application, getting either
5 a refusal, a grant or a request for further 16:17
6 information. In all probability even if she were to be
7 successful it would be appealed to An Bord Pleanála,
8 they may or may not refuse and she could be in judicial
9 review, and I explained all of that to her. When I
10 had, when I made contact with Gus McCarthy, McCarthy 16:17
11 Keville O'Sullivan, and he told me that he had two
12 clients that had two wind farms with full permission
13 and grid connections I thought to myself oh be God
14 they, you know, they'll be -- because credit at that
15 time was a very scarce commodity. 16:18

16 149 Q. I think you said already in relation to the
17 confidentiality she instigated that?
18 A. She did.

19 150 Q. Did you ever instigate it?
20 A. Did I ever instigate it, no. 16:18

21 151 Q. So she, she was going on about that?
22 A. Yeah.

23 152 Q. What level of investment was she talking about?
24 A. I asked her what her budget, what type of a budget did
25 she have and she told me that it was unlimited, which I 16:18
26 thought was a strange answer but then I didn't think
27 too much about it, no more than some of the other
28 things she said to me, and I thought well it is
29 possibly a considerable number of millions, you know,

1 but I never heard of a budget that didn't have a limit.

2 153 Q. Now you are an experienced politician as well
3 Councillor McHugh, do you see anything wrong with
4 somebody explaining the preplanning process to a
5 potential investor?

16:19

6 A. No.

7 154 Q. Do you see any problem with offering to even be a
8 liaison person, which is what I think you --

9 A. No, well I have always said that as an elected member
10 of Galway County Council I am effectively a liaison
11 officer in type between the constituents who elected me
12 and the officials in Galway County Council that I work
13 with, and I have done that over the last 19 years now.

16:19

14 155 Q. Would a lot of the investments that you'd come across
15 or see coming into the west of Ireland be, in any
16 event, from foreign investors?

16:19

17 A. It is, it is from foreign investors but back in 2015
18 the Irish banks effectively weren't giving out any
19 credit and I mean if you wanted, if somebody wanted
20 credit it had to come from some private investment firm
21 in the main.

16:19

22 156 Q. If you would answer any questions from My Friend?

23

24 END OF EXAMINATION OF COUNCILLOR TOM MCHUGH BY

25 MR. O'CONNOR

16:19

26

27

28

29

1 COUNCILLOR TOM McHUGH CROSS-EXAMINED BY MR. DOHERTY
2 AS FOLLOWS:

- 3
- 4 157 Q. MR. DOHERTY: Good afternoon Councillor McHugh, just a
5 couple of questions if I, if I may? 16:20
- 6 A. Okay, yeah.
- 7 158 Q. Firstly, I appreciate you've been here today and you've
8 seen the video recording and you've heard the audio?
- 9 A. Correct.
- 10 159 Q. Of the recordings involving the interaction of the 16:20
11 undercover reporter Nina and Councillor Queenan. Apart
12 from that do you have any direct knowledge of your own
13 of the engagement that took place between Councillor
14 Queenan and Nina as part of this RTÉ document?
- 15 A. No, I never met or spoke to Councillor Queenan until I 16:20
16 met him at 9:10 this morning in the office here.
- 17 160 Q. Right, okay. So while you've had your own experience
18 of dealing with an undercover reporter calling herself
19 Nina, and you've given some evidence about that?
- 20 A. Correct. 16:20
- 21 161 Q. You're not in a position to offer any evidence from
22 your own knowledge of Councillor Queenan's interaction
23 with Nina?
- 24 A. No.
- 25 162 Q. Can I just ask you something slightly different? 16:20
26 You're familiar I take it, as a Councillor of long
27 standing and experience, with the Code of Conduct?
- 28 A. Correct.
- 29 163 Q. That was promulgated under Section 169 for County

1 Councillors of the 2001 Act, isn't that right?

2 A. Correct.

3 164 Q. And I'm happy to give you a copy of it just to have a
4 look at it, if you like, but would you accept that that
5 sets a standard which councillors are obliged to have 16:21
6 regard to and pay particular attention to in the
7 conduct of their duties as councillors?

8 A. Well I would have a general, I would have a general --
9 I can't say to you that I have read the actual Act in
10 detail but I would have a general understanding of the 16:21
11 meaning of it.

12 165 Q. Well you appreciate, of course, that you have a
13 specific statutory obligation as a councillor?

14 A. I do, yes.

15 166 Q. To have regard to the contents of that Code of Conduct? 16:21

16 A. Correct.

17 167 Q. And to comply with it?

18 A. Yeah.

19 168 Q. And adhere to it in the performance of the functions of
20 your duties, isn't that right? 16:21

21 A. Correct.

22 169 Q. I think a copy has just been provided to you, it is
23 just opened to you there?

24 A. Yes.

25 170 Q. That makes specific provision for councillors behaving 16:21
26 in a particular way, isn't that right?

27 A. Yeah.

28 171 Q. And it sets a high standard, in fact it is said right
29 from the opening paragraph at paragraph 1.1 of the

1 introduction:
2
3 "The public is entitled to expect conduct of the
4 highest standards from all those involved in local
5 Government", 16:22
6
7 do you accept that?
8 A. Yeah.
9 172 Q. You would also accept then that in terms of general
10 conduct and behaviour that a councillor is, in carrying 16:22
11 out their role is obliged to act in a way that enhances
12 public trust and confidence, you accept that?
13 A. Yes.
14 173 Q. That they are to avoid conflicts of interest and never
15 seek to use improper influence? 16:22
16 A. Right, correct, yeah, conflict of interest, yeah.
17 174 Q. That they are to make decisions based solely on
18 consideration of the public interest and common good?
19 A. Correct.
20 175 Q. That they should seek to avoid any form of conflict of 16:22
21 interest?
22 A. Yeah.
23 176 Q. And that particular emphasis is placed in relation to
24 conflict of interest that potentially arise between the
25 performance of their public functions, on the one hand 16:22
26 as councillors, and their business interests?
27 A. Yeah.
28 177 Q. You accept that?
29 A. Yeah.

1 178 Q. And that that conflict of interest is specifically
2 spelled out in the Code of Conduct to apply to
3 situations not where there is actually a conflict of
4 interest but also to situations where a member of the
5 public might perceive there to be a public, a conflict 16:23
6 of interest, should I say, between the performance by a
7 councillor of his public functions and any business
8 interests they might have or become involved in, you
9 understand that?

10 A. I'm, I'm unclear on that as to what you mean by that? 16:23

11 179 Q. Okay. Can I ask you just to look at Clause 3.7 of the
12 Code that is in front of you?

13 A. Okay, we'll go on now and I'll --

14 180 Q. It is on page 6.

15 A. Yeah, okay. 16:23

16 181 Q. So 3.7 is talking about, this is under the section
17 dealing generally with conflicts of personal and public
18 interest and it says:
19

20 "The test to be applied by a councillor is not just 16:24
21 what he might think - but rather a member of the public
22 knowing the facts and the situation would reasonably
23 think that the interest concerned might influence the
24 person in the performance of his or her functions. If
25 so, disclosure should follow and a councillor should 16:24
26 consider whether in the circumstances he should
27 withdraw from consideration of the matter? In this
28 context it is important to ensure that as well as the
29 avoidance of actual impropriety, occasions for

1 A. Yes.

2 183 Q. It is critically important that there'd be a clear and
3 bright line distinction between you giving that advice
4 or assistance in your role as a councillor, on the one
5 hand, and any personal or private or business interests 16:26
6 that you might have, on the other? That is a very
7 important distinction.

8 A. Well I could be giving that advice, I'm giving that
9 advice in my role as a County Councillor but the advice
10 I may be giving may be on foot of experiences I've had 16:26
11 myself in the past.

12 184 Q. I think you understand the question Councillor McHugh?
13 It's important that you keep your business interests or
14 a (Inaudible)

15 A. I appreciate that. 16:26

16 185 Q.not personal to you?

17 A. I appreciate that but if I have had experiences, I
18 spent all of my working life working in the building,
19 in the building sector, I would regard myself as a
20 house builder. So in relation to matters pertaining to 16:26
21 planning I would reasonably, I would believe that I
22 would have a reasonable understanding of the planning
23 process and how it works, and any advice I would give
24 wouldn't have anything to do with the experience I
25 would have gained over the years could tend, lead me to 16:26
26 give them the best advice available to me.

27 186 Q. I understand.

28 A. Is that okay?

29 187 Q. I understand it completely, Councillor McHugh, and I

1 certainly don't mean to personalise it to you. I am
2 talking about in general because it is a code of
3 conduct that applies to all councillors. The point I
4 am trying to make, and perhaps not very clearly
5 Councillor McHugh but I think you'll agree with me, is 16:27
6 that the thrust of the Code of Conduct is that it may
7 be perfectly legitimate for a councillor to offer
8 assistance and advice of the kind you have just
9 suggested and, of course, you are going to bring some
10 of your personal experience and knowledge to bear on 16:27
11 giving that advice and assistance, but there is a
12 dividing line between that kind of performance, on the
13 one hand, and that kind of performance with a personal
14 business interest or stake, or the potential for a
15 personal business interest or stake getting involved? 16:27
16 A. No, I don't know where the personal interest, interest
17 comes into it.
18 188 Q. I see. So if you're asked to provide assistance, if
19 one is asked to provide assistance in a planning
20 context? 16:27
21 A. Yes.
22 189 Q. To an investor and is offered a business investment as
23 part of that?
24 A. No, I didn't go down that road with the said lady.
25 190 Q. I know that's what you have said Councillor McHugh. 16:28
26 I'm not asking you specifically to you, but you
27 recognise I think that that situation is directly
28 caught by the Code of Conduct, don't you?
29 A. I'm not making comment on that. I came here today to

1 give my own experience of dealing with the said lady,
2 I've done that and I'm not going any further on that.
3 We have, we have dealt with 3.7.

4 191 Q. Eh-hmm.
5 A. Of the conflict of interest and I think you and I 16:28
6 understand one another pretty well on that at this
7 point, is that correct?

8 192 Q. I think so Councillor McHugh but just to confirm you
9 accept fully that the Code of Conduct requires a
10 councillor faced with this situation to make decisions 16:28
11 and to conduct himself based solely on considerations
12 of public interest and the common good with no
13 thought....

14 A. Well I do that, yes.

15 193 Q.or consideration for private gain? 16:28
16 A. I do that, I do that.

17 194 Q. And that the Code of Conduct is in fact quite clear in
18 identifying the situation as not just being actual
19 private gain, not actual impropriety but any kind of
20 situation where a member of the public might suspect or 16:29
21 it might appear to a member of the public that your
22 private interests are getting mixed up in your public
23 functions?

24 A. They do that all the time, members of the public do
25 that all the time. 16:29

26 195 Q. I see.
27 A. They're full of suspicion.

28 MR. O'CONNOR: Chairman, I don't like to cut across my
29 My Friend but when I kind of tried to elicit certain

1 opinions from Ms. Laird about certain things I was
2 objected to, and I think at this stage the Councillor
3 has been asked the questions three or four times, I'm
4 not so sure that he gets the distinction legally
5 between objective problem and a subjective problem, and 16:29
6 I think the position is that's a matter for the
7 Tribunal, if any route.

8 CHAIRMAN: I think we should curtail it.

9 MR. DOHERTY: I respectfully accept what Mr. O'Connor
10 says. It is a matter for the Commission ultimately so 16:29
11 I have no further questions for Councillor McHugh.

12
13 END OF CROSS-EXAMINATION OF COUNCILLOR MCHUGH BY
14 MR. DOHERTY

15
16 A. Have I not answered correctly? 16:29

17 MR. O'CONNOR: You're finished now Mr. McHugh, unless
18 the Tribunal have any questions for you?

19 CHAIRMAN: (Shakes head no).

20
21 THE WITNESS WITHDREW 16:29

22
23 MR. O'CONNOR: Councillor Queenan please.

24 CHAIRMAN: How long will this witness be?

25 MR. O'CONNOR: I think that in, Mr. Doherty having 16:30
26 read out the letter, the personal letter from
27 Councillor Queenan I really can't see what much more he
28 can add to it but he does want to give evidence. He
29 doesn't want anyone to say that he wasn't willing to

1 get into the witness box so I would --
2 CHAIRMAN: I just want to on time, are you happy to
3 continue on now?
4 MR. O'CONNOR: I'm perfectly happy. I think I
5 could.... 16:30
6 CHAIRMAN: Do you want a break for five minutes?
7 MR. O'CONNOR: maybe get through the examination in
8 chief.
9 MR. DOHERTY: I'm entirely in the hands of the
10 Commission. It seemed to me to be a convenient time 16:30
11 perhaps to take a five minute break before starting
12 with Councillor Queenan.
13 CHAIRMAN: Yeah, we'll give you that, we'll give you
14 that. we'll say seven or eight minutes.
15 MR. McCARTHY: Ten. 16:30
16 MR. O'CONNOR: All right.
17
18 THE HEARING ADJOURNED FOR A SHORT RECESS.
19 THE HEARING RESUMED AS FOLLOWS:
20 16:53
21 MR. O'CONNOR: I call Councillor Joe Queenan please.
22 CHAIRMAN: Before we start, it is our aim hopefully to
23 be finished the evidence taking today and we won't take
24 anybody short but we hope to achieve that. we would
25 like submissions after that in relation to the legal 16:53
26 principles involved and we're suggesting in relation to
27 that that it should be four weeks from today, I think
28 is the 8th October, the 8th October. So we know the
29 term starts again in the Law Library on the 1st, on the

1 Monday I think it starts, and that applies to both
2 sides equally that the submissions are received. I
3 know, yes, in relation to that when submissions are
4 being made in relation to your client, Mr. O'Connor,
5 there is no need to refer in detail to the extracts 16:54
6 from the letters, if you just pinpoint us page 5,
7 second paragraph, or whatever, and that should make the
8 job of, your job and my job a little bit easier? So we
9 can move on now. Thank you both.

10 MR. O'CONNOR: Four weeks should be achievable but I 16:55
11 wonder if five weeks might be a slight bit easier but I
12 --

13 CHAIRMAN: All right, well we --

14 MR. O'CONNOR: we'd aim for four weeks but I --

15 CHAIRMAN: Yeah, well if you don't do it early in the 16:55
16 term you wouldn't do it until Christmas.

17 MR. O'CONNOR: Four weeks should be fine, Chairman.

18 MR. O'KEEFFE: The voice of experience.

19 MR. O'CONNOR: I'll have it all forgotten, they might
20 be shorter if -- 16:55

21 MR. MCCARTHY: At worse we might.

22 CHAIRMAN: So the 8th is a, is it the 8th is a Monday?

23 MR. DOHERTY: It is, Chairman.

24 CHAIRMAN: The 12th is a Friday so we'll say the 12th.

25 MR. O'CONNOR: I'm obliged. There is a very short 16:55
26 statement that Councillor Queenan had done, which is a
27 synopsis again of his position, which might help me to
28 shorten things in the direct evidence, I am going to
29 circulate that.

1 CHAIRMAN: Yes.

2 MR. O'CONNOR: It is only half a page.

3 CHAIRMAN: Thank you very much.

4 MR. O'CONNOR: My solicitor will.

5

16:56

6 COUNCILLOR JOE QUEENAN, HAVING BEEN SWORN, EXAMINED BY

7 MR. O'CONNOR AS FOLLOWS:

8

9 CHAIRMAN: Thank you.

10 A. Thank you, Chairman.

16:56

11 196 Q. MR. O'CONNOR: Councillor Queenan, you've set out your
12 position in great detail in letters already so a lot of
13 the detail will be in those letters but you were
14 anxious to give evidence yourself?

15 A. Yeah.

16:56

16 197 Q. I think you've been an elected member of the County
17 Council in Sligo for, since 1999, is that correct?

18 A. I am on my 20th year now, Chairman, elected member.

19 198 Q. I think that you were Vice Chairperson at one stage, is
20 that correct?

16:57

21 A. I had the honour to be Vice Chairman of my Council,
22 Chairman of the Council and at the moment I am Chairman
23 of the elected area that I represent, the
24 Tubbercurry/Ballymote area, elected by my colleagues.

25 199 Q. Yes. Now just before we go into the detail of your, of
26 what is at issue here, from the point of view of Sligo
27 and the recession and investment in Sligo what is the
28 position down there, in summary?

16:57

29 A. Well it's not, like it is a different world up here in

1 Dublin. I don't know where I was this morning, it's
2 completely different to what it's like in rural County
3 Sligo or in rural any county at the moment. You see
4 all over the post offices closing, the pubs closing,
5 shops closing. I happened to be the Chairman of the 16:57
6 Council the first year, 2000, when our financial state
7 in the Council, the Minister at the time, Minister
8 Kelly, arrived at our doorstep giving us so many weeks
9 to get our act together or he was closing us down. We
10 met the Taoiseach the following month and that's the 16:58
11 backdrop that we were facing and that I was facing as
12 an elected member where we had no investment, we had
13 plenty of plans but we had no, nobody to put money. So
14 I want people to be conscious that one job in a rural
15 town is worth 100 jobs up here. We're not getting them 16:58
16 number of jobs. Christmas day up here is a quiet day,
17 it's every day is Christmas day in the villages that I
18 represent and that's the facts.

19 200 Q. Yes. Now you have -- what are your -- you're an
20 auctioneer is it? 16:58

21 A. I'm a farmer, a dairy farmer, my son now farms that.
22 I'm an auctioneer with all my qualifications. I have
23 two small supermarkets and an agri-business attached to
24 one of the shops in Enniscrone. I create -- every
25 Tuesday that's me challenge to have 18 wages in the 16:59
26 banks for 18 people.

27 201 Q. Okay.

28 A. And I'm so happy to be able to do that for me, for me
29 community.

1 202 Q. Now you've been involved in politics, why did you get
2 involved in politics day one?

3 A. I got involved in politics because I was a committee
4 activist for about 40 years, I am more than 40 years
5 serving in my community in all kinds of range of things 16:59
6 and I seen, an opportunity arose in my town where the
7 local councillor was retiring and I was asked to go
8 forward, I went forward, I got elected on the 13th June
9 1999 and I have been elected ever since.

10 203 Q. I think you've been very involved in sport and Gaelic 16:59
11 games, all of that kind of thing in your community and
12 --

13 A. Yeah, I chaired me own club for ten years. I'd be
14 Chairman of the West Divisional Board. I am the
15 longest serving Chairman of Sligo County Board ever. I 16:59
16 was eight years, nine years Chairman of the County
17 Board. I was seven years Vice Chairman. I was two
18 years Treasurer. I was two years on the Connacht
19 Council. I was a county selector and I was involved in
20 Sligo when we were in the good days, about ten years 17:00
21 ago when we were playing in the All Ireland qualifiers
22 in Croke Park.

23 204 Q. I think you've also been involved in other --

24 A. Yeah.

25 205 Q. Supporting other things like schools and golf clubs and 17:00
26 all of that?

27 A. I'm Chairman of a local Board of Management for 15
28 years. I was Chairman of the old VEC in my county, the
29 last Chairman. I was the first Chairman of the Mayo,

1 Sligo, Leitrim ETB, which is a new amalgamation. I am
2 meals on wheels. I'm a county, I'm a Chairman of the
3 local leisure company. I have been on the Sligo Leader
4 Partnership. I have been very busy.

5 206 Q. Now there were other things going on in your life just 17:00
6 before this happened, you'd been to Canada would you
7 just tell the Commission about that?

8 A. Yeah. My younger brother had a bone marrow transplant
9 in the Tom Baker Centre in Calgary in late September.
10 The indications at the outset at that stage was 17:00
11 positive but as the weeks went by and we had to, I had
12 to come home, he was on his own, virtually only
13 friends, we were depending on friends to tell us what
14 was happening but things started to go downhill in
15 October after coming back. All the things I'm involved 17:01
16 in, me businesses and my own brother I wasn't meself,
17 Chairman, to put it mildly.

18 207 Q. Now you got a telephone call from this woman, as we
19 heard earlier, in late October looking to meet?

20 A. I got a telephone call, yeah, and it was her. I 17:01
21 acknowledge that telephone call did take place, I said
22 what I said and --

23 208 Q. Yes.

24 A. Now when I got that telephone call, just on that, I
25 made it clear, because I doubted something, something 17:01
26 wasn't right and I asked that the meeting would take
27 place in the foyer of the Sligo Park Hotel. Now
28 anybody that knows the Sligo Park Hotel that foyer is a
29 big open space, twice as big as this area here, where

1 you can sit down, business people can sit down in a
2 nice seated area, have a cup of coffee with somebody in
3 a nice casual way and I, and that was --

4 209 Q. In an open, in an open public area?

5 A. An open public area. 17:02

6 210 Q. You think I think, that was the area you asked to meet
7 in, was that right?

8 A. I suggested that and she agreed, her ladyship agreed,
9 and that was agreed right up to the text that came. I
10 got a call then again the day before and I said okay, 17:02
11 and then on the morning of the, I was running around,
12 and I got a text I think at 10 o'clock or so, it's
13 there somewhere, saying sorry we couldn't get a bed in
14 the Sligo Park Hotel last night, is it okay that we go
15 to the Connaughton suite at 1 o'clock? 17:02

16 211 Q. The Connaughton suite where?

17 A. In the Southern Hotel, a different hotel. Of course
18 that, when they went to Sligo Park Hotel my colleagues
19 in the ESB, RTÉ they could see straightaway they
20 couldn't tape me or film me in the Sligo Park so that's 17:02
21 why I presume they changed the venue.

22 212 Q. I see. Now what were you doing that morning just before
23 you went to the meeting, you were late for the meeting
24 we could see?

25 A. I was late for the meeting. 17:03

26 213 Q. Why were you late for the meeting?

27 A. Well I was late, I had a business problem, I had a
28 business issue at home first then I had to rush, I
29 represent a person in Sligo County Council on a Council

1 issue and then I got caught in traffic and I was 20
2 minutes late to meet this lady.

3 214 Q. When you say you had business problems or business
4 issues where you working in your shops that morning,
5 were you? 17:03

6 A. Oh, absolutely I was working. I work, my shop it's
7 open every morning at 7:00/7:30 and I'm there every
8 single morning of the week except two weeks in the year
9 to open me shop and close it that night.

10 215 Q. Okay, so you arrived at the meeting? 17:03

11 A. Arrived at the meeting, rushed in the door. I went to
12 the, to the reception on the right-hand side and I
13 asked where was the Connaughton suite, and I should
14 know myself, so she said "straight in front", straight
15 in the door 20 minutes late, all apology and a cup of 17:03
16 cold coffee in front of me and a plate of chocolate
17 biscuits and away I went talking and...

18 216 Q. Yeah.

19 A.the rest is history.

20 217 Q. Did you, did you go instigating or asking for 17:04
21 confidentiality in this, you know when you went in?

22 A. Absolutely not but in the confidentiality clause, all
23 that hoo-ha, no matter - and I have represented so many
24 people over the years - everything is confidential at
25 that stage. You don't go telling the country or the 17:04
26 public if you're representing an ordinary citizen in
27 the street, you keep it confidential, so I had no issue
28 with that. The same with any planning issue. Sure if
29 you were going announcing on the radio the next day you

1 would no longer be a councillor so it has to be
2 confidential, but I didn't look for that I assumed that
3 was the route.

4 218 Q. So if somebody came to you, if a constituent came to
5 you and said to you look I'm in arrears with my 17:04
6 mortgage or I'm going to be thrown out of my house and
7 I want you to make representations to see could I get a
8 Council house, would they expect you to kind of divulge
9 that widely or --

10 A. Absolutely you go to, you make a representation, you do 17:04
11 your best in a confidential manner.

12 219 Q. So you didn't --

13 A. That's how I address all of my issue with regards the
14 public.

15 220 Q. I think that we can see from the transcript that this 17:05
16 lady from an early stage was beginning to suggest that
17 she, you know, that there might be something in it for
18 you or "before we put money in", and in fairness to
19 you, Councillor Queenan, on a number of occasions you
20 told her you didn't want anything out of it? 17:05

21 A. Yeah.

22 221 Q. Isn't that the case?

23 A. Yeah, now I see up there I said "that's a separate
24 issue".

25 222 Q. You also told her I think that there were no guarantees 17:05
26 in the planning process?

27 A. I went through the, again that was another hoo-ha. I
28 went through the planning process in a detailed form. I
29 have been involved in three County Development Plans in

1 my own county. I have been involved in numerous area
2 plans so I take an interest in that whole area, and I
3 had experience of wind farms because of what happened
4 in my area. So I told her as it was in a very straight
5 and open way how you deal with a situation like that, 17:06
6 and like she was coming from the very, very early
7 stages, she hadn't even got a map or anything. So
8 anyway I was reading from a blank page really.

9 223 Q. Yeah, now I think you explained to her the difference,
10 that the planning was an Executive function and that 17:06
11 you were an elected member, it wasn't...

12 A. Absolutely.

13 224 Q.going to be the decision of an elected.
14 A. At the end of the day it is an Executive function to
15 grant planning permission. Like a local member can 17:06
16 make representation, is encouraged to have a
17 preplanning process beforehand with his client, if he
18 so wishes, but at the end of the day it's an Executive
19 function signed off by the County Manager and then you
20 can appeal it to An Bord Pleanála if necessary. 17:06

21 225 Q. I think the preplanning process is in legislation now
22 since about the year 2000, isn't that correct?

23 A. Absolutely and we're encouraged in our county if we
24 have, if someone comes to us with a planning issue, big
25 or small, that we should set up to go the preplanning 17:07
26 route first. That short circuits a whole lot of
27 problems and the planners will then give an indication
28 there and then whether this is a practicable or whether
29 it is feasible or not to go further with the, with a

1 project.

2 226 Q. Is that with a view to say in the situation where
3 somebody might go to a whole load of expense and put in
4 a whole rigmarole of an application that might end up
5 being totally off beam? 17:07

6 A. Absolutely, it's a benefit to everybody.

7 227 Q. It's a filter, is it?

8 A. Pardon?

9 228 Q. It's like a filter?

10 A. It's like a filter, yeah. 17:07

11 229 Q. And what's your --

12 A. It shortens the whole thing.

13 230 Q. What's your understanding of a councillor's role in
14 that?

15 A. A councillor's role is within the planning process or 17:07
16 within the preplanning process is you set up the
17 meeting, you're in the, you set up a meeting with the
18 official a certain, in the local authority office at a
19 certain date and time and you bring along, if they have
20 an architect with them and you bring along the client 17:08
21 with them, and if they have maps and they indicate to
22 the planners there and then what's - and this is of no
23 cost to anybody, no fees - the officials then will give
24 an indication of the proposal in front of them whether
25 it is feasible or not? If it is feasible amendments 17:08
26 that should be made to them before you put in a draft
27 stage before you send in a proper application.

28 231 Q. Were you enthusiastic about the thought that this was a
29 company coming in who was interested in investing?

1 A. Well, as I said at the outset Chairman, I took this
2 lady at face value and she did indicate somewhere that
3 she represented a number of big investors in England
4 and she did, I did ask her why didn't she ask other
5 councillors? So I was enthusiastic that somebody was 17:08
6 about to come to Sligo to invest money in our county
7 because it's still badly needed, it would create jobs
8 for our people. As I said in the thing there every
9 turbine that is active I think this year it's 5,000
10 rates on that for the local authority, which is of 17:09
11 benefit to the local authority. Everyone is working,
12 that's the only way to solve our economic problems and
13 decimation in the rural parts of the county, is through
14 jobs.

15 232 Q. She did I think give the impression that she was 17:09
16 talking to people in other counties though, didn't she?

17 A. She did but I didn't, I just vaguely said that look --
18 I did tell her that I wasn't interested, well I wasn't
19 interested but I couldn't give her any help really I
20 was only involved in me own. 17:09

21 233 Q. When she said that was there any worry in your mind
22 that the investment might go to some other county?

23 A. Well that was important. That's -- maybe I don't know
24 was it that little bit, I was a little bit over
25 enthusiastic? I wanted to try my best because the fear 17:09
26 I had, I took this lady at bona fides value and if down
27 the road it broke that because she had put the
28 responsibility on me to talk to her and help her if she
29 had, if I couldn't have delivered in my own little way

1 it could break in six months time or a year's time that
2 this investor came to Sligo, met a local councillor,
3 didn't get on well, didn't perform and the investment
4 now is above in me, above me in me neighbouring County
5 Mayo which would be a, in every way a - 17:10

6 234 Q. Or maybe Donegal?
7 A. Or Donegal or wherever, so I was anxious that an
8 investor was there and I would do everything I could to
9 help her.

10 235 Q. No I think at page 5 she said at the bottom of that 17:10
11 transcript: "Am I speaking to the wrong guy?". Do you
12 remember her saying that to you?
13 A. Yeah, well I do, I think I do, yeah.

14 236 Q. In fairness to you after that you still said to her you
15 couldn't guarantee that you'd be any more successful, 17:10
16 no more than anybody else?
17 A. No, I was honest and humble with her. Like I was --
18 I'm only, as I said, a go between. Maybe that's the
19 wrong word, maybe there is a right word? We represent
20 the public to the local authority in different forms 17:11
21 and all I was doing was that.

22 237 Q. Yeah. Now I think as early as page 6 on it there she
23 is saying to you:
24
25 "Well what would you need to do that for us?", 17:11
26
27 and you didn't seem to pick up on what she was getting
28 at, councillor, because your answer was, this is on
29 page 6:

1 "Okay, I would do that for you no problem if you showed
2 me an area in Enniscrone where wind farms would work".

3
4 It's a while -- there are a number of questions when
5 you read it again. Hindsight is a great thing, 17:11
6 Councillor Queenan, but there were a number of
7 questions which were trying to sidetrack you, you can
8 see that now I think?

9 A. Yeah.

10 238 Q. You didn't see -- 17:11

11 MR. DOHERTY: well, with the greatest of respect, that's
12 not a proper question to ask on direct examination. He
13 can ask what the questions are and he can ask what
14 Professor Queenan, sorry, Councillor Queenan's view of
15 it is but he can't suggest the answer in the question 17:12
16 to Councillor Queenan.

17 CHAIRMAN: I'm giving --

18 MR. DOHERTY: I allowed Mr. O'Connor go a long time.

19 MR. O'CONNOR: I appreciate the general point.

20 CHAIRMAN: I'm giving, I'm giving a bit of tolerance 17:12
21 on the rules of the evidence.

22 239 Q. MR. O'CONNOR: I can see that, yeah. I will try not
23 to take too much advantage of it. I am trying to short
24 circuit things to some extent. Now I think in general
25 terms you were strongly advising her to keep away from 17:12
26 the coast, keep away from the scenic areas?

27 A. Absolutely, I'm, as I said I had experience of a
28 planning application before and as it happens the
29 knock, the Ox mountains area is regarded as one of the

1 best mountain areas for wind farms in a county, in the
2 whole country because of the way the wind speed goes,
3 and this has come from experts who would have verified
4 that. So there have been a number of wind farms up in
5 the Kings Mountain area and the Ox mountain area of 17:13
6 County Sligo. The other -- as you take the N59 from,
7 we'll say from County Mayo to Sligo town, a straight
8 road, on the right-hand side is the sea, the left-hand
9 side is the sea and the right-hand side is the
10 mountain, and I told her then no going on the sea side 17:13
11 because straightaway there'd be objections and it
12 couldn't go, well whatever An Bord Pleanála might do it
13 down the road but it would be the wrong advice to give
14 a person.

15 240 Q. why did you give her that advice? I mean there seems 17:13
16 to be some suggestion, I'm not saying from the
17 Commission, that you could view the programme as nearly
18 criticising you for giving her special advice almost,
19 why did you give her that advice at all? why did you
20 give her the benefit of the advice? 17:13

21 A. I felt as somebody who I thought was dealing with was a
22 serious investor I wouldn't mislead anybody. I was
23 giving her the advice of an experienced councillor who
24 has dealt with planning issues aboveboard on numerous
25 occasions and that was the right advice and I can stand 17:13
26 over that advice; the mountain area is the only place
27 it would work. Also the infrastructure now is in place
28 in the mountain area for all of the cabling so it would
29 be easier for her to connect to the, to the

1 infrastructure down the road if she got planning.

2 241 Q. Yeah, and I think on page 9, for instance, she says to
3 you again:

4
5 "What would I do for you" or, sorry, "how much 17:14
6 commitment will you give us from your behalf?". You
7 answer: "What I would do for you because you asked me".

8
9 You go on to say on page 9:

10 17:14
11 "It will cost you nothing, I am not looking for
12 anything out of it. All I want is it to be kept
13 confidential and we will see".

14
15 Again you're asked again further on, on page 9 of the 17:14
16 transcript: "What will you need from us?". What did
17 you think when she was asking you what, what was going
18 through your mind or did you --

19 A. I'd have to be honest about the whole thing now looking
20 back on it. At that interview, we seen it on the tape, 17:14
21 I found her to be, I had pity on her to be honest
22 because here is a person who is suppose to be
23 representing financial companies in London coming over
24 to invest huge money in west Sligo and when I asked her
25 a few questions on wind farms and things on the 17:15
26 environment she was very, very weak on her response,
27 she quite clearly was weak. I felt I didn't want to
28 send this woman back to London without some kind of
29 assistance or help and I was really trying to help her

1 along here because she was very naive when it came to
2 wind farms.

3 242 Q. Yeah. Anyway you asked her, you said to her in response
4 to that, on page 9:
5
6 "not really, at the moment I'm not looking or if you're
7 asking for money I am not really",
8
9 and it goes on from there. But then you did get into
10 an unwise conversation, Councillor Queenan? 17:15

11 A. Yeah. Chairman I put up my hands. I did get into, I
12 don't know was it the chocolate biscuits or what it was
13 but I diverted for a minute because I seen this invest,
14 I got the impression in me head that this, this woman
15 with all this investment could also invest in other, 17:16
16 other things rather than the wind farms. I diverted
17 myself that way and I am sorry I shouldn't have. It
18 isn't me form but I was caught and maybe it's all the
19 things that was going on in me mind at the time but
20 I've hands up. 17:16

21 243 Q. You're saying in the statement you handed in at the
22 beginning that on six occasions you'd made it clear you
23 didn't want anything but, however, when this bogus
24 involvement company suggested the company could help
25 with investments in the future? 17:16

26 A. Yeah. what I said was hypothetical in the future. It
27 wasn't -- I didn't go in there looking for anything on
28 the day.

29 244 Q. I think in the interview after that or in the, there

1 are a number of locations where you make it clear that
2 you're not seeking to link the two things?

3 A. No, no.

4 245 Q. So that again on paragraph, page 11 you're saying that
5 you're not looking for anything. When she pushed you 17:17
6 about whether it'd be an investment or whatever you
7 said that it could be a share that you would repay it
8 over a number of years?

9 A. Yeah, yeah, that was all hypothetical. If that ever
10 happened down the road I didn't want anything for 17:17
11 nothing.

12 246 Q. I think you continue to emphasise on page 12 that what
13 you were doing for her would be free gratis and for
14 nothing, that you weren't looking for money, but I
15 think you said there you could imagine people going to 17:17
16 other countries like England or Canada and they'd need
17 a local contact. Page 13, again I think at the top of
18 the page, or close to the top of the page you would
19 say:

20 17:17

21 "It will cost you absolutely nothing. If it happens it
22 happens and if it doesn't it doesn't. I would be
23 delighted if something works out for ye".

24

25 A. Yeah. 17:17

26 247 Q. But what you're saying is you felt sorry for her?

27 A. Yeah.

28 248 Q. Now later on then towards the end of that tape, and it
29 was hard to hear a lot of it on the audio but we have

1 some transcripts on it, the conversation on page 15
2 turns to geothermal energy in Iceland, do you remember
3 that?

4 A. I do, yeah.

5 249 Q. Do you remember this lady talking about having hot 17:18
6 water and that she could be in the showers for hours
7 and hours and she wouldn't have to spend a penny?

8 A. I remember that, yeah.

9 250 Q. And she always felt a bit cold when she comes to other
10 countries? 17:18

11 A. Yeah, I remember that.

12 251 Q. Councillor Queenan, Mr. Doherty is right in that I
13 can't give the evidence for you, particularly on
14 something like this, so would you just tell us how this
15 lady presented in that way? 17:18

16 A. Well you know I'm not angry or anything about the whole
17 thing now I'm embarrassed really, what has happened and
18 them things. She was, there is no question about it,
19 Chairman, she was flirting, to put it in West Sligo
20 language, and you know I lost my concentration. There 17:19
21 was nothing that way and she did come across as a
22 flirter and maybe it was below my standard really, I'm
23 sorry?

24 252 Q. Yeah. Now we saw her on the tape afterwards adjusting
25 her clothing and, of course, we haven't been able to 17:19
26 cross-examine her. Have you anything to say in
27 relation to that as to how --

28 MR. DOHERTY: well before Councillor Queenan answers
29 that question, that question was put to Mr. Culliton

1 who explained what occurred.

2 MR. O'CONNOR: He gave a version.

3 MR. DOHERTY: Sorry, he gave evidence that hasn't been
4 challenged which was elicited by Mr. O'Connor. He
5 can't now seek to challenge that evidence having 17:19
6 elicited it.

7 MR. O'CONNOR: well, no, I challenged that, I
8 challenged that at the time and if Mr. Culliton....

9 MR. DOHERTY: with the greatest of respect --

10 MR. O'CONNOR:wants to get back into the box I'll 17:19
11 challenge him again.

12 MR. DOHERTY: with the greatest of respect it's not for
13 Mr. O'Connor as Mr. Queenan's representative to
14 challenge evidence that he has elicited under
15 cross-examination, he's stuck with the answer he got. 17:20

16 MR. O'CONNOR: Mr. Culliton gave evidence about that,
17 it doesn't mean that I accepted it or it doesn't mean
18 that I cannot lead evidence on it. I mean it's, it's
19 -- I'm already being told --

20 CHAIRMAN: well you had the opportunity to do it. 17:20

21 MR. O'CONNOR: well I have it now to ask this man, he
22 was in the room, with respect Chairman.

23 CHAIRMAN: what is your question?

24 253 Q. MR. O'CONNOR: My question is how was she dressed in
25 detail? 17:20

26 A. She was --

27 CHAIRMAN: How is that relevant?

28 MR. O'CONNOR: I'm saying it's relevant to the
29 standards that she herself employed and that the

1 overall context --

2 CHAIRMAN: Are we dealing with her standards or are we
3 dealing with the Councillor's standards?

4 MR. O'CONNOR: I take the point that you make,
5 Chairman, but you know I've made a point in the morning 17:20
6 which the Tribunal didn't find with me this morning but
7 it still goes to the weight of the evidence and I think
8 the ruling --

9 CHAIRMAN: No, you've conducted your case very well.

10 MR. O'CONNOR: well I want -- at the same time I think 17:20
11 that I have raised the point, I've made the point, I've
12 suggested it to Mr. Culliton and there's a man here who
13 was in the room and who experienced it and I think it
14 would be doubly unfair if I am not allowed ask him
15 that. 17:21

16 CHAIRMAN: what question? Do you want the totality of
17 what she was wearing, is that it?

18 MR. O'CONNOR: How she, how she was presented.

19 CHAIRMAN: I find it very hard to find how that could
20 be relevant? we heard where the cameras were located, 17:21
21 et cetera. It seems to me that could be, your reaction
22 is one that only formulated itself since the witness
23 Mr. Culliton gave evidence.

24 MR. O'CONNOR: well I'm saying that she was engaged in
25 entrapment and I'm saying that as a result the evidence 17:21
26 that's put before this Commission is tainted, and that
27 what happened in that room it was instigated by her.
28 If it's over and beyond a normal opportunity given to
29 somebody to show evidence of misconduct and if it

1 reaches a certain standard that it becomes wholly
2 tainted.

3 CHAIRMAN: well can't we make our minds up in relation
4 to that?

5 MR. O'CONNOR: You can and at the end of the day if 17:21
6 the Commission don't want me to ask that question or
7 not allow the question we'll move on. I think, I
8 suggest it's not an unfair question but --

9 CHAIRMAN: I think we'll move on.

10 254 Q. MR. O'CONNOR: Very well, Chairman. I think then that 17:22
11 you got a phone call some time after that?

12 A. Yeah, I think two hours later or something. Again I
13 was above in the middle of something happening in
14 business and a phone call came and it is there,
15 whatever, and I was -- the one recollection I have of 17:22
16 that, what surprised me all along from the moment I met
17 her to -- like, by the way, I left that, I left my, the
18 Southern Hotel that date I would say a quarter to two,
19 Chairman, after having the interview with her ladyship,
20 the blond bombshell, and I went straight to my other 17:23
21 shop out in Strandhill because I was late. As I was
22 going in the door, as you can see on the tape, you can
23 show there, I was been taped and shown and another car
24 was shown also by these people but anyway all the way
25 going to Strandhill, doing my business in Strandhill, 17:23
26 coming 35 miles back again to Enniscrone to me other
27 shop, there was something in me head wasn't right about
28 the whole thing, it just didn't fully add up. But I
29 had so much going on I didn't, I didn't sit down and

1 think about it, think it out through. When I got the
2 call she said, it's two hours later, she was now at
3 "Dublin airport", I think was the word she said, and
4 then she said she was talking to her friends, her
5 associates, her representatives in London and they were 17:23
6 prepared to put €200,000 into my business. Now I was,
7 I don't know how it goes out on the tape but I was
8 stunned when I got that, when I heard that from this
9 lady. Here's a lady who had done very little research
10 on Joe Queenan, who didn't know anything about the 17:24
11 businesses I ran; how financial they were, were they
12 making profits or what and she offered me €200,000?
13 I said to her I think, I just said "hold on now, let's
14 get the planning sorted out first before we go talking
15 about jobs or talking about €200,000. It might have 17:24
16 come across different on the tape but I know what my
17 reaction was. I was taken back really by her comments.
18 CHAIRMAN: And that was on your way, on her way to the
19 airport she said it?

20 A. The airport, as she said herself, two hours later she 17:24
21 was far and she was going back to, she was at the
22 airport now. Sure I said to myself how in Jesus could
23 she be in the airport in Dublin in two hours from
24 Sligo?

25 CHAIRMAN: Is that the first time you were put on 17:25
26 notice by virtue of her demeanour or what she said?

27 A. That was, that was the final conversation I had with
28 Nina, this is the last few at the end when she rang me.
29 CHAIRMAN: Had there been anything earlier that put you

1 on notice that all wasn't...

2 A. Well there was a number of things.

3 CHAIRMAN:correct?

4 A. To be fair, Chairman, the whole -- when I was talking
5 about wind farms and all of that, as I said to you 17:25
6 earlier, Chairman, if you're representing
7 multinationals or big companies in any country, you're
8 coming over here to meet people, you come here with a
9 presentation and you come here with your facts and you
10 give that impression, whether you know them or not, but 17:25
11 this lady when I, she quite clearly was weak on a whole
12 load of things so, but as --

13 255 Q. MR. O'CONNOR: You had doubts about her?

14 A. Oh I had doubts, I certainly had doubts.

15 256 Q. Eh-hmm. 17:25

16 A. But again I walked into the trap and --

17 CHAIRMAN: So were the doubts that you had, did they
18 commence when she rang you or when you were speaking
19 about the €200,000?

20 A. Well no, Chairman, the very first doubt I had, the very 17:26
21 first conversation, phone call that was made was I was
22 on the way from Sligo and then she introduced, we'll
23 have a, about the wind farm, the very first
24 conversation, and I said "hold on I'm in bad coverage
25 I'll talk to you when I get home". That's why even 17:26
26 that time there was something not right about the whole
27 thing. That's why I insisted that the meeting would be
28 held in the public area of the Sligo Park Hotel. It's
29 an open foyer, I knew then you couldn't be entrapped in

1 any way, you couldn't be filmed, you know it was a
2 public area. Right from the word off there was
3 something not right about the whole thing but --

4 257 Q. MR. O'CONNOR: would that be a common practice of
5 your's, councillor, to meet in a public area of a
6 hotel? 17:27

7 A. Well if it was personal, if it was a, well say if I was
8 meeting some local person you wouldn't meet them in a
9 public area, you'd meet them in a private area. You'd
10 meet them in your office or you'd meet them in their 17:27
11 office or you'd meet somewhere, you wouldn't be showing
12 because they know who you were. But in this case here
13 is a stranger making a phone call from England, or so
14 called from England, it was an English registration or
15 an English phone number that came up on my phone so I 17:27
16 took it that it was legit, but somehow something wasn't
17 right in the whole thing at the back of my mind. But,
18 Chairman, I am not making any excuses but at the same
19 time I had a lot of things on in me mind at that time
20 and I just wasn't totally focused on what I should be 17:27
21 doing.

22 CHAIRMAN: Okay, I can understand that.

23 A. Okay, Chairman.

24 CHAIRMAN: Now, just for the sake of the record, you
25 did mention the flirting but we don't seem to have any 17:28
26 mention of it in the statement that you've given us.

27 A. Okay. Well on the last statement, yeah, I didn't. It
28 has been brought up now and you can take it or you
29 don't have to take it, I don't mind, Chairman, it's

1 your call. I said it under oaths. I didn't put it in
2 this statement I didn't want -- this is the --
3 MR. O'CONNOR: I think it was in the letters, the
4 earlier letters, the more detailed letters that
5 Ms. Durkan wrote it was referred to. 17:28
6 CHAIRMAN: I appreciate that but just here as a matter
7 of comment I was just putting it to the witness.
8 MR. O'CONNOR: I know.
9 CHAIRMAN: Yeah.
10 MR. O'CONNOR: I don't have any further questions. 17:28
11
12 END OF EXAMINATION OF COUNCILLOR JOE QUEENAN BY
13 MR. O'CONNOR
14
15 CHAIRMAN: Do you have any questions? 17:28
16 MR. DOHERTY: Yes, Chairman, I do thank you.
17
18 COUNCILLOR JOE QUEENAN CROSS-EXAMINED BY MR. DOHERTY
19 AS FOLLOWS:
20 17:28
21 258 Q. MR. DOHERTY: Councillor Queenan.
22 A. Mr. Doherty how are you?
23 259 Q. I'm very well, thank you. Councillor Queenan I think
24 you heard me opening some of the provisions of the
25 Local Government Act? 17:28
26 A. Yeah.
27 260 Q. Part 15 to the Commission earlier today?
28 A. Yeah.
29 261 Q. I take it as a councillor with your background of

1 experience and your many years of service you're keenly
2 aware of your obligations under those provisions?

3 A. I am.

4 262 Q. Is that correct?

5 A. I am Mr. Doherty, yeah. 17:29

6 263 Q. And have been for some considerable time?

7 A. That's correct, sir.

8 264 Q. Just in ease of you, Councillor Queenan, I can hand up
9 a book of the legislation so we can see the provisions,
10 but I take it that you accept that in carrying out your 17:29
11 functions as a councillor you're obliged to maintain
12 proper standards of integrity, conduct and concern for
13 the public interest, isn't that right?

14 A. Absolutely 100%, yeah, absolutely.

15 265 Q. You're familiar, of course, with the Code of Conduct as 17:29
16 well that was passed in 2001 under Section 169 of the
17 2001 Act, isn't that right?

18 A. I am, Mr. Doherty, yeah.

19 266 Q. And of your obligation to have regard and be guided by
20 that Code of Conduct in performing your duties and 17:29
21 functions as a public representative?

22 A. Absolutely.

23 267 Q. You're likewise aware of the express prohibition under
24 Section 170 of, against seeking to exact or accept any
25 payment from any person or any remuneration, fee, 17:30
26 reward or other favour for anything done or not done by
27 virtue of your office, you understand that?

28 A. I understand that.

29 268 Q. Can I ask you in relation to the Code of Conduct for

1 Councillors, it's a lengthy enough document, there's a
2 lot of detail in it and it seeks to explain in a very
3 clear way, can I suggest to you, the obligations of a
4 councillor as part of this core bargain with the public
5 who have voted in the councillor and maintaining public 17:30
6 trust and confidence that these core principles of
7 integrity, honesty, impartiality, transparency, these
8 are all embedded in the Code of Conduct, isn't that
9 correct?

10 A. Correct. 17:31

11 269 Q. Are these things that you generally have regard to and
12 adhere to in the performance of your functions as a
13 councillor?

14 A. They certainly are and I can give you a number of
15 examples if you want? 17:31

16 270 Q. No, I am not asking for examples. I just want to
17 establish before we get into the substance of the
18 matters that bring you here today before the
19 Commission?

20 A. Okay. 17:31

21 271 Q. The extent to which you are familiar with your
22 obligations under the legislation in the Code of
23 Conduct and the extent to which you were familiar and
24 adhered to these principles at the time of your
25 interaction with Nina in 2015. So just bearing that in 17:31
26 mind can you confirm that you had the same level of
27 knowledge and adherence to those principles in 2015 as
28 you profess to have today?

29 A. Yes.

1 272 Q. Okay, and I will ask you this question, it is a very
2 general question and feel free to answer it as you feel
3 best, obviously you are under oath, but knowing what
4 you know about the Code of Conduct and the principles
5 that you're obliged to adhere to and have regard to 17:31
6 under the legislation, do you believe you would be here
7 before this Commission and this investigation today if
8 you had complied fully with the Code of Conduct and the
9 principles that apply?
10 MR. O'CONNOR: I think that question is far too broad, 17:32
11 Chairman, I have to say so I would object to the
12 question.
13 CHAIRMAN: Pardon?
14 MR. O'CONNOR: I would suggest that question is far
15 too broad. It's asking him why would he be here today 17:32
16 if he complied with the Code of Conduct? I mean if he
17 wants to put a specific part of the Code of Conduct,
18 Mr. Doherty does, to the councillor?
19 CHAIRMAN: It is a hypothetical question.
20 273 Q. MR. DOHERTY: May it please you, Chairman. Well in your 17:32
21 dealings with Nina, who you took to be a genuine person
22 interested to invest or to bring an investment into the
23 Sligo region, isn't that correct?
24 A. Yeah, yes, absolutely.
25 274 Q. Yeah. 17:32
26 A. And the phone calls I assumed that everything was
27 legit, yeah.
28 275 Q. So we've all seen and heard the recordings and seen the
29 transcripts, do you believe now - I just want to be

1 clear on your position before the Commission - that in
2 those dealings you did adhere to the principles set out
3 in the Code of Conduct or that you didn't?

4 MR. O'CONNOR: Again, Chairman, I think that's a very
5 broad question. 17:33

6 A. That's a very broad question because I was dealing with
7 quite clearly a man under stress, number one. I was,
8 the venue was changed, I was 20 minutes late, I rushed
9 into a room and I was clearly entrapped. I did not go
10 there, I did not go there looking for anything, only 17:33
11 try and advise this lady, who might bring jobs to my
12 county, and I stand over that until the day I die,
13 Chairman.

14 276 Q. MR. DOHERTY: Okay, we will take it in steps Councillor
15 Queenan. I understand your complaint that you believe 17:33
16 you were entrapped, I understand that.

17 A. Thank you.

18 277 Q. I understand what your Counsel has said about being
19 lured into making statements by flirtatious behaviour,
20 I don't accept it but I understand the point being 17:33
21 made. The reason why I've asked you the question is
22 both of those things; alleged entrapment, alleged
23 luring by flirtatious behaviour, presuppose a breach by
24 you of the Code of Conduct but are offered as
25 explanations for your behaviour. So I just want to be 17:34
26 clear, before we get to the detail of those excuses and
27 explanations, do you accept or do you not accept,
28 whatever your explanation or reason, that in your
29 dealings with Nina in 2015 you breached the Code, you

1 breached the provisions of the legislation?
2 MR. O'CONNOR: Again Chair I would again interrupt him
3 but I --
4 A. That's not up to me to decide but I didn't go there to
5 breach anything, Chairman. I went there to speak to an 17:34
6 investor who was supposedly bringing jobs to our area.
7 I didn't go there to breach anything. I didn't -- look
8 at my attire I didn't go there looking for money. You
9 could quite clearly, how I'm dressed today and I was
10 dressed that day I was there just -- 17:34
11 CHAIRMAN: I think in view of what he has said it will
12 be up to the Commission to decide on that point.
13 278 Q. MR. DOHERTY: May it please the Commission.
14 A. Thank you, Chairman.
15 279 Q. MR. DOHERTY: Can I ask you then, Councillor Queenan, to 17:35
16 look at some of the things that have been said by you
17 and on your behalf in response to the airing of the RTÉ
18 investigation, in the first place, and in response to
19 the Inquiry Officer, okay? So you know that RTÉ
20 levelled, or in correspondence to you on the 20th 17:35
21 November or the 12th November 2015 asserted that their
22 view was that the footage taken with Nina demonstrated
23 breaches of the Code, you're aware that was an
24 allegation levelled against you by RTÉ at the time,
25 isn't that correct. 17:35
26 A. I do, yeah.
27 280 Q. Your solicitor on your behalf wrote to RTÉ on the 25th
28 November 2015, isn't that correct?
29 A. Yeah, that's correct I think, yeah.

1 281 Q. Okay. In that letter, which I think it's only fair
2 that you see because it's in the booklet before you, if
3 you want to open that folder in front of you?
4 A. Okay, sorry, yeah, well okay. What page are we on?
5 282 Q. If you go behind Tab B? 17:35
6 A. Yes.
7 283 Q. You'll see that there are a number of unmarked tabs
8 after that?
9 A. I see the allegations, yeah.
10 284 Q. You'll find about three tabs ahead a blank page that 17:36
11 says "Appendix 2", do you see that?
12 A. Where am I now, are we in Tab B?
13 285 Q. Tab B, there are a couple of tabs after Tab B?
14 MR. O'CONNOR: Three, I think.
15 MR. DOHERTY: Three unmarked tabs after Tab B. 17:36
16 A. Oh, sorry, yeah. Go on, yeah.
17 286 Q. And it the third of those. This is a letter sent on
18 your behalf by your solicitor on the 20th November
19 2015, do you see that?
20 A. Yeah. 17:36
21 287 Q. Okay. So I take it this letter was written on your
22 instructions to RTÉ to set out your views at the time,
23 is that correct?
24 A. Yes.
25 288 Q. In this letter you'll see from the second paragraph 17:36
26 that your solicitor complains on your behalf that:
27
28 "RTÉ has behaved in a manner which is disingenuous and
29 deceptive and which has as its clear design the

1 entrapment and misrepresentation of my client to a
2 national and worldwide audience"?

3

4 A. Yes.

5 289 Q. Can I just ask you about the allegation of entrapment? 17:37
6 How is it that you say, what facts do you identify as
7 giving rise to the entrapment of this case?

8 A. Well quite clearly, Chairman, I'm an ordinary guy and
9 I've a lot of little businesses and I'm very active and
10 I go into my office every morning at 7 o'clock. When I 17:37
11 opened my e-mail and seen the e-mail, the allegations
12 that RTÉ made against me on the 13th November 2015, a
13 day I'll never forget while God keeps me on this earth
14 because for 15 minutes in a dark room the light was, I
15 had one light on, I was in absolute shock and 17:37
16 thankfully somebody came to me, to my assistance
17 because I was absolutely devastated the way RTÉ had
18 treated me here. I went there to Sligo to the Southern
19 Hotel the previous, whatever it was, ten days, in good
20 faith to help a lady who was suppose to bring business 17:38
21 and employment to my area and I felt shocked and
22 angered the way I was being set up, and that's genuine,
23 Chairman, and if -- of course I was entrapped, of
24 course I was entrapped.

25 290 Q. Okay, in what way? well let's just take it one step 17:38
26 back?

27 A. But sure we've seen the film, I was entrapped.

28 291 Q. If you could just listen to the question please,
29 Councillor Queenan?

1 MR. O'CONNOR: The question is a legal question,
2 Chairman.
3 MR. DOHERTY: It's not.
4 MR. O'CONNOR: It's a legal question being put to a lay
5 witness. 17:38
6 MR. DOHERTY: with the greatest respect, it's a
7 cross-examination.
8 MR. O'CONNOR: well it's a legal question.
9 292 Q. MR. DOHERTY: Firstly, what were you entrapped to do?
10 A. Well what this lady set out to me to do first of all. 17:38
11 The allegation is there, that's what I was entrapped,
12 it was a setup.
13 293 Q. To do what, what were you entrapped to do?
14 A. Read what RTÉ, the allegations of RTÉ, what page is
15 that there? They made allegations, a whole load of 17:39
16 allegations again me. On the first letter that I got,
17 on the 13th November, Friday the 13th November 2015, as
18 I said a day in my life that I'll never forget, and my
19 family will never forget and my friends will never
20 forget. I have lost track of that letter. 17:39
21 MR. O'CONNOR: I think it is --
22 A. Oh, yeah, it is here in the (B). All these allegations
23 here about the phone calls sure that was, in my, in my
24 clear mind and in my clear conscience, Chairman, I went
25 there to help somebody. I didn't go there to look for 17:39
26 anything. I looked for jobs for my area, that's me
27 focus. I said to Mr. Doherty you may not be aware of
28 what it's like in rural Ireland but I live in it. I'm
29 a sixth generation from west Sligo, I am proud of it, I

1 am proud of my county but we need investment and jobs
2 and that's including all Government, all Governments,
3 apart from Éamon Ó Cuív and Michael Ring, they've done
4 nothing for the rural part of our county. That is why
5 I went there hopeful that maybe something good would
6 come out of it. 17:40

7 CHAIRMAN: well we now, we now know your motive for
8 going there.

9 A. Okay, thank you Chair. I am sorry for being emotional
10 but I -- 17:40

11 CHAIRMAN: Yeah, so if we can proceed in relation to
12 that?

13 294 Q. MR. DOHERTY: You see, Councillor Queenan, you know with
14 the Statement of Alleged Contraventions assert against
15 you. You know that it is asserted that in your 17:40
16 dealings with Nina you compromised your role as a
17 public official by holding out the possibility of a
18 private investment while dealing with her as a public
19 official. So is it your case, and I am just trying to
20 understand it now, I don't understand Mr. O'Connor's 17:40
21 argument, I'm just trying to understand it, is it your
22 case that you did do that but you were trapped and
23 tricked into doing it or that you didn't do it?

24 A. I didn't go there looking for anything and you can
25 trick the question anyway you want but it is the way it 17:41
26 was put to me, and I will say that it'd be, that it be
27 the lady or the chocolate biscuits but I got carried
28 away a small bit, I'm sorry, I'm sorry, Chairman, I'm
29 sorry, I did go down a small bit under the standard

1 that I have kept. My standard is there, my CV is there
2 for 20 years. As I said every -- I'm involved, I said
3 Chairman, in the VEC, ETB, GAA, all of them are
4 interacting with the local authority at some stage.
5 Mr. Ó Cuív, the Foreign Minister, will tell you that. 17:41
6 There are times when things are coming before the local
7 authority which might have an interest in other bodies
8 you'd be involved in and every time that that happened
9 in my case I left the Council Chamber over me 20 years
10 or I put up my hand and said, every time we talked 17:41
11 housing or planning in an area I started off by saying
12 I'm a local, I'm also a local auctioneer so I never
13 tried to deceive the people that I represent or to
14 deceive anybody, but I will say that that was below my
15 standard that day and I apologise but I didn't go in 17:42
16 there looking for anything, Chairman.
17 CHAIRMAN: Now, Mr. Doherty, he has answered the
18 question in the manner he wishes to answer the
19 question.
20 MR. DOHERTY: He has, Chairman, absolutely. 17:42
21 CHAIRMAN: I think we should proceed.
22 295 Q. MR. DOHERTY: Absolutely. So in the course of your
23 direct evidence with Mr. O'Connor, Councillor Queenan,
24 I noted you as saying, he brought you to a part of the
25 transcript where you suggested you didn't want anything 17:42
26 for offering your services to Vinst Opportunities but
27 maybe down the road there was a possibilities of an
28 investment in your business, do you recall that?
29 A. Yeah, I do.

1 296 Q. And in your direct evidence I have you noted as saying,
2 and correct me if I'm wrong, "I put up my hand, I
3 diverted myself, I shouldn't have, it wasn't my form",
4 words to that effect?

5 A. Okay. 17:42

6 297 Q. Certainly that suggested to me that you recognised that
7 in suggesting or agreeing to a suggestion, however you
8 want to characterise it, that you would get support
9 from Vinst Opportunities by way of investment into your
10 private business you had breached the Code? 17:43

11 A. Well, first of all, the whole thing was hypothetical.

12 298 Q. I understand that?

13 A. The whole thing about this agri-business wasn't even in
14 my control, still is not in my control.

15 299 Q. Okay. 17:43

16 A. Or in nobody's control so I was, to be quite saying,
17 exaggerating a little bit, right? I also said that my
18 brother could be, could be the partner because I do
19 know, and this is natural in normal life, look at in
20 the Dáil, all of the business people in the Dáil 17:43
21 elected by the people, but to form a big company, to
22 form a serious business you won't get the money from
23 the banks. I haven't it under the mattress like Bertie
24 so I have to get investors to help me along or help
25 anybody along to develop a business. At the end of the 17:44
26 day all this was, was to try and create more jobs in my
27 area.

28 CHAIRMAN: All right, we have that point now.

29 A. Okay, I am sorry Chairman.

1 300 Q. MR. DOHERTY: Can I ask you why, Councillor Queenan, in
2 the second of the two telephone conversations with Nina
3 setting up the meeting of the 4th November 2015, when
4 she asks that the matter be kept confidential you
5 answer: 17:44
6
7 "oh, big time, oh absolutely and the same here. I
8 don't want anyone to know that I'm doing this".
9
10 A. Right, okay, absolutely I stand over that statement. 17:44
11 301 Q. Yeah?
12 A. No problem. If, for argument sake Chairman, any
13 investor rings you do you think I was going to be like
14 some politicians and go on the local radio and say I
15 was talking to an investor coming from England tomorrow 17:45
16 morning, that's not the way you operate business in an
17 effective way. Of course I was keeping it
18 confidential, I was keeping it confidential because
19 nothing may have, would come out of it, may not, as it
20 did nothing did come out of it because it was a hoax, 17:45
21 but in the event of it being a legitimate phone call
22 from a legitimate person legitimately interested in
23 West Sligo then of course you keep it confidential
24 until they, until they go in through the planning
25 process, and when they go to the planning process it 17:45
26 goes on the public display then, your notice goes on
27 the site, it goes in the local papers, everyone knows
28 then. Until then you keep it confidential in case it
29 in any way it jeopardises the project.

1 302 Q. Okay, I understand that from the perspective of Vinst
2 Opportunities, that they might want to keep this
3 confidential until they were ready to go for planning
4 permission, as you've just indicated, but you said:
5 "I don't want anyone to know that I am doing it". So 17:45
6 why do you not want anyone to know that you're doing
7 this meeting with Vinst Opportunities?
8 A. "I'm doing it". Well I was asked by her.
9 303 Q. Yes?
10 A. To do it and she wanted to keep it confidential and I 17:46
11 said I would keep it confidential. There was no big
12 agenda there in any way. I don't want any -- I'm that
13 kind of a guy anyway, I do keep my own counsel to
14 meself, so I didn't want anyone to know, full stop.
15 304 Q. Can I suggest to you the reason that you didn't want 17:46
16 anyone to know about it because it potentially brought
17 you into conflict with the Code of Conduct?
18 A. No, no, no, I -- right, no --
19 305 Q. Do you think it enhances?
20 MR. O'CONNOR: Let him answer. 17:46
21 MR. DOHERTY: Sorry, I didn't realised he had finished.
22 A. It had nothing to do with the Code of Conduct at that
23 stage. As a councillor I was, I was, I was taking a,
24 taking a phone call from a possibility of a huge
25 investment in my area, that's the reason you keep them 17:46
26 things low key, quiet until the, until the whole
27 project is developed. That's all that was there.
28 There is no big, no big agenda on my behalf there.
29 306 Q. I see, and the issue of confidentiality is raised again

1 in the context of your meeting with Nina on the 4th
2 November 2015, isn't that correct?

3 A. It was, yeah.

4 307 Q. And in the course of offering to assist in the
5 preplanning process, as you have given your evidence 17:47
6 about?

7 A. Yeah.

8 308 Q. You also made it clear that you didn't want it known
9 that you were offering that assistance to Vinst
10 Opportunities? 17:47

11 A. Right.

12 309 Q. Isn't that right?

13 A. That's right.

14 310 Q. why didn't you want it known that you were working with
15 -- 17:47

16 A. why would I want it -- I'll turn that around and ask
17 you. I'm a local councillor, like you're a local
18 councillor, there are some elected members who would be
19 anti-development who'd be anti-wind farms and I would
20 want to keep that low key, confidential until we came 17:47
21 to a stage where you had no option but to go public. It
22 had nothing do with ethics, it had nothing to do with
23 money, it was just my strategy and my experience, I've
24 20 years working for the people of my area.

25 311 Q. Can I suggest to you that the reason you didn't want it 17:48
26 made public and known by other councillors that you
27 might be assisting this company is precisely because
28 during the course of this meeting you were offered a
29 business opportunity by Vinst Opportunities, isn't that

1 correct?

2 A. No, no, no, no. The Vinst opportunity or the business
3 opportunity came on that tape later on, way later on
4 and I said, and my hand, you will see my hand going
5 that way, we'll deal with the planning area, planning 17:48
6 app, your planning proposal first and then we can deal
7 with the hypothetical business opportunity later. It
8 had nothing to do -- I'd keep the two of them separate
9 because that's what my clear conscience was and the
10 tape will verify that. I did not go in there to give, 17:48
11 to help somebody get planning in lieu of getting a job
12 done or getting investments in some other company, that
13 never was my thinking at all.

14 312 Q. Do you think it enhances public confidence in you as a
15 public official that these kind of meetings and this 17:49
16 kind of interaction would be kept confidential?

17 A. Absolutely, they happen every day.

18 313 Q. I see.

19 A. Confidential meetings.

20 314 Q. Do you think it's consistent with your obligation to 17:49
21 act in accordance with the code of principles of
22 honesty, integrity and impartiality?

23 A. Absolutely, every TD's clinic every day is full of
24 problems, they write to all the different bodies, they
25 don't tell everyone else about it, it's confidential. 17:49

26 315 Q. When you indicate to Nina during the course of the
27 meeting that you'll do a bit of lobbying behind the
28 scenes of the local authority that that is consistent
29 with your obligations of transparency, impartiality and

1 integrity under the Code?

2 A. Okay, let me explain that to you now Mr. Doherty. Again
3 we're talking about this investor who has come here to
4 my county to make a big investment, because it is huge,
5 wind farms are, it's a huge investment. If, if the day 17:50
6 came that we got over the first few, the main obstacles
7 to get into the planning office I would definitely
8 then, it was my intention then to talk to my local
9 Councillor and say I met this lady - I had never any
10 intention to bring this to the grave with me - I met 17:50
11 this lady, I progressed it as far as I could as a local
12 councillor, maybe now if this comes into the Chamber
13 any way we could, if there is employment here, there is
14 investment here, I would talk to my colleagues.

15 316 Q. Okay. would you disclose to your colleagues that she 17:50
16 had offered to make an investment in your business to
17 the tune of €200,000?

18 A. If that ever happened, if that ever happened and that's
19 hypothetical.

20 317 Q. well -- 17:50

21 A. It's hindsight and it is always hypothetical, there is
22 absolutely no doubt about it, no doubt about it that
23 the Joe Queenan that's sitting here would definitely
24 tell everybody. I would make it clear, it would be, it
25 would be -- look at the accountant would know, the 17:51
26 ethics forum would have to know, it would be wiser
27 anyway. If I was in a position to create 30 jobs or
28 whatever jobs through and agri-business in Enniscrone I
29 would have to say right this is the way I put up so

1 much money, it is half owned by such a person, of
2 course I'd tell them that, no agenda.

3 318 Q. Okay, so if we get this straight then, you're prepared
4 to put your own time on the line to assist in the
5 preplanning process, to lobby behind the scenes with 17:51
6 the councillors so that Vinst Opportunities can develop
7 a wind farm in Sligo, you're not going to tell anyone
8 that this person has offered you the possibility of a
9 private investment of €200,000 but if it comes down the
10 line at some future point you'll make a disclosure at 17:51
11 that stage, is that right?

12 A. I think now Mr. Doherty you're nit-picking and you're
13 going out on hypothetical stuff that you'd only see on
14 a repeat on RTÉ. That is way, way hypothetical to me,
15 Media thrash because that's not the way it works in 17:52
16 reality. I never had any intention of covering anything
17 up here. My focus was jobs for my people if I had a
18 chance.

19 319 Q. Okay. Well to be frank, Councillor Queenan, I'm just
20 reading the transcript and I've just watched the 17:52
21 video,?

22 A. Okay.

23 320 Q. But I just want to ask you this before I get to the
24 substance of that particular part of the transcript,
25 because I think you appreciate that's why you're really 17:52
26 here today?

27 A. Well I don't know why I'm here but anyway.

28 321 Q. Well in your solicitor's letter she says --

29 A. By the way I say this, Chairman, why I'm here is

1 because a complaint by the County Manager, isn't that
2 correct, the Sligo County Council, is that correct
3 Mr. Doherty?

4 322 Q. (Nods head yes)

5 A. Let me put this on record Mr. Chairman. That complaint 17:52
6 was signed by the County Manager and countersigned by
7 the Chairperson of the day. Not one official, not one
8 elected member knew about that until last week. Just
9 put that on record.

10 CHAIRMAN: It is on the record now. 17:53

11 323 Q. MR. DOHERTY: All right. Councillor Queenan in your
12 solicitor's letter on the second page she says:
13
14 "In addition it is clear to us that the demeanour of
15 your undercover reporter was very arguably flirtatious, 17:53
16 fell far below the level that one would expect of
17 National Broadcaster, in that it stooped to a level of
18 innuendo and flirtation that was conspicuous and which
19 was, in our view, designed to elicit predesigned
20 responses from my client". 17:53
21

22 It is really the last part of that sentence I want to
23 ask you about. What part of the questions, and I think
24 you've had these transcripts for a very long time, what
25 part of the questions asked of you by the undercover 17:53
26 reporter do you say were designed to elicit
27 "predesigned responses".

28 A. Can I get that -- I lost my concentration. Are you
29 saying that I'm alleging because of her demeanour that,

1 is that what you're saying?
2 324 Q. Her demeanour presentation and the questions she asked
3 you were designed to elicit predesigned responses from
4 you. That is what your solicitor has said on your
5 instructions. So I just want to understand what is 17:54
6 meant by that? I'll tell you what I think you mean.
7 That you wouldn't have said various things that you did
8 say but for the way she was asking you the questions,
9 is that, am I understanding that right?
10 A. I wouldn't say, I don't want to get caught here because 17:54
11 I don't know how you're twisting me around here. Like
12 and I'm not being evasive, Chairman, or anything like
13 that because I came in here with me hands up to give it
14 the way it happened, and my background at the time and
15 my feeling for the area. Can you ask the question 17:54
16 again, Mr. Doherty, sorry, I lost the --
17 325 Q. Okay. In correspondence with RTÉ?
18 A. Okay.
19 326 Q. About the things they were going to broadcast about
20 you, things that you had said to Nina which they 17:55
21 considered to have been a breach of the Code, your
22 solicitor says:
23
24 "It's clear to us that the demeanour of your undercover
25 reporter was very arguably flirtatious and fell far 17:55
26 below the level that one would expect of our National
27 Broadcaster, in that it stooped to a level of innuendo
28 and flirtation that was conspicuous and which was, in
29 our view, designed to elicit predesigned responses from

1 my client".

2

3 So I just wanted to, because you've had the opportunity

4 to look at these transcripts and watch these videos for

5 a long time now, what was it that Nina did that got you 17:55

6 to say these predesigned responses?

7 A. I suppose you've obviously put a lot of thought into

8 this Mr. Doherty. Life has moved on, this is three

9 years. It is ironic, Chairman, that the legal report

10 has to be back to you by the 13th November, it will be 17:56

11 exactly four years since my famous day. So all I would

12 say about all of that is you've seen the tape, ye have

13 to make up your minds did I go there looking for

14 anything for myself, when I know I didn't?

15 CHAIRMAN: All right, we've got to decide on that. 17:56

16 A. I think he can say what he likes but look at --

17 327 Q. MR. DOHERTY: Okay. Can I ask you to look, there were

18 transcripts taken by Gwen Malone stenographers of the

19 video recording, I'm not sure if you have that in front

20 of you there but I'll get Mr. Shanahan to hand it to 17:56

21 you if you don't?

22 A. Yeah, okay, I have it.

23 328 Q. There are just a couple of things about this.

24 A. I hope you are not going back through all of this again

25 maybe, are you going through it all? 17:56

26 329 Q. I'm not going to go through it all, you'll be glad to

27 hear?

28 A. Thank you, Mr. Doherty.

29 330 Q. I just want to focus on a couple of things.

1 A. Yeah.

2 331 Q. The Commission have obviously seen the video, they have
3 the transcript.

4 A. They have all, yeah.

5 332 Q. There will be submissions to the Commission in due 17:57
6 course about certain aspects of this.

7 A. Yeah.

8 333 Q. So I'm not going to trawl through all of it but I would
9 like you to look at a very important part of this which
10 goes I think to the nub of it, which is on page 19? 17:57

11 A. Okay, I will try my best now. Right, go on.

12 334 Q. Okay. So up to this point you had discussed in a
13 general way planning and suitable areas and unsuitable
14 areas in Sligo for wind farms, and you had given your
15 own experience and you have had some conversation about 17:57
16 the preplanning process?

17 A. Yeah.

18 335 Q. And the reporter posing as Ms. Carlsson had asked a
19 number of times what they could do for you? You'll see
20 the top of the page she says at line 5: 17:57

21

22 "I mean from you, what would we get from you?", and you
23 say: "You get a commitment, when your expertise, when
24 your engineers come to me you give him my contact
25 numbers, come to me and bring the maps to me or the 17:58
26 proposal, I will bring to the Council. I will get
27 firsthand information from the Council and I'll get a
28 bottom line. I know from day one or straightaway
29 whether it is a runner or not and report that back to

1 you, right".
2
3 Okay, so that's your --
4 A. All right.
5 336 Q. That's the preplanning process I suspect, is that 17:58
6 right?
7 A. Yeah, yeah, yeah, yeah
8 337 Q. Then she says:
9
10 "What would you need from us?", and you say, "nothing, 17:58
11 not really at the moment, I'm not really asking for, if
12 you're asking for money or that I am not, I am not
13 really like, I couldn't. If I was caught, if I was
14 actually seen doing that, yes, I would be out on my ear
15 straightaway but maybe down the road, as I say I'm in 17:58
16 business myself".
17
18 Okay, so just taking that interaction for the moment?
19 A. Okay.
20 338 Q. I appreciate we're taking a small piece of a large 17:58
21 transcript?
22 A. Yeah.
23 339 Q. And I'm putting that to you. Can I ask is there
24 anything in the questions that Ms. Carlsson asks you
25 there that you characterise as "stooping to a level of 17:59
26 innuendo or designed to elicit a predesigned response"?
27 Do you make that allegation in respect of this part of
28 the transcript?
29 A. If you are trying to clear Miss, the bomb, the blond

1 from RTÉ I'm not going to go down there. I'll tell
2 you, you're all common sense people and we all go in
3 and have a conversation from time to time, let it be in
4 local office, local pub, and you'll say things out loud
5 and when you see it on tape again you'd be horrified 17:59
6 but you don't go in there deliberately to say what you
7 say or to create some kind of a scenario. I was
8 talking maybe a little too much on top of me head, it
9 wasn't me best day, I was eating chocolate biscuits, I
10 had a blond bombshell in front of me and the rest is 17:59
11 history. I have to, I've to live with this.

12 340 Q. Okay. I'm just simply trying to understand because
13 your Counsel has --

14 A. I was trying to explain to you how I feel, how I felt
15 on the day. 18:00

16 341 Q. Okay.

17 A. And how I feel now.

18 342 Q. Okay. Your Counsel this morning made a submission to
19 the Commission that you had been entrapped into giving
20 certain answers by flirtation and he made quite 18:00
21 significant submissions to the Commission about that.
22 Your solicitor's letter of the 20th November 2015, on
23 your instructions, alleged that you had been lead into
24 giving certain answers by "behaviour and demeanour on
25 the part of the undercover reporter that is said to 18:00
26 have been designed to elicit predesigned responses",
27 so that is your case as to why you said these things.
28 I'm just trying to understand, it's a very simple
29 thing, do you make that case about these answers that

1 I've just brought you to on page 19?

2 A. I just -- it's the overall scenario on the day of what
3 happened. That's -- we made that allegation, we felt
4 that like it was, it was unprofessional I think
5 personally the way the whole thing was done. I was 18:01
6 being used, there is no question about that.

7 343 Q. Okay.

8 A. I was badly set up. It was a bad time for me and my
9 family and I felt angry and I'm very annoyed and I'm
10 very down for a long time after that. 18:01

11 344 Q. Okay. "What would you need from us" --

12 A. I didn't go there --

13 345 Q. "What would you need from us?" is the question that
14 Ms. Carlsson asks, "what would you need from us?".
15 Do you have a complaint about that question? 18:01

16 A. Look at I don't, look at I do only so far.

17 346 Q. Okay.

18 A. But you can nit-pick all you want. In our opinion I
19 was, I was set up.

20 347 Q. Okay? 18:01

21 A. She came there, she looked the part, she didn't know
22 the part but she knew the part.

23 348 Q. Okay?

24 A. And I was weak enough to fall for it.

25 349 Q. Okay. 18:01

26 A. And with her chocolate biscuits and all. It wasn't my
27 best day but I went there thinking that here was an
28 investor that was going to put money into my county,
29 jobs for my people.

1 350 Q. okay?

2 A. That was my focus.

3 351 Q. Is that a difficult question, "what would you need from
4 us?", is that a difficult question?

5 A. It isn't a different quest, a difficult question but 18:02
6 you see what you want me to do now Mr. Farrell (sic),
7 and you're not going to get it from me. Chairman, if
8 I'm out of order tell me. I'm not going to split my
9 legal team and me. That's what this is -- and try and
10 get Nina off the hook. We seen it on the tape, we've 18:02
11 seen her actions ten minutes after I had left, the
12 carry on. We've seen the evidence here today from RTÉ.
13 So that's up to you, Chairman, you can decide that.

14 352 Q. Okay.

15 A. You've seen me in action and I'm not going to go, I'm 18:02
16 not going to answer any more of that stuff because
17 that's trying to put me into, I was trapped once in
18 Sligo in the Southern Hotel in Sligo, I won't be
19 trapped again.

20 353 Q. Councillor Queenan you do understand that it's your 18:02
21 conduct that's under scrutiny here?

22 A. I know it's my conduct, that's why I'm here.

23 354 Q. That conduct having been identified for you to express
24 a view upon, you've expressed a view that you were lead
25 into making these statements by RTÉ. Now I'm just 18:03
26 trying to understand that do you stand over that
27 complaint or do you do what you said in your direct
28 evidence, you put up your hand and say look I got it
29 wrong there I shouldn't have said that but I said it,

1 which is it?

2 A. well it's a combination of both. Let's look at it, and
3 the Chairman I know, and you're very learned people,
4 all of you, and you're balanced people, you'll have to
5 take into consideration Joe Queenan, his background, 18:03
6 his credibility over 20 years, elected by the people,
7 and 40 years in voluntary services never a question
8 about my credibility, you have to take that into
9 consideration, RTÉ's conduct, the way they set me up
10 and my performance on the day, which in some cases was 18:03
11 not up to my usual standard.

12 355 Q. Okay.

13 CHAIRMAN: we have that now?

14 MR. DOHERTY: Can I just ask you then Councillor --

15 MR. O'CONNOR: I may say, Chairman, and I don't want 18:03
16 to, I know it's getting late and I mean it's all in the
17 transcripts and we've seen the tape and --

18 CHAIRMAN: If there is any other matters you want to
19 discuss?

20 MR. O'CONNOR: I think everything else can be dealt 18:04
21 with, I would say, on submission.

22 356 Q. MR. DOHERTY: well I've a few more questions.

23 CHAIRMAN: You've a few more questions.

24 357 Q. MR. DOHERTY: If I may Chairman, but I will, I will move
25 on swiftly if I may? Just a couple of questions just 18:04
26 on this point still, Councillor Queenan. First of all,
27 your first answer when asked that was:
28
29 "Nothing, not really at the moment. I'm not really

1 asking for, if you're asking for money or that I am
2 not, I am not really like, I couldn't. If I was
3 caught, if I was actually seen doing that I would be
4 out on my way straight away", and then you say "but
5 maybe down the road". 18:04
6
7 Can I suggest to you the first part of your answer
8 reflects a keen awareness of the impropriety and
9 inappropriateness of mixing a potential favour or
10 reward for the assistance that you've offered her 18:04
11 already, isn't that right?
12 A. No, no, I reject that completely.
13 358 Q. Okay. So if she had actually said well, yeah, we are
14 going to pay you for this that would have been fine, is
15 that right? 18:05
16 A. Absolutely not. I --
17 359 Q. I see. Is there a difference?
18 A. I wanted no favours.
19 360 Q. Okay.
20 A. This lady was going to, bringing jobs to West Sligo and 18:05
21 that's all that I was anxious to achieve.
22 361 Q. Okay. You continue on then at the bottom of page 19:
23
24 "And I will have some business project coming up. You
25 might be, some of your clients might be interested to 18:05
26 invest with me in the project, or maybe something like
27 that, just talking off the top of my head right now".
28
29 Then she says:

1 "That might be like you know a relationship with --
2 If I have a business project. Yeah. Maybe your view,
3 you've a lot of investors, obviously you're handling a
4 lot of money for investors, yeah, maybe there is
5 something we might be able to, if it was a viable 18:05
6 opportunity, a viable proposal I would be delighted to
7 get your support that way".
8
9 Okay, that's all in answer to the same question "what
10 would you need from us?", do you see that Councillor 18:05
11 Queenan?
12 A. I didn't read it but I heard you.
13 362 Q. Okay. So you would be delighted to get support from
14 Vinst Opportunities by them investing in a potentially
15 viable opportunity that you would be able to bring to 18:06
16 them as part of what they needed from you, that's how
17 it reads, Councillor Queenan, do you see that?
18 A. It might, yeah, it might read awkward, it might be
19 awkward talk on my behalf but all I can say to you
20 Chairman, and I'm going to keep repeating myself, I 18:06
21 didn't go there for anything, for nothing. I don't
22 want anything from anybody. You can ask me all you
23 want Mr., and you have a job to do Mr. Doherty.
24 363 Q. Okay?
25 A. My conscience is absolutely 100% clear. 18:06
26 364 Q. Okay, and on page 23 of the transcript you make it
27 clear that this is all to be kept confidential?
28 A. Yeah, maybe, I don't know what's -- yeah, right go on.
29 365 Q. Yeah.

1 A. Of course which was kept confidential?

2 366 Q. The investment that you had been discussing in a
3 potential business that you'd identified?

4 A. Is that on the, is that the phone call, is it?

5 367 Q. No, it's the meeting. 18:06

6 A. Okay, right, go on.

7 368 Q. Page 23 Ms. Carlsson says at line 5:
8
9 "We could keep confidential that investment. Oh, oh,
10 that, yeah, would be confidential big time, of course 18:06
11 absolutely because we don't want it in the public
12 domain".

13
14 Do you see that?

15 A. I didn't put -- look at I seen it a thousand and one 18:06
16 times. Again my answer to that Mr. Farrell is quite
17 clear, it wasn't my best moment.

18 369 Q. Okay.

19 A. I have to admit, and I was talking hypothetical big
20 time. There was nothing there. 18:07

21 370 Q. Okay.

22 A. I was starting to waffle a bit there.

23 371 Q. At the top of page 24 Councillor Queenan:
24
25 "oh, no, I wouldn't go. The last thing I want to do as 18:07
26 a politician is to go public and say I was being backed
27 by tycoons from the UK or lobbying, that is illegal
28 what I would be doing there. Straightaway it would be
29 a very grey area, I don't want to go there"?

1 A. Isn't that, isn't that to my credit?

2 372 Q. That you don't want it to go public? The last thing
3 you want to do as a politician is go public and say you
4 were being backed by tycoons?

5 A. No, no, isn't it me credit that I knew the ethics? I 18:07
6 didn't want, I wanted no money. These were tycoons
7 that were going to bring in jobs to the area.

8 373 Q. It will be a matter for the Commission ultimately what
9 you meant by that.

10 A. Yeah, yeah. 18:07

11 374 Q. Having seen the video and heard the audio.

12 A. Okay.

13 375 Q. But can I suggest to you Councillor Queenan, because I
14 want to be fair to you, that it makes it very clear
15 that you know what you're proposing to do is a breach 18:07
16 of the Code of Conduct, you don't want it to go public
17 and you're making it clear to Ms. Carlsson you don't
18 want it to go public?

19 A. I reject that. You see you have to take it all in
20 context, the whole conversation and me talking really 18:08
21 off the top of me head really to a certain extent. I
22 didn't go in there deliberately looking for jobs for
23 Joe Queenan or for favours.

24 CHAIRMAN: We have that.

25 A. I'm sorry. 18:08

26 376 Q. MR. DOHERTY: Okay.

27 A. I'm going to continue answering in the same way because
28 he's going to try and --

29 377 Q. Okay. I don't want to labour the point but in the

1 follow up call on the 4th.

2 A. It's the last call, is it?

3 378 Q. The last call.

4 A. The last call I had with Nina, my God.

5 379 Q. And I have plenty more questions for you, to be honest 18:08
6 with you Councillor Queenan, but I'm conscious of the
7 time?

8 A. Well thank you, thank you.

9 380 Q. I'm conscious that the Commission itself will be able
10 to form a view of this? 18:08

11 A. Yeah, they will I hope.

12 381 Q. But this is, of course -- do you have the transcript in
13 front of you there?

14 A. No, but go on, I've seen it.

15 382 Q. No, I think it's better and in fairness to you that you 18:08
16 have the transcript Councillor Queenan?

17 A. I thought we discussed this already.

18 383 Q. You may have discussed it with Mr. O'Connor briefly?

19 A. Yeah.

20 384 Q. I am opening this in fairness to you Councillor 18:09
21 Queenan. Do you see on page 3 of the transcript?

22 A. Go on, yeah.

23 385 Q. So Ms. Carlsson has asked you about how the investment
24 would be structured, would it be a loan or stake in the
25 company and you say you would be open to either. Then 18:09
26 you go on to say that you trust that none of this is
27 being recorded and that she is being frank. You say at
28 line 13:
29

1 "Anything you ask me to do I'll do it for the benefit
2 of Sligo. That will bring more wind farms to Sligo and
3 more income for the Council and I don't want any fee or
4 nothing like that for anything I do for you",

18:09

5
6 right, okay? So I think that has been your view that
7 that was really what your interest was in dealing with
8 Ms. Carlsson throughout this, isn't that correct?

9 A. I repeated that a thousand times, absolutely.

10 386 Q. Okay, and then you say:

18:09

11
12 "And if I go down the route of developing a business
13 further, which I will know in the next month or six
14 weeks, we would do it on a business, totally on a
15 business nature, everything above board, and if it's a
16 loan I'll pay it back, we'll come to an agreement we'll
17 pay it back. I'd want to take a share in my business,
18 we'd go that route, again we're talking and basically
19 here we'll go that route either also, right".

18:10

20
21 Okay, so the first part reflects, can I suggest to you,
22 your public obligation, your public function in trying
23 to attract business to Sligo, the second is your
24 private interest in getting an investment in the
25 business, isn't that correct?

18:10

26 A. No because I'll tell you why? The famous location
27 we're talking about wasn't mine so I had no control
28 over it whatsoever and, as I said, it's something I
29 shouldn't have said and I said it but I was really, I

1 was talking hypothetical. I hadn't even owned the
2 property and I was talking about offering someone an
3 investment in a future business plan that was
4 hypothetical and may not happen, and did not happen and
5 it is not going to happen I think now. 18:11

6 387 Q. Okay. Well can I suggest to you - it will be a matter
7 for the Commission ultimately - that these identify two
8 separate things?

9 A. Okay.

10 388 Q. A public function and a private interest? 18:11

11 A. Okay.

12 389 Q. But it's being presented by the same party who is
13 trying to solicit your assistance as a councillor who
14 is offering you this private opportunity, do you see
15 that? 18:11

16 A. It is being solicited by who?

17 390 Q. By this, this private investor is offering you an
18 investment or offering to make an investment in your
19 private business interests while at the same time
20 soliciting your assistance as a public official, do you 18:11
21 see that's what's taking place?

22 A. No, no, I don't agree with that. Actually I don't
23 agree with what your, with your analysis at all there.

24 391 Q. Okay.

25 A. I'll tell you why I don't agree with your analysis. 18:11
26 Right, I did mention that famous place, location that I
27 don't own, never did own, will probably never own but I
28 was in an awkward roundabout way saying, hoping that
29 along with the wind farms if they developed maybe she

1 would be able to invest in other businesses in the
2 area. That is really what I was coming at there, what
3 I was saying there.

4 392 Q. Okay. In your letter of the 12th April 2017 you also
5 appear to acknowledge that you have breached the Code 18:12
6 but say in hindsight that you are embarrassed about how
7 quickly you were manipulated into this conduct, do you
8 remember that?

9 A. If I said it, I'm not disputing that it wasn't said.

10 393 Q. Okay, okay. 18:12

11 A. Is this regards -- oh, yeah, the 12th April, go on,
12 yeah.

13 394 Q. Yeah, so how were you manipulated into this conduct?
14 A. I think we've been through that a thousand times.

15 395 Q. Okay. 18:12

16 A. To be fair to you Mr. Doherty and I'm not repeating it
17 again.

18 396 Q. Okay, it's the same answer as before.
19 A. Because the Chairman is going to rule me out of order..

20 397 Q. Okay. Can I suggest to you just, and this is the last 18:12
21 piece I want to ask, you have given evidence that you
22 are familiar with the Code of Conduct?

23 A. Yeah.

24 398 Q. And it'll be a matter for the Commission ultimately to
25 decide whether or not you did adhere to those 18:13
26 principles? If Ms. Carlsson had been genuine, this is
27 a hypothetical question, if she had been genuinely a
28 representative of a wind farm operation?

29 A. Okay.

1 399 Q. So this wasn't a deception?
2 A. Okay.
3 400 Q. And had asked the question she'd asked?
4 A. Okay.
5 401 Q. And I accept there is deception in the way she is 18:13
6 presented because she wasn't and she was an undercover
7 reporter.
8 A. Okay.
9 402 Q. Isn't that precisely what you'd expect somebody to come
10 to do to try to corrupt a public official; offer them a 18:13
11 public benefit, sorry, a private benefit as part of
12 trying to solicit their public support, isn't that
13 exactly what you'd expect somebody to try to do?
14 A. I don't agree. You see there's an, there's 870 county
15 councillors in the country. 18:13
16 403 Q. Yeah?
17 A. And there are so many Dáil deputies and senators and it
18 makes headlines to see corrupt politicians. Yes, there
19 was things in the planning in the past was totally out
20 of order and were wrong but the vast, vast majority of 18:14
21 councillors are ordinary human guys who are getting a
22 small wage out of the local -- actually if you're
23 talking about finance I get €20,000, Chairman, for
24 being a local councillor. Half of that is gone in tax
25 and when I am away on my business, Council business, I 18:14
26 have someone in me shop looking after it. It is not
27 worth €5,000 a year to me but I'm going to do it
28 because I'm proud of me area and people want me. So
29 there's no big financial gain for me being a local

1 councillor at all but I'll do it because the people
2 want me to do it and I'll continue as long as they
3 want me to do it, so.

4 404 Q. Okay.

5 A. Corrupt politicians is a headline straightaway. 18:14

6 405 Q. I'm going to ask you one more question just about Nina?

7 A. We're not all corrupt.

8 406 Q. I'm going to ask you one more question about Nina and
9 then I'm going to put three or four short propositions,
10 and that's all I have for you you'll be glad to hear 18:14
11 Councillor Queenan.

12 A. Good.

13 407 Q. In relation to Nina can I suggest to you that what
14 happened here, if you treat it as in the hypothetical
15 I've just put to you as somebody who was actually 18:14
16 trying to exploit an opportunity and offer support in a
17 public, in a private benefit, it is no more than an
18 unexceptional opportunity for you to breach --

19 MR. O'CONNOR: It's a totally, I have to object,
20 Chairman, on the basis that that's a totally legal 18:15
21 question that is now being put.

22 MR. DOHERTY: It's not a legal question, it's a
23 perfectly valid question.

24 MR. O'CONNOR: It is a matter that will be important in
25 the submissions as to what is an exceptional or an 18:15
26 unexceptional opportunity, and it comes straight from
27 the case law on entrapment and it is unfair to put it
28 to a lay witness.

29 MR. DOHERTY: It's a perfectly legitimate question. If

1 you'd let me finish the question then the Commission
2 might understand the question?

3 CHAIRMAN: Go on finish the question.

4 408 Q. MR. DOHERTY: First of all, I have to suggest to you
5 that Nina's behaviour in approaching the way she did 18:15
6 and asking the questions she did is no more than an
7 entirely unexceptionable form of behaviour that
8 somebody if they were actually trying to corrupt the
9 process would engage in?

10 MR. O'CONNOR: That in itself requires an objective 18:15
11 analysis. It's again a matter of, it's a matter of
12 law, Chairman, and I think it's unfair to put a legal
13 question at a quarter past six to a witness.

14 A. I don't know.

15 CHAIRMAN: well is he in a position to answer the 18:16
16 question?

17 A. I'm not in a position to answer that, I don't know
18 where he is coming from?

19 CHAIRMAN: All right.

20 409 Q. MR. DOHERTY: You were offered an opportunity here, and 18:16
21 you took it, to set up a potential private investment
22 for yourself in the context of this fictional potential
23 investment in Sligo, isn't that correct?.

24 A. No, I totally reject it out of hand.

25 410 Q. Okay. 18:16
26 A. Out of order, out of -- completely.

27 CHAIRMAN: All right, we have his response.

28 411 Q. MR. DOHERTY: Okay. Can I suggest to you then, first of
29 all, that the appropriate thing for you to do when

1 lady who was here to do what she wanted to Joe Queenan.
2 All I was looking for, I'll agree with you it's
3 hypothetical, it was a share in a business, either a
4 loan or a shareholder in the business. If that ever
5 happened, if that ever happened Mr. Farrell, 18:18
6 Mr. Doherty, my apology, I would definitely have
7 declared that at a very, very early stage, if that ever
8 was to happen. But this is the very first conversation
9 we had with this lady regards this thing and I said,
10 Chairman I don't want to keep repeating myself, you are 18:18
11 getting board of me saying the same thing.

12 CHAIRMAN: No, we have it.

13 MR. DOHERTY: Those are my questions for Councillor
14 Queenan.

15
16 END OF CROSS-EXAMINATION OF COUNCILLOR JOE QUEENAN BY
17 MR. DOHERTY 18:18

18
19 A. Can I, before you do could I just say one things on the
20 ethics because I know we agreed the ethics, I took me 18:18
21 hand up on, but on the ethics form, Chairman, and you
22 are all part of the Ethics Committee, the ethic form if
23 you seen my one which raised alarm was it, the ethics
24 form is that you put your name on the top of it and you
25 sign the bottom on the very first page. As Mr. Doherty 18:19
26 is, for the last half an hour or so, so concerned about
27 ethics and all of that and if the, that is something I
28 want to change anyway is that the last thing you should
29 do on any serious form you fill out is you sign it at

1 the very end, that'd be whatever it is. That is what
2 happened me that day, Chairman. I was in the Chair
3 chairing the meeting and when you're chairing a Council
4 meeting, Mr. O'Keefe would know well, there is a load
5 of paperwork on your, in front of you and what happened 18:19
6 was I, the administrator beside me said "Joe, you
7 better get this sorted out today". I put my name on
8 it, I signed it and I left it there and it was taken
9 away in correspondence and put into a file and that was
10 the end I heard of it until the 13th November 2015. 18:19
11 I'm sorry, it's my responsibility but it was a genuine
12 error. I was not deliberately trying to hide anything.
13 CHAIRMAN: All right, thank you Mr. Queenan.
14 A. Can I just say before I finish, it's a long day, I want
15 to thank you for the courtesy you've shown me here. It 18:20
16 has been nearly four years to come in and give my side
17 of the story and it has been tough on me and me family
18 and my supporters.
19 CHAIRMAN: Yes but we have it all.
20 A. But I want to say this; I hold no ill against anybody 18:20
21 who tried to entrap me in any way. I'm human, I made
22 an error, not a big error, so I'm sorry. I hold no ill
23 feeling to anybody and I'm going to go back to my
24 people and they'll decide my fate next May. Thank you,
25 Chairman. 18:20
26 CHAIRMAN: All right, well that's the end?
27 MR. O'CONNOR: Yeah, Councillor Queenan himself dealt
28 with the Declaration matter, which was the one thing
29 I'd forgotten to ask him about.

1 CHAIRMAN: Yeah.

2 MR. O'CONNOR: He has dealt with it himself. I'll make
3 my submissions in the timeframe outlined.

4 CHAIRMAN: So that's it at this late hour of the day.

5 MR. DOHERTY: Yes, Chairman. 18:21

6 CHAIRMAN: I've already made the directions in
7 relation to submissions and then we'll have to deal
8 with the matter.

9 MR. DOHERTY: Just on one housekeeping matter, Chairman,
10 if I may? I know that you have made directions about 18:21
11 the written submissions. In ease of Mr. O'Connor,
12 given that we presented the case, it may make more
13 sense for it to be a staggered submission so that we'll
14 give our submission one week earlier so that Mr.
15 O'Connor sees what we're saying on the factual and 18:21
16 legal issues before the Commission and has an
17 opportunity to respond. It just strikes me as
18 potentially being fairer to Councillor Queenan in those
19 circumstances.

20 CHAIRMAN: If it's only the week you can do it that 18:21
21 way.

22 MR. DOHERTY: Yes, absolutely, Chairman.

23 CHAIRMAN: Because we have to have some finality. So I
24 thank everybody for their contribution in this matter
25 and we will do the best we can to finalise the matter 18:21
26 when we get your submissions.

27 MR. DOHERTY: Okay.

28 MR. O'CONNOR: I am obliged, Chairman.

29 THE HEARING CONCLUDED.

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Appendix 4

Preliminary Application Decision of the Commission
dated 10 September 2018

RULING ON PRELIMINARY APPLICATIONS

1. At the outset of today's hearing, counsel on behalf of Councillor Queenan made two preliminary applications to the Commission which we will now address in turn.

First Application

2. The first application relates to certain references to a named third party in the transcripts and recordings which are to be put before the Commission in evidence. This named third party has no connection with the matters under investigation and, in those circumstances, counsel requested that those parts of the transcript or recordings not be dealt with in public sitting. In reply, counsel on behalf of the Commission submitted that this matter could be dealt with by way of a reporting restriction rather than the Commission sitting in private session.
3. Having considered this application, the Commission considers that, in circumstances where the named third party has no connection with the matters currently under investigation, it is appropriate that there be a reporting restriction in respect of the third party's name.
4. Accordingly, the Commission directs that there be no reporting or other publication of the name of the third party referred to in the relevant transcripts and recordings.

Second Application

5. The second application on behalf of Councillor Queenan is that the Commission should not proceed with its investigation today on the basis of anonymous evidence and that to do so would be in breach of Councillor's Queenan's rights.
6. Counsel on behalf of Councillor Queenan submitted that the whole premise on which the hearing was taking place today was anonymous evidence and that there was a strong rule, both in the common law and under the Constitution, against such anonymous evidence. He submitted that his client should be afforded an opportunity to cross-examine the undercover reporter who used the fake name of Nina Carlsson. In making this submission, counsel relied on a number of authorities: the judgment of the House of Lords in *R v Davis* relating to the admission of evidence of anonymous witnesses in a criminal trial; judgments of the High Court in this jurisdiction in the cases of *Roe v. Blood Transfusion Board* and *Doe v. Revenue Commissioners* which concerned the entitlement of parties to civil litigation to bring proceedings otherwise

than in their own name. Counsel submitted that, without the undercover reporter being called as a witness, the Commission could not proceed on a constitutional basis.

7. Counsel on behalf of the Commission submitted that this was not a proper basis for halting the inquiry. He said that the undercover reporter was not Councillor Queenan's accuser and it was not evidence of the reporter that formed the basis of the investigation. The video and audio recordings of the precise interactions were available to the Commission and had been made available to the Councillor and his legal representatives for some time. He submitted that the witness statements before the Commission confirmed the accuracy and authenticity of these recordings which speak for themselves. Counsel submitted that this was not a criminal trial and, referring to the Supreme Court judgment in *Law Society v. Kennedy*, that there was an inherent flexibility in a regulatory investigation in relation to the rules of evidence. Counsel referred to certain correspondence from the Councillor's solicitor. He submitted that there was no prejudice or deficit to the Councillor in the reporter not being available to give evidence. For these reasons, he submitted that the application was not a proper basis for halting the investigation.
8. The Commission has carefully considered the submissions made in relation to this preliminary application. At the outset, it is important to observe that the Commission is conducting this investigation in accordance with its powers under the Ethics in Public Office Act 1995 (as amended), the Standards in Public Office Act 2001 and Part 15 of the Local Government Act.
9. The Commission's investigation is not a criminal trial and the Commission is not engaged in a criminal process. Accordingly, the rules applicable to evidence in criminal proceedings do not strictly apply to these proceedings. The investigation takes place in very different circumstances to those at issue in the case of *R v Davis* upon which counsel for Councillor Queenan places reliance. It is not intended to call the undercover reporter and there is therefore no question of the Commission relying on the evidence of an anonymous witness in this investigation.
10. Councillor Queenan's representative has submitted that the Councillor is not being afforded an opportunity to cross-examine his accuser. In this regard, it must be noted that the Commission's investigation takes place on foot of a complaint referred to it by the Chief Executive and Cathaoirleach of Sligo County Council. The undercover reporter is not therefore Councillor Queenan's accuser in the context of this investigation.
11. The evidence to be put before the Commission is the video recording of the meeting and the audio recordings of the telephone calls that took place between the

undercover reporter and Councillor Queenan. It does not appear that Councillor Queenan is taking issue with the accuracy and authenticity of the recordings as such. Indeed, counsel indicated that, if the Commission were to proceed with its investigation today, he did not intend to challenge the evidence of the RTE camera man who had made the recordings. The video and audio recordings are available and Councillor Queenan will be afforded an opportunity to give evidence and call any witnesses on his behalf.

12. It will be a matter for the Commission in due course to consider the weight to be afforded to the recordings.
13. However, the Commission has concluded that the mere fact that the undercover reporter is not being called to give evidence does not provide a sufficient basis for closing the investigation at this stage.
14. The Commission rejects the application and will now proceed with its investigation.

Appendix 5

(i) Written Submissions made by counsel on behalf of the Commission

(ii) Written Submissions made by counsel on behalf of Councillor Queenan

STANDARDS IN PUBLIC OFFICE COMMISSION
INQUIRY INTO A COMPLAINT CONCERNING COUNCILLOR JOE QUEENAN

Written Submissions for the Commission

A. INTRODUCTION

1. The Standards in Public Office Commission (“*the Commission*”), as a part of its investigation of complaints that Councillor Joe Queenan (“*Councillor Queenan*”), contravened various provisions of Part 15 of the Local Government Act 2001 (“*the 2001 Act*”), convened a oral hearing on 10th September 2018.
2. The circumstances giving rise to the investigation arose from complaint made by Sligo County Council (“*the Council*”) through its Cathoirleach and Chief Executive by letter dated 20 April 2016. That complaint, in turn, was prompted by a programme made by the RTE Investigations Unit and aired on 7 December 2015, which included footage of a meeting which took place on 4 November 2015, between an undercover reporter, posing as the representative of an investment company exploring the possibility of developing a windfarm in Sligo, and Councillor Queenan.
3. On 12 of November 2015, before the programme was aired, Councillor Queenan wrote to the Council regarding a letter he had received from RTE, arising from the RTE investigation and which alleged breaches by Councillor Queenan, *inter alia* of section 171 of the 2001 Act by reason of his failure to disclose various interests in his annual declaration submitted on 8 February 2015. Councillor Queenan submitted a revised Declaration Form to the Council on 20 November 2015, with a further email from his solicitor on 4 December 2015 with details of his business interests. The Council expressed the view that the initial declaration of 8 February 2015 appeared to be in breach of the Act and the Code of Conduct for Councillors but that it was not in a position to determine whether the submission of a subsequent declaration and statement was sufficient to remedy the original omission.

4. Following the airing of the RTE programme, the Council expressed the view that the programme appeared to indicate that further breaches may have been committed by Councillor but that it was not in a position to determine (i) whether the manner in which the meeting and scenario was set up was itself in accordance with appropriate ethical standards and was a contributory factor in any breach; and (ii) whether the selective use of extracts from the meeting (in the programme) was a true and fair reflection of Cllr Queenan's behaviour and conduct at the meeting.
5. The Council complaint attached a series of documents at APPENDIX I - including the RTE letter to Councillor Queenan of 12 November 2015, which itself appended transcripts of the telephone calls between "Nina" and Cllr Queenan and the meeting itself, a copy of his declaration of 8 February 2015 for the purposes of s. 171 of the 2001 Act. In addition at the request of Cllr Queenan's solicitor, further documentation was included at APPENDIX II, comprising a series of letters sent by Cllr Queenan's solicitor to RTE. That correspondence, in setting out Cllr Queenan's position, made extensive reference to the content of the audio and video recordings made by RTE.
6. At the commencement of the hearing, an application was made by Councillor Queenan's legal team that the investigation should not proceed in circumstances where it was contended that the absence of evidence from the undercover reporter "Nina" and her unavailability for cross-examination, would render the conduct of the proceedings unfair. The Commission heard legal submissions on this issue and, having retired to consider the matter further, delivered a ruling rejecting Councillor Queenan's application and determining to proceed with the investigation.
7. The Commission heard from three witnesses, namely Mr. Cedric Culliton,¹ former director of photography to the RTÉ Investigations Unit, Mr. Conor Ryan,² reporter and Ms. Elaine Laird,³ Inquiry Officer appointed under section 6(1) of the Standard in Public Office Act 2001. In addition, the Commission reviewed the full unedited audio and video recordings made by RTE. Legal representation on behalf of

¹ Page 60 of the transcript on 10th September 2018

² Page 68 of the transcript on 10th September 2018

³ Page 79 of the transcript on 10th September 2018

Councillor Queenan called Mr. Tom McHugh⁴ as a witness as well as direct evidence from Councillor Queenan.⁵ At the conclusion of the hearing, the Commission requested the delivery of brief written submissions.

B. BACKGROUND

8. On 7 December 2015, a programme entitled 'RTE Investigates: Standards in Public Office' was broadcast on RTÉ. This was following an investigation into elected public representatives and their duties and obligations under the Ethical Framework for the Local Government Service (Part 15 of the Local Government Act 2001) and the Ethics Acts (Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001).
9. The investigation focused on evidence surrounding any conflicts of interests that may arise or potentially arise in the course of their duties as public officials. The investigation primarily examined adherence by elected public representatives to the ethical standards required under their Ethical Framework for the Local Government Service.
10. The RTÉ Investigations Unit created a fictitious UK investment company, Vinst Opportunities, interested in developing wind farms in County Sligo, in respect of which the Company was looking for information and assistance in dealing with issues such as planning permission and local opposition.
11. "Nina Carlson" contacted Councillor Queenan on 20th October 2015. There were two telephone conversations, which were recorded, requesting a meeting with the Councillor. A meeting on 4th November 2015 was agreed. This meeting and a subsequent telephone call that day were all recorded unbeknownst to Councillor Queenan and included in the programme that was broadcast on 7 December 2015. This programme forms the basis upon which Councillor Queenan is alleged to have breached the Ethical Framework which governs his responsibilities as a public

⁴ Page 125 of the transcript on 10th September 2018

⁵ Page 144 of the transcript on 10th September 2018

representative.

C. THE COMPLAINT

12. A complaint was received from the Cathaoirleach and the Chief Executive of Sligo County Council regarding Councillor Joe Queenan in relation to his appearance on the RTE Investigates programme broadcast on 7 December 2015. In accordance with Section 174(7) of the Local Government Act 2001, the matter was brought to the attention of the Cathaoirleach and the Chief Executive of the Council in a memorandum prepared by the Council's Ethics Registrar.

D. FACTUAL CONTEXT FOR THE ALLEGED CONTRAVENTIONS

13. The Statement of Alleged Contraventions is at Tab A of the Booklet of Hearing Documents. The legal and factual background is set out in the opening statement of counsel for the Commission, Mr. Doherty SC⁶. Contraventions 1 to 4 fall to be considered as complaints made, pursuant to section 4(1)(b) of the Standards in Public Office Act 2001, of contraventions by the Councillor of provisions of the Local Government Act 2001.

14. The Commission was provided with transcripts⁷ of three recorded telephone conversations as well as a recorded meeting between “Nina” and Councillor Queenan. All recordings were played to the Commission on the 10th September 2018.

15. Prior to the hearing, Councillor Queenan accepted that the complaint itself was properly before the Commission and therefore did not require evidence to prove the statutory basis to ground the complaints. Essentially, Councillor Queenan accepted that the fact that a complaint was made to the Commission was not in dispute and therefore Mr. Ciarán Hayes, Chief Executive of Sligo County Council was not required to give evidence before the Commission.

⁶ Page 39 of the transcript on 10th September 2018

⁷ Tab C witness statement

16. The Commission first heard from Mr. Cedric Culliton⁸, former director of photography to the RTÉ Investigations Unit. Mr. Culliton's evidence⁹ related to the preparation, setting up and supervision of all the three cameras that were used to film Councillor Queenan on 4th November 2015. Mr. Culliton was also in a position to attest to their authenticity and accuracy.
17. Mr. Conor Ryan¹⁰, a reporter with RTÉ told the Commission¹¹ that he was present for all the recordings made with Councillor Queenan by telephone and could verify their authenticity and accuracy.
18. Ms. Elaine Laird was appointed as the inquiry officer in accordance with section 6(1) of the Standards in Public Office Act 2001. Pursuant to her statutory powers, Ms. Laird told the Commission¹² that she carried out a preliminary inquiry on foot of the complaint made by Councillor Rosaleen O'Grady, and the Chief Executive, Mr. Ciaran Hayes concerning Councillor Queenan. In Ms. Laird's report¹³ she was of the opinion that there was prima facie evidence to sustain the complaint received by the Standards in Public Office Commission from the Cathaoirleach and the Chief Executive.
19. Solicitor for Councillor Queenan, Sinead Durkan, issued a reply to Ms. Laird regarding Councillor Queenan's attitude towards the investigation. Councillor Queenan further issued a personal response to Ms. Laird on 21st March 2017.

E. LEGAL CONTEXT OF THE ALLEGED CONTRAVENTIONS

20. Part 15 of the Local Government Act 2001 sets out the ethical framework that applies to, inter alia, members of a local authority when carrying out their functions. Section 168 requires local authority members in carrying out their functions to

⁸ Witness Statement, Tab G

⁹ Page 60 of the transcript on 10th September 2018

¹⁰ Tab G3, C3

¹¹ 68 of the transcript on 10th September 2018

¹² Page 79 of the transcript on 10th September 2018

¹³ Tab 12

maintain proper standards of integrity, conduct and concern for the public interest.

21. Section 169 provides for the preparation of codes of conduct for the guidance of local authority members in relation to the conduct and standard of integrity required of them in exercising their functions. Councillors are expected to have regard to the code of conduct when carrying out their functions to help uphold public confidence in the discharge of local authority functions. Section 170 discusses the prohibition of favours, rewards, etc.
22. This section states that local authority members shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office. Section requires local authority members to prepare and furnish an annual written declaration to the Ethics Registrar containing (i) particulars of his or her declarable interests (set out in section 175), and, (ii) an undertaking by him or her to have regard to and be guided by the relevant code of conduct in the exercise of his or her functions.
23. The Code of Conduct for Councillors, published in 2004, states its purpose as promoting the principles of fairness and impartiality and to uphold public confidence so that all councillors can be seen to act solely in the public interest and within the law. The code represents a standard against which the conduct of all those involved in local government can be judged in the performance of their duties. Section 2 deals with the general conduct and behaviour expected of Councillors in carrying out their role.
24. It requires that Councillors should in all matters seek to ensure that their conduct does not bring the integrity of their office or of local government into disrepute. The following points are of particular relevance in this case; - a duty to keep faith with the public trust placed in them - a personal responsibility that requires them to observe the highest ethical standards in the performance of their role - act in a way which enhances public trust and confidence - never seek to use improper influence - make decisions based solely on consideration of the public interest and the common good - serve their local authority and its people conscientiously, honestly

and impartially .

25. Section 3 of the Code refers to conflict of personal and public interest. In particular it states that Councillors must not seek to use their official position so as to benefit improperly themselves and that Councillors should base their conduct on a consideration of the public interest and the common good. Section 4 deals with planning matters and provides that '*consideration of planning matters by Councillors is carried out in a transparent fashion; follows due process; ...*' It states it is important that Councillors observe extra care in dealing with planning matters, particularly as regards conflict of personal and public interest. Section 4 deals with planning matters and consideration of planning matters by Councillors is carried out in a transparent fashion; follows due process; states it is important that Councillors observe extra care in dealing with planning matters, particularly as regards conflict of personal and public interest.

F. EVIDENCE OF COUNCILLOR QUEENAN

26. Councillor Queenan has made two statements and gave evidence to the Commission on the 10th September 2018.

PUBLIC STATEMENTS

27. Councillor Queenan provided two statements, both on 12 April 2017; through Sinead Durkan Solicitors and a personal statement to Ms. Laird. In the statement provided by Ms. Durkan, Councillor Queenan made the following observations which can be summarised as follows:

- His comments were in response to attempts and to the specific requirements about investment that Councillor Queenan mentioned a potential business opportunity he had identified. Councillor Queenan was talking off the top of his head in view of the fact;
- At all times in conversations with Nina, Councillor Queenan reiterated he would

assist her in any way he could in the preplanning process and that this is something he would do for anyone and something which he did not ask any favours or remuneration for;

- His decision to assist Nina was based solely on consideration of the public interest and common good and in doing so he believed he was serving the local authority and its people conscientiously, honestly and impartially;
- He never promised to do anything he wasn't entitled to do as a County Councillor;
- He never promised to deliver any results or be in a position to exert any influence over the planning process. He promised no more or no less than any other County councillor could;
- Councillor Quennan never sought to influence or seek to influence a decision of the local authority in any matter and, in fact, at all times reiterated that he could not influence this process as it is an Executive function;
- Councillor Queenan made some minor errors in completing his annual written Declaration for 2014 and 2015. His original annual written Declaration was clearly submitted in error as the entire Part 2 thereof had been left blank. He regretted this oversight, which was a mistake and not in any way intended to mislead the Council or the public in relation to his declarable interests. His profession as an auctioneer and his retail interests were well known locally to his constituents and to his fellow councillors and he was fully tax compliant with regard to all his business interests;
- Councillor Queenan never sought, exacted or accepted any remuneration, fee or reward or other favour for any act done or not done by virtue of his office in these matters.

28. Councillor Queenan also provided a personal response to Ms. Laird on 12th April

2017, the salient points can be summarised as follows:

- The issue of confidentiality in these conversations was at all times instigated by Nina;
- Councillor Queenan believes that at all times in conversation with this person when they spoke about the planning process, and repeatedly informed her that there was no way that he could influence the process and that in helping her he was only doing what he would do for anyone else;
- Councillor Queenan did not seek any form of monetary gain, despite repeated attempts to bring up the matter of what she could do for him;
- Councillor Queenan sincerely regretted that he allowed himself to enter into a hypothetical conversation with this person about a potential future investment opportunity that he had identified;
- Councillor Queenan stated over and over to Nina, both during the meeting and in a subsequent conversation, that anything he would do he would do for the benefit of Sligo and that any potential future business would be done above board;
- Councillor Queenan never sought, exacted or accepted payment from any person, any remuneration, fee, reward or other favour for anything done or not done by virtue of his office and he wholeheartedly believes that in no way can it be said that he was in contravention of Section 170 of the Local Government Act 2001.

ORAL TESTIMONY

29. Councillor Queenan gave evidence before the Commission¹⁴. It is not the intention of these submissions to recount in detail his evidence to Commission, but aspects of that evidence is worthy of comment. He again reiterated the position as previously outlined in the two statements furnished to Ms. Laird. Certain aspects of the transcript

¹⁴ Page 14 of transcript of 10th September 2018

of 4 November 2017 meeting were put to Councillor Queenan for moment. When asked to comment on the statement: “... *not really, at the moment I’m not looking or if you’re asking for money I am not really.*” Councillor Queenan stated at page 158 of the transcript:

A. “Yeah. Chairman I put up my hands. I did get into, I don't know was it the chocolate biscuits or what it was but I diverted for a minute because I seen this invest, I got the impression in me head that this, this woman with all this investment could also invest in other, other things rather than the wind farms. I diverted myself that way and I am sorry I shouldn't have. It isn't me form but I was caught and maybe it's all the things that was going on in me mind at the time but I've hands up.

Q. You're saying in the statement you handed in at the beginning that on six occasions you'd made it clear you didn't want anything but, however, when this bogus involvement company suggested the company could help with investments in the future?

A. Yeah. What I said was hypothetical in the future. It wasn't -- I didn't go in there looking for anything on the day.

Q. I think in the interview after that or in the, there are a number of locations where you make it clear that you're not seeking to link the two things?

A. No, no.

30. The striking feature of this extract is that it would appear that Councillor Queenan is admitting he “*shouldn’t have...*” mentioned a potential investment. Furthermore, it is respectfully submitted that the fact that Councillor Queenan didn’t go to the meeting “*looking for anything on the day*” is wholly irrelevant as Councillor Queenan’s statements during the meeting are the subject of the alleged contraventions before the Commission.

31. Under cross-examination, Councillor Queenan accepted he was aware of his obligations under Part 15 of the Local Government Act 2001. He also accepted that he had been involved in politics for nearly twenty years and was Cathaoirleach of the County Council from 2014-2015. When pressed on whether he believed he breached his code of conduct Councillor Queenan stated that he did not go to the meeting “*to breach anything*”¹⁵.
32. Councillor Queenan further alleged that he was entrapped by the undercover reporter and RTÉ. Councillor Queenan failed to point to any one aspect of an entrapment but alluded to the recording as a whole, while again reiterating that he did not go to the meeting looking for anything. When pressed on whether he was trapped or tricked into his statements or that he was denying his behaviour, he suggested that he “*got carried away a small bit, I’m sorry, I’m sorry chairman, I’m sorry, I did go down a small bit under the standard that I have kept*”¹⁶.
33. Regarding confidentiality, Councillor Queenan’s two statements insisted that at all times confidentiality was instigated by the undercover reporter. Under cross-examination, Councillor Queenan was asked to comment on the statement he made during the meeting: “*oh, big time, oh absolutely and the same here. I don’t want anyone to know that I’m doing this.*” Councillor Queenan defended this statement; that such a matter would have to be kept confidential for fear of the project being jeopardised. He further added that “Nina” requested it would be confidential and he agreed. When asked whether he wanted it to be kept confidential as it potentially breached the code of conduct, Councillor Queenan rejected this assertion. As outlined below, it will be blatantly apparent that Councillor Queenan also stressed the importance of confidentiality and in fact, it is not the undercover reporter that insists on confidentiality.
34. Councillor Queenan again rejected the assertion that confidentiality must be guaranteed, despite stating: “*oh, no, I wouldn’t go. The last thing I want to do as a*

¹⁵ Page 172 transcript of the 10th September 2018

¹⁶ Page 176 transcript 10th September 2018

*politicians to go public and say I was being backed by tycoons from the UK or lobbying, that is illegal what I would be doing there. Straightaway it would be a very grey area, I don't want to go there"?. Under cross examination, it was put to him it was a clear breach of the code, Councillor Queenan did not accept that and stated "isn't it [to] me credit that I knew the ethics."*¹⁷

35. When asked about the statement: *"nothing, not really at the moment, I'm not really asking for, if you're asking for money or that I am not, I am not really like, I couldn't. If I was caught if I was actually seen doing that I would be out on my way straight away...but maybe down the road"*, Councillor Queenan again did not accept such a statement contravened the code of conduct.

36. In summary, it is respectfully submitted that Councillor Queenan's evidence to the Commission is a myriad of inconsistencies. Firstly, Councillor Queenan throughout his evidence apologises for this conduct with the caveat that he never intended to *"get anything out of it"*. The apologies for such behaviour are as follows:-

- *I didn't go there looking for anything and you can trick the question anyway you want but it is the way it was put to me, and I will say that it'd be, that it be the lady or the chocolate biscuits but I got carried away a small bit, I'm sorry, I'm sorry, Chairman, I'm sorry, I did go down a small bit under the standard that I have kept. My standard is there, my CV is there for 20 years. As I said every -- I'm involved, I said Chairman, in the VEC, ETB, GAA, all of them are interacting with the local authority at some stage. Mr. Ó Cuív, the Foreign Minister, will tell you that. There are times when things are coming before the local authority which might have an interest in other bodies you'd be involved in and every time that that happened in my case I left the Council Chamber over me 20 years or I put up my hand and said, every time we talked housing or planning in an area I started off by saying I'm a local, I'm also a local auctioneer so I never tried to deceive the people that I represent or to deceive anybody, but I will say that that was below my standard that day and I*

¹⁷ Page 197 transcript 10th September 2018

*apologise but I didn't go in there looking for anything, Chairman.*¹⁸

- *Like and I'm not being evasive, Chairman, or anything like that because I came in here with me hands up to give it the way it happened, and my background at the time and my feeling for the area.*¹⁹
- *I was talking maybe a little too much on top of me head, it wasn't me best day, I was eating chocolate biscuits, I had a blond bombshell in front of me and the rest is history. I have to, I've to live with this.*
- *A. And I was weak enough to fall for it.*
Q. Okay.
*A. And with her chocolate biscuits and all. It wasn't my best day but I went there thinking that here was an investor that was going to put money into my county, jobs for my people*²⁰.
- *I said already to you, Chairman, that area of my debate wasn't my best hour, and I apologise, but I want to make it clear I didn't go in there deliberately looking for anything other than jobs for my area.*²¹

37. Despite these admissions, Councillor Queenan sought to contend throughout his evidence, that he did not breach Part 15 of the Local Government Act 2001.

AUDIO AND VIDEO RECORDINGS

38. This section will outline the statements made by Councillor Queenan during the meetings and telephone recordings with the undercover reporter that we say are in contravention of sections 168, 169 and 170 of the Local Government Act 2001.

39. It should be noted at this juncture that it would appear the Councillor Queenan is

¹⁸ Page 176 transcript 10th September 2018

¹⁹ Page 186 transcript 10th September 2018

²⁰ Page 191 transcript 10th September 2018.

²¹ Page 205 transcript 10th September 2018

accepting a breach of section 171 of the Local Government Act 2011, that being, a failure to set out in full all declarable interests.

Meeting 4th November 2015

- *COUNCILLOR QUEENAN: (Inaudible) if you identify the areas for me right, where you think it is good, **I am totally confidential**. You show me the maps of the areas, just on an ordinary map, I will have a look at it, I will bring it to the planners and ask the planners have they got views on it. MS. CARLSSON: Yes. COUNCILLOR QUEENAN: **Right in a confidential manner, which you are entitled to do and no one will know who is the investor or whose land it is or anything, I will do that confidential for you***
- *MS. CARLSSON: You will work with us on it? COUNCILLOR QUEENAN: Yeah, I will work with you, it will cost you absolutely nothing, I am not looking for anything out of it. **All I want is it to be kept confidential and we will see.** MS. CARLSSON: Confidential, yeah. COUNCILLOR QUEENAN: **I will do a little bit of lobbying behind the scene of the local authority right for you, provided it is realistic. If I see day one, you coming in with something that isn't realistic, I will tell you straightaway, "we are wasting our time going here" right, I will be very honest.***
- *MS. CARLSSON: What would you need from us? COUNCILLOR QUEENAN: **Nothing, not really at the moment I am not really asking for - if you are asking for money or that, I am not - I am not really like. I couldn't if I was caught, if I was actually seen doing that.***
- *COUNCILLOR QUEENAN: **I would be out on my ear straight away but maybe down the road, as I say I am in business myself.***
- *COUNCILLOR QUEENAN: **And I will have some business project coming up, you might be, some of your clients might be interested, to invest with me***

in the project or maybe something like that, just talking off the top MS. CARLSSON: That might be, like, you know a relationship with - COUNCILLOR QUEENAN: If I have a business project. MS. CARLSSON: Yeah. COUNCILLOR QUEENAN: Maybe your view, you have a lot of investors, obviously you handling a lot of money for investors. MS. CARLSSON: Yeah. COUNCILLOR QUEENAN: Maybe there is something we might be able to -- if it was a viable opportunity, a viable proposal, I would be delighted to get your support that way. MS. CARLSSON: On what terms, like, can you tell me? COUNCILLOR QUEENAN: Well, for arguments sake now, what I do is, I am only a very very small player. I am a local auctioneer, in a small way. I own a laundrette, I manage holiday homes. I have a shop in Enniscrone and I have a shop here in Strandhill. Supermarkets, small supermarkets and I have - I'm starting an agri-feed business in Enniscrone, right, where I know there is a market for one. But one of the issues at the moment I haven't got the space, this is me personally now, I haven't the space. There is a 300 year old church beside me lying idle for the last 40 years right, and there's (Inaudible) with it in the one complex and if I got that far it will cost me, the guy who owns it is looking for €300,000. And it will take another €100,000, it will take €400,000 I am just talking now, looking for anything at the moment, I maybe have about half of that at this moment in time. I can secure half the money, so I was thinking of getting some investors, may be it mightn't be ye at all. My brother is very wealthy in America, come in and take a share of that business with me if it is viable. MS. CARLSSON: So you are looking for investors here? COUNCILLOR QUEENAN: Yeah, I maybe looking. MS. CARLSSON: Yeah. COUNCILLOR QUEENAN: Yeah. MS. CARLSSON: What specifically, like was that specific?

- *COUNCILLOR QUEENAN: That is one, that is a classic one now, where I may be caught, it would be a good sense business, I have all the figures and all for you but it would be an investment I would say of - max €200,000, right. MS. CARLSSON: Max €200,000. COUNCILLOR QUEENAN: Yeah. That's where I would see that. I am only just -- we are only talking out loud here now -- I am not making any... if I had someone to come in and give*

*me a hand, and take a 50 percent or 40 percent share of that business, I would repay it over a number of years. That way you could help me, if it comes to that, right. What do you think of that, Nina, am I? MS. CARLSSON: Yeah but at the moment we are just looking at wind farms. COUNCILLOR QUEENAN: Yeah. MS. CARLSSON: And you know I will definitely speak to my investors about that. COUNCILLOR QUEENAN: Yeah. MS. CARLSSON: But, you know, something we just might -- COUNCILLOR QUEENAN: I am not looking for it anyway. MS. CARLSSON: Later on. COUNCILLOR QUEENAN: **Yeah, that is what I am, I am not the wind farm business myself so.** MS. CARLSSON: Yeah, yeah, exactly. COUNCILLOR QUEENAN: I have no land in the wind farm bog area, leaving that aside for the moment. MS. CARLSSON: Then? COUNCILLOR QUEENAN: Forget about me for a second. MS. CARLSSON: Okay. COUNCILLOR QUEENAN: Concentrate on your project, I am telling you that I am not looking for anything out of it. MS. CARLSSON: There might be a possibility definitely. COUNCILLOR QUEENAN: Yeah. MS. CARLSSON: I am not ruling it out at all. COUNCILLOR QUEENAN: And I am not saying. It may never come to anything. It is a possibility. MS. CARLSSON: Yeah it is not much either, you know. Do you think like do you have a timeframe for that when it would be suitable for you? COUNCILLOR QUEENAN: **Well if I got it up and going in the next six or eight months - the problem with you is, I have a very - your project is a long term project. You could put a year on this before we get any real -- like I know for a fact that the moment you start the planning permission in Sligo.** MS. CARLSSON: We could keep confidential that investment. COUNCILLOR QUEENAN: Ooh ooh. MS. CARLSSON: That, yeah, that would be confidential. COUNCILLOR QUEENAN: Big time, of course (Inaudible) absolutely. MS. CARLSSON: Because we don't want it to be in the public domain.*

- *MS. CARLSSON: How would we be confidential? COUNCILLOR QUEENAN: For me? MS. CARLSSON: No, with your business like? COUNCILLOR QUEENAN: We will deal with that down the road. We will make it confidential if that ever happens if it ever happens. MS. CARLSSON: Yeah. COUNCILLOR QUEENAN: **Oh no, no I wouldn't go - the last thing***

I want to do as a politician is go public and say I was being backed by tycoons from the UK or -- MS. CARLSSON: No. COUNCILLOR QUEENAN: Or lobbying, that is illegal, what I would be doing there. Straightaway it would be a very grey area. I don't want to go there. MS. CARLSSON: Okay, we will consider that. COUNCILLOR QUEENAN: Perfect.

- *COUNCILLOR QUEENAN: All I can be for you really, what I can be a link man or a gofer whatever between your architects and the Local Authority. I can be the eyes and ears and I will go, they will tell me we have a good working relationship, if there is amendments being done or anything, I will talk to planners and see and encourage them, impress on them the importance of (Inaudible) but that's - there is also a plus for the Council on all these things, right. MS. CARLSSON: Mmm.*
- *MS. CARLSSON: So you are optimistic we will get planning permission if you help us? COUNCILLOR QUEENAN: I am optimistic if the, you know depends on location, yeah, no problem. MS. CARLSSON: Mmm you will work with us on it. COUNCILLOR QUEENAN: I will work for you free gratis and for nothing. Just to, you ask me to help you out, I will help anybody out because I am a business man myself and I know I can imagine ye are all people from outside of the country. I can well imagine myself going over to England or going over to Canada or starting a business unless you have some local contacts you are wasting your time really, that is the reality. MS. CARLSSON: That is the reality.*
- *MS. CARLSSON: You would like us to consider that, put some money into your business? COUNCILLOR QUEENAN: I don't want to - maybe. MS. CARLSSON: Yeah, that could be helpful to you. For you just to do your work for us, do you think? COUNCILLOR QUEENAN: Possibly, we will see how it works first. We will... I won't be at the moment we will see.*
- *MS. CARLSSON: What is the name -- COUNCILLOR QUEENAN: The business I have is Enniscrone Laundrette. You have Queenan agri-feed,*

agri-feeds and I have the Queenan Properties and I have the Enniscrone.
MS. CARLSSON: Where would you need the money, in what?
COUNCILLOR QUEENAN: If, if it ever happens (Inaudible) yeah
Enniscrone area. MS. CARLSSON: If we consider it, where would it go?
COUNCILLOR QUEENAN: It would be to expand the business and to
create jobs in the area, to be fair, in Enniscrone. That is what we will do.
MS. CARLSSON: What is the name of the company so we can?
COUNCILLOR QUEENAN: Let's see, which company will I use... It'll be
under Lackinasleiva Ltd. I will write it out for you. MS. CARLSSON: Please
just to have the details to tell my investors. COUNCILLOR QUEENAN:
Lacknasleiva Ltd. And look it all I am an ordinary local guy if I can be of any
help to you and if you are creating jobs and that? MS. CARLSSON: Yes, you
have given us a big help already, you know. And I think that will be enough
for today.

Phone call 4th November 2015

MS. CARLTON: Okay. Thanks for your time earlier. It was really nice to meet
you. COUNCILLOR QUEENAN: No problem. MS. CARLTON: And we are
very happy you want to work with us. COUNCILLOR QUEENAN: Yes. You
know yourself, I've no guarantees, I'll do what I can, that's all I can do. MS.
CARLTON: Okay, that's great. Well I spoke with my boss and he's interested
in the 200 grand figure for your agri feed business as part of our overall
investment in Sligo but he asked me to clarify two things and one is would it
be a loan or a stake in the company? COUNCILLOR QUEENAN: Well I'm
open to both. Either way. Again all them issues, I'd prefer if we got to know
each better and get some progress on the wind farm before I even talk about
that genuinely. MS. CARLTON: Okay, how exactly could you guarantee
confidentiality at that stage like?

- *COUNCILLOR QUEENAN: And if I do go down the route of developing the*
business further which I will know in the next month or six weeks and we
will do it on a business, totally on a business nature. Everything above
board and if it's a loan I'll pay it back, we'll come to an agreement and we'll

*pay it back. I'd want to take a share in my business if we go that route. Again we're talking, I'm basically (inaudible) here. We'll go that route either, also right. MS. CARLTON: Okay, but would it be possible that you could have a business plan for us or at least more details for when we come to Ireland in December? COUNCILLOR QUEENAN: I would never -- everything has to be a business plan. No problem. Oh absolutely. I would never, like even the place (inaudible) like from anybody, you have to visit them and you have to be legitimate and you have to be able to sign agreements that you're going to be able to pay it back right. MS. CARLTON: Right, right. We will be in Ireland in December and I hope to meet you again. COUNCILLOR QUEENAN: Oh Nina, make sure you meet me, right. MS. CARLTON: Great. COUNCILLOR QUEENAN: **And all these conversations I presume are totally confidential?** MS. CARLTON: *Strictly confidential.**

G. LEGAL ISSUES

40. As noted above, at the outset of the hearing, counsel for Councillor Queenan applied to have the undercover reporter representing herself as “Nina” to be made available for cross examination on the basis of a constitutional right to confront ones accuser. Following legal submissions, the Commission issued a ruling²² stating that the hearing could proceed. It is therefore, not intended to readdress this point. The other legal issues that will be discussed below are:-

- (i) The law relating to “entrapment”
- (ii) the standard of proof; and
- (iii) the requirement of the Commission to record in its report (a) whether the contravention or act was committed or done inadvertently, negligently, recklessly or intentionally, (b) whether it was, in all the circumstances, a serious or minor matter and (c) whether the Councillor acted in good faith.

²² Page 34 of the transcript

(i) Entrapment

41. It should be noted at the outset that no specific legal argument regarding entrapment was advanced to the Commission by Councillor Queenan, but the contention that Councillor Queenan had been drawn into breaching Part 15 and the Code was repeatedly advanced by and on behalf of Councillor Queenan (both before and during the hearing). At its height, it would appear that Councillor Queenan contends *if he breached his obligations* that he was lured into so doing. While not entirely clear, it appears that this point is being raised in mitigation of any breach by Councillor Queenan, as opposed to outright exculpation.²³
42. In considering the issue of “entrapment”, the Irish Courts have tended to follow the leading decisions in the United Kingdom and from the European Courts of Justice. One such UK authority is *R v Loosely*,²⁴ where the prosecution arose out of a controlled purchase operation. Lord Nicholls commented that:-

“.... expressions such as ‘state-created crime’ and ‘lure’ and ‘incite’ focus attention on the role played by the police in the formation of the defendant's intent to commit the crime in question. If the defendant already had the intent to commit a crime of the same or a similar kind, then the police did no more than give him the opportunity to fulfil his existing intent. This is unobjectionable. If the defendant was already presently disposed to commit such a crime, should opportunity arise, that is not entrapment. That is not state-created crime. The matter stands differently if the defendant lacked such a predisposition, and the police were responsible for implanting the necessary intent.”

²³ The issue of “entrapment” as it arises in a criminal context, is generally deployed in more fundamental way – viz. to prevent a hearing taking place at all, or to exclude specific evidence, on the grounds that the use of state power to bring about the circumstances of the alleged offence constitutes an abuse of process which deprives the accused or a right to a fair trial. In *Loosey*, Lord Nicholls said: “*It is simply not acceptable that the state through its agents should lure its citizens into committing acts forbidden by the law and then seek to prosecute them for doing so. That would be entrapment. That would be a misuse of state power, and an abuse of the process of the courts.*”

²⁴ [2001] 1 WLR 2060

43. Lord Nicholls went on to state as follows:-

“... one has to look ... for assistance in identifying the limits to the types of police conduct which, in any set of circumstances, are acceptable. On this a useful guide is to consider whether the police did no more than present the defendant with an unexceptional opportunity to commit a crime. I emphasise the word ‘unexceptional’. The yardstick for the purpose of this test is, in general, whether the police conduct preceding the commission of the offence was no more than might have been expected from others in the circumstances. Police conduct of this nature of this nature is not be regarded as inciting or instigating the crime, or luring a person into committed a crime. The police did no more than others could be expected to do. The police did not create crime artificially.”²⁵

44. In **DPP v Mills**,³⁰ the appellant challenged the admissibility of evidence gathered by undercover gardaí approaching people at random on the street and seeking to buy a small consignments of drugs. The appellant submitted that the admission of evidence resulting from such a test purchasing operation lacked independent authorisation and that it involved the incitement of criminality by undercover Gardaí in violation of his rights to a fair trial under Article 38 of the Constitution and Article 6 of the European Convention on Human Rights. The Court of Appeal dismissed the appeal and held that the evidence was admissible. In so doing, the Court had regard to the public interest in ensuring that certain criminal conduct be amenable to effective police work. Mahon J. alluded to this (at para 64):

“There is therefore a clear public interest that such criminality be amenable to effective professional police work, and in that respect undercover operations of the type evident in this case are both necessary and effective. What is wrong with providing a person with the opportunity to commit a crime which he is in the practice of committing anyway? The key is to ensure that such operations are appropriately authorised,

²⁵ [2001] 1 WLR 2060 para 23

³⁰ [2015] 4 IR 659

controlled and supervised and that undercover operatives do not themselves precipitate criminal conduct that would not otherwise occur.”

45. The Court was further satisfied that the evidence established that the appellant was provided with no more than an unexceptional opportunity to commit a crime, an opportunity which he freely took advantage of in circumstances and where it appears that he would have behaved in the same way if the same opportunity had been offered by anyone else; and that he had not been incited, instigated, persuaded, pressured or wheedled into committing a crime.
46. The application of these principles in a civil regulatory setting was considered by the High Court in England in *CRHCP v General Medical Council and Saluja*.³² There, a doctor was charged with serious professional misconduct arising from his apparent willingness to consider a request from of an undercover journalist to provide a medical certificate for time off work in return for money. A Fitness to Practice Panel of the General Medical Council, applying subsisting authority in criminal cases as to when entrapment might be permissible, stayed the proceedings on the basis that the kind of entrapment that had taken place rendered the proceedings an abuse of process. That stay was set aside by the High Court on appeal.
47. Goldring J considered that the grant of a stay on the proceedings on the basis of alleged entrapment to be “exceptional”. He noted that the principle behind such a power was one of mis-use of state power, thereby undermining the integrity of the judicial process. In the case of a non-state agent, however, different considerations must arise since, in those cases, “*the rationale of the doctrine of abuse of process is ... absent*”. Importantly, he went on to state as follows (at paragraph 81):-

“However, the authorities leave open the possibility of a successful application of a stay on the basis of entrapment by non-state agents. The reasoning I take to be this: given sufficiently gross misconduct by the non-state agent, it would be an abuse of the court’s process (and a breach of

³² [2007] 1 WLR 3094

article 6) for the state to seek to rely on the resulting evidence. In other words, so serious would the conduct of the non-state agent have to be that reliance upon it in the court's proceedings would compromise the court's integrity. There has been no reported case of the higher courts, domestic or European, in which such "commercial lawlessness" has founded a successful application for a stay. That is not surprising. The situations in which that might arise must be very rare indeed."

48. Goldring J was not satisfied that *"for a journalist to go into a doctor's surgery and pretend to be a patient in circumstances such as the present is similar to abuse of power by an agent of the state."*³³ As to the facts of the case and, in particular, the assertion of "entrapment" by the journalist Goldring J concluded as follows (at para 124):-

"Doctors have a key role in the administration of the medical insurance system and of public funds. If any dishonesty were found after a full hearing it required an appropriate sanction in order to maintain confidence in the system. If the allegations were true there would be an (apparent) diagnosis of a patient without examination. It would remain on the patient's records. If Dr Saluja was influenced by the offer of money, that was an aggravating feature, not one which should play a part in exculpating him. Some disciplinary offences (particularly where the patient has an interest in keeping quiet) will only come to light through the use of techniques such as were used here."

49. It is respectfully submitted that the above conclusion is particularly apposite to the issues before the Commission in the case of alleged contraventions against Councillor Queenan arising from his engagement with "Nina". While ultimately a matter for the Commission, it is respectfully submitted that the claims of entrapment seemingly made by Councillor Queenan in this case are wholly without foundation in fact and, if anything, serve only as an aggravating (and not mitigating) factor underscoring the seriousness of the breaches involved.

³³ At para 82.

(ii) Standard of Proof

50. The Commission has habitually identified the appropriate standard for the purpose of an Investigation as being the civil standard, i.e. the balance of probabilities. Such an approach is apparent in virtually all of its previous reports. It is submitted that the civil standard is the correct standard to apply.

(iii) The requirement of the Commission to record in its report (a) whether the contravention or act was committed or done inadvertently, negligently, recklessly or intentionally, (b) whether it was, in all the circumstances, a serious or minor matter and (c) whether the Councillor acted in good faith.

51. Should the Commission find Councillor Queenen did breach the above provisions of the Local Government, it is then required by section 24 of the Ethics Act 1995 (as amended) to determine, whether the contravention or specified act was committed inadvertently, negligently, recklessly or intentionally. While the 1995 Act does not so specify it is respectfully submitted that the Commission would be entitled to take the following approach to the differing forms of breach identified characterised under s. 24 (a) of the 1995 Act:-

- A breach may be said to have been committed “inadvertently”, where the Commission is satisfied that the breach was entirely accidental;
- A breach may be said to have been committed “negligently” where, applying an objective test, the Commission is satisfied that no reasonable Councillor in the same position, acting properly, would have made the same error.
- A breach may be said to have been committed “negligently” “recklessly”, where, applying a subjective test, the Commission is satisfied on the evidence that the Councillor must have foreseen the risk of the consequence of his conduct bringing about a breach of the relevant provisions and the Code but proceeded with his conduct nonetheless; and

- A breach may be said to have been committed “intentionally”, where the Commission is satisfied on the evidence that the Councillor proceeded with his conduct knowing that it involved a breach so that the act was done consciously with a view to the result intended.³⁴

52. It is clear from previous findings of the Commission that it considers a determination that an act was committed intentionally to be at the highest end of the spectrum (with acts committed inadvertently at the lowest end).

53. In the present case, it is respectfully submitted that the evidence points to conduct on the part of Councillor Queenan which, at its most benign, must be viewed as reckless but which in fact is amenable to a finding that it was intentional. Such a finding might be predicated upon a number of factors: (i) the potential investment opportunity mentioned by Councillor Queenan (ii) this investment was as a result of assisting Ms. Carlson in successfully applying for planning permission (iii) the knowledge Councillor Queenan had that it should be kept confidential.

54. It should also be noted that Councillor Queenan has been a member of Sligo County Council since 1999. He was Cathaoirleach of the County Council from 2014-2015. He accepted under cross examination that he was “*keenly aware*”³⁶ of the provisions of Part 15 of the Local Government Act 2001 and have been for a considerable time. He further accepted he was familiar with and guided by the Code of Conduct in his capacity as public representative. This is most relevant as to the level of awareness Councillor Queenan had of his obligations under the legislation and code coupled with nearly twenty years experience. Furthermore, an annual declaration that Councillor Queenan would have signed³⁷ requires all Councillors “*undertake to have regard to and be guided by the Code of Conduct for Councillors.*”

55. It is respectfully submitted that Councillor Queenan, at all material times, was aware that what he suggested to “Nina Carlson” was in contravention of the Local Government Act and his code of conduct. This is evident from Councillor Queenan

³⁴ Standards in public office commission inquiry into a complaint concerning senator Brian Ó Domhnaill

³⁶ Page 168 transcript of 10th September 2018

³⁷ Tab E4 of the hearing book

requesting the matter be kept confidential, and this is evident from the following extracts:

- *COUNCILLOR QUEENAN: Nothing, not really at the moment I am not really asking for - if you are asking for money or that, I am not - I am not really like. I couldn't if I was caught, if I was actually seen doing that.*
- *COUNCILLOR QUEENAN: And I will have some business project coming up, you might be, some of your clients might be interested, to invest with me in the project or maybe something like that, just talking off the top of my head now right. MS. CARLSSON: That might be, like, you know a relationship with –COUNCILLOR QUEENAN: If I have a business project. MS. CARLSSON: Yeah. COUNCILLOR QUEENAN: Maybe your view, you have a lot of investors, obviously you handling a lot of money for investors. MS. CARLSSON: Yeah. COUNCILLOR QUEENAN: Maybe there is something we might be able to -- if it was a viable opportunity, a viable proposal, I would be delighted to get your support that way.*
- *I would be out on my ear straight away but maybe down the road, as I say I am not in the wind farm business myself.*
- *MS. CARLSSON: How would we be confidential? COUNCILLOR QUEENAN: For me? MS. CARLSSON: No, with your business like? COUNCILLOR QUEENAN: We will deal with that down the road. We will make it confidential if that ever happens if it ever happens. MS. CARLSSON: Yeah.*
- *COUNCILLOR QUEENAN: Oh no, no I wouldn't go - the last thing I want to do as a politician is go public and say I was being backed by tycoons from the UK or -- MS. CARLSSON: No. COUNCILLOR QUEENAN: Or lobbying, that is illegal, what I would be doing there. Straightaway it would be a very grey area. I don't want to go there*
- *COUNCILLOR QUEENAN: Yeah, I will work with you, it will cost you absolutely nothing, I am not looking for anything out of it. All I want is it to be kept confidential and we will see..*
- *MS. CARLSSON: How would we be confidential? COUNCILLOR QUEENAN: For me? MS. CARLSSON: No, with your business like?*

COUNCILLOR QUEENAN: We will deal with that down the road. We will make it confidential if that ever happens if it ever happens. MS.

CARLSSON: Yeah.

56. Again, in the follow up call later that day, Councillor Queenan again, is acutely aware of the potential engagement of an interest that might influence Councillor Queenan in the performance of his functions:

- *And if I do go down the route of developing the business further which I will know in the next month or six weeks and we will do it on a business, totally on a business nature. Everything above board and if it's a loan I'll pay it back, we'll come to an agreement and we'll pay it back. I'd want to take a share in my business if we go that route. Again we're talking, I'm basically (inaudible) here. We'll go that route either, also right.*

57. The above extracts highlight not only the awareness of a potential conflict of interest but also a strong agreement between the two parties that there would be some reward for assisting the undercover reporter with planning permission. The above passages highlight a conscious effort by Councillor Queenan to assist “Nina Carlson” in successfully applying for planning permission in exchange for a potential investment in a private business owned by him. This can only be viewed by a member of the public, reading the above extracts, would reasonably think that the potential investment concerned might influence the person in the performance of his or her functions.

58. In assessing whether any contravention or act found by the Commission constituted a minor or a serious matter, it is submitted that the hypothetical, potential investment is not determinative of that issue. While the manner in which Councillor Queenan made these statements is a factor to which the Commission may appropriately have regard, it may also take cognisance of factors such as the nature of a contravention, the number of occasions Councillor Queenan asked for the matter to be kept confidential, the occasions where he stated he could not be seen to be “lobbying” or “being backed by UK investors” and he “would be out on my ear straight away”, the explanations offered in relation thereto, the attitude of the contravener to his conduct

at the time thereof, the level of insight demonstrated and any other circumstance regarded by the Commission as relevant to assessment of this issue.

59. Similar considerations apply to the Commission's assessment of whether the Senator acted in good faith.

H. CONCLUSION

60. In the light of the above, and having regard to the evidence before Commission, it is submitted that clear breaches of Part 15 and the Code have been made out and that (with the possible exception of Councillor Queenan's admittedly incomplete declarations) these breaches cannot be characterised as either inadvertent or negligent, but must be viewed as at the very least reckless, but more appropriately (it is submitted) intentional.

61. It is further submitted that the breaches are serious and cannot readily be considered to be consistent with Councillor Queenan acting in good faith.

62. Given the possibility of investment in Councillor Queenan's business by the fictitious Vinst Opportunities, Councillor Queenan should have been indicating at the meeting with "Nina", or in the follow up call: (1) that he would have to disclose his potential business interest with Vinst to the Council; (2) that he would have to stand aside from any and all interactions between Vinst and the Council in relation to the proposed windfarm project; (3) that if the Company wished to discuss any aspect of its proposed development it would be better to make contact with a different councillor where there was no potential business relationship and therefore no risk of a conflict of interest; and (4) that he would have to make appropriate declarations and disclosures concerning any business with the Company in the normal course. That he did none of these things is, of itself, a damning reflection of his understanding of his obligations as a public representative.

**IN THE MATTER OF THE ETHICS IN PUBLIC OFFICE ACT, 1995
AND IN THE MATTER OF THE STANDARDS IN PUBLIC OFFICE ACT, 2005
AND IN THE MATTER OF THE LOCAL GOVERNMENT ACT, 2001
AND IN THE MATTER OF AN INVESTIGATION AND HEARING INTO
ALLEGED CONTRAVENTIONS OF THE LOCAL GOVERNMENT ACT, 2001
BY COUNCILLOR JOE QUEENAN**

BETWEEN/

STANDARDS IN PUBLIC OFFICE COMMISSION

PROSECUTOR

-AND-

JOSEPH QUEENAN

ACCUSED / RESPONDENT

LEGAL SUBMISSIONS ON BEHALF OF THE ACCUSED / RESPONDENT

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INTRODUCTION

1. The Standards in Public Office Commission (hereinafter referred to as 'the Commission') are in the somewhat unusual position of being asked to investigate, prosecute and adjudicate on the complaints against Councillor Joe Queenan.
2. In *Giblin v. Irish Life & Permanent Plc*,¹ Laffoy J. considered a situation where an investigation team within the Defendant financial institution carried out an investigation into the Plaintiff and it was proposed that the same team of investigators would decide whether or not his conduct amounted to serious misconduct. Laffoy J. found that the management of the Defendant financial institution and the investigation team were manifestly confused as to the role and function of the investigation team at the various stages in the process and found that in that particular case it was not appropriate for the investigation to be carried out by the same people who were to make the decision.
3. Although Laffoy J. was careful to note that a one-stage inquisitorial process would not always amount to a breach of fair procedures, nevertheless it is interesting to note that in the recent Supreme Court case of *O'Sullivan v. Sea Fisheries Protection Authority*,² O'Donnell J., at paragraph 52, whilst commenting on the fact that there was only one hearing under the 2015 Fishing Penalty Point Regulations, stated: -

"I wish to emphasise that it cannot be said that it is always improper to have a single decision-making process or to have a default position or to place upon a licence holder an onus of proof or indeed the entire burden of proof. In each case, the question of fairness of the procedures must be gauged against the subject matter of the decision, its significance, the difficulties of proof and the consequences of error."

4. Later on, at paragraph 53, O'Donnell J. stated: -

"I do not think it is useful to attempt to weigh each of the individual components so as to determine the precise point at which the removal of one element will lead to the invalidity of the 2014 Regulations, in the same way as a child's toy might survive while bricks are removed but collapse when a particular brick is removed. The facts in each case are different, and the justification so distinct, that it is I think appropriate merely to observe that if the 2014 Regulations were seeking to hew exactly to the line of the minimum required by fair procedures in this case, they have, in my judgement, crossed that boundary and the decision of the High Court that the 2014 Regulations are invalid must be upheld albeit on this narrower basis."

5. It is therefore submitted that the Commission, being in the position of a hybrid body which investigates, prosecutes and decides, must be very careful to ensure that any crucial keystone or founding brick of fair procedures is not inadvertently removed or fundamentally weakened and cracked to the point that the person accused of wrongdoing is denied fair procedures.

¹ [2010] IEHC 36.

² [2017] 3 I.R. (Vol. 3, Part 2).

WHO SELECTS THE EVIDENCE?

6. In this case, whilst the complaint formally has emanated from the Chief Executive of Sligo County Council (after requests for clarification as it was not clear if he had even made a complaint at first), the reality of the situation is set out in the report of the Commission's own inquiry officer, Elaine Laird. At paragraph 9.2 of the analysis of the complaint by the inquiry officer, it is stated: -

"The main evidence to be considered in this case relates to the unedited written transcripts of the full verbal exchanges between Councillor Queenan and 'Nina' during the phone calls and the meeting, the unedited visual recording of the meeting taken by RTE, the information provided by Councillor Queenan in his annual declarations and the annual statement, and the responses to the inquiry officer from Councillor Queenan and his solicitors."

7. It is therefore clear that the main evidence was and is the transcripts of exchanges between Councillor Queenan and the person who used the false name 'Nina Carlson' and whose identity remains concealed and hidden from view.
8. Before turning to the question of the rule against anonymous evidence, it is fair to ask who gets to select the evidence in this case? This is because the evidence presented is highly selective.
9. RTE have decided to select Conor Ryan and Cedric Culleton as witnesses but have decided to deselect and/or conceal 'Nina Carlson'.
10. Regrettably, the Commission seems to simply have accepted this and despite protestations and a significant application by the Accused and despite the very serious consequences for the Accused regarding his good name, political career and the potential for criminal enquiries, the Commission have proceeded to allow an investigation progress to the point of an oral hearing in the full glare of publicity at a time when a third party has decided what the main evidence will be and what it will not be.
11. Section 17 of the Standards in Public Office Act, 2001 provides: -

"A person who by act or omission obstructs or hinders a Committee, the Commission, an inquiry officer or a person who is a member of the staff of a Committee or the Commission or is carrying out an examination pursuant to Section 32(4A) of the Principal Act in the performance of the functions of the Committee, the Commission or the officer or person shall be guilty of an offence and Section 37 of the Principal Act applies to such an offence as it applies to an offence under that Act."

12. It is respectfully submitted that RTE, by their omission and persistent wilful refusal to make available the person falsely describing herself as 'Nina Carlson' are in fact guilty of the offence of obstructing the Commission. However, not alone have the Commission not done anything about this but the Commission have insisted that Councillor Queenan deal with an investigation in the absence of this person and without any ability to have her cross-examined or her credibility tested.
13. This is notwithstanding the provisions of Section 16 of the 2001 Act which provides: -

“(1) Notwithstanding subsection (8) of section 32 of the Principal Act—

(a) a person who gives evidence before a Committee or the Commission or to a person for the purposes of an examination by him or her pursuant to subsection (4A) of that section shall not be entitled to refuse to answer any question put to him or her, and

(b) a person shall not be entitled to refuse to produce or send a document pursuant to a direction,

on the ground that his or her answer or the document might incriminate him or her.”

14. The same Section goes on to say that answers given or documents given cannot be used in criminal proceedings against the person subject to the inquiry.
15. The above is significant in that Conor Ryan refused to answer, under oath, when asked for the identity of ‘Nina Carlson’.
16. Conor Ryan also refused to confirm whether or not the person who falsely described herself as ‘Nina Carlson’ had any convictions.
17. The Commission sat back and allowed Conor Ryan to dictate and select what evidence he would or would not give and he was not forced to answer nor was he warned of the fact that he may well be committing a criminal offence pursuant to Section 17 of the Act. In addition to the above matters, one also has to bear in mind that RTE decided not to give the Commission or the Accused any recording or transcript of what was going on in the earpiece or what ‘Nina Carlson’ was being told to say or do and again this was a decision taken by RTE to be selective about what was put forward.
18. RTE also decided not to give any transcript of what was said in the room after Councillor Queenan had left and, in particular, never brought to the attention of Elaine Laird the interaction that took place afterwards whereby Councillor Queenan was, without any justification whatsoever, called a ‘sleaze ball’ and where contrary to the evidence of Conor Ryan, the parties engaged not in nervous laughter but in hearty downright derisory laughter. Whilst not of huge significance in isolation, nevertheless in the context of the selectivity of the evidence, these matters are important.

WHAT IS THE EFFECT OF THIS SELECTIVE EVIDENCE?

19. The Accused here is left in the position that he will never know what the effect of the missing evidence might be and that is because he was not afforded the opportunity to test the evidence of 'Nina Carlson' in the following manner: -
 - (a) As to what her riding instructions were;
 - (b) 'Nina Carlson' could not be cross-examined as to her credibility;
 - (c) 'Nina Carlson' could not be asked as to whether or not she had prior convictions for deception or any other criminal offence;
 - (d) 'Nina Carlson' could not be served with a subpoena *duces tecum*;
 - (e) 'Nina Carlson' could not be examined as to the methods employed by her and the level of planning of those methods in advance;
 - (f) The profession of 'Nina Carlson' could not be ascertained;
 - (g) It could not be ascertained as to whether 'Nina Carlson' was in fact an accredited or proper reporter or a person who had been properly vetted by RTE;
 - (h) On a very basic level, the nature of the interaction between the only two parties who were present when the discussions took place could not be properly explored, thereby depriving Councillor Queenan of any opportunity to bolster his own evidence as to the hypothetical nature of the discussion that eventually ensued and the context in which that discussion ensued.
20. It is easy to say that there is no prejudice or that the video tape shows everything but if that were the case, there would be no need for an oral hearing before any administrative body or Court, whether civil or criminal.
21. Our system of law depends on witnesses and their availability to be examined and cross-examined and it is often not what a witness says that will sway the mind of a decision-maker but how they present and whether they present as an honest or trustworthy person or whether they present as a sneaky or nasty individual and sometimes it can be the most casual or throwaway remark by a witness that changes an entire case where the mask slips and where a witness' true character is briefly revealed and where the truth makes a fleeting but telling appearance from behind a curtain of deception.
22. The above is our system and one which generations of common lawyers and Judges have been keen to extol the virtues of.

THE LACK OF ANY NECESSITY FOR SECRECY

23. In many of the cases where anonymity is required, one will find that there is a threat to life or limb, be it a threat of intimidation from gangsters or paramilitary groups but, in this case, there is no good reason as to why 'Nina Carlson' cannot be unmasked. The inquiry officer has found that the interaction between the two people, 'Nina Carlson' and Joe Queenan is, in effect, the main evidence or at least a large part of the main evidence and the Act itself, at Section 8, says that the Commission should not even investigate a complaint made unless the identity of the person making the complaint is disclosed to it. The same Section gives the Commission power to impose reporting restrictions where the interest of justice requires it.
24. The point is taken that the Chief Executive of Sligo County Council is the one who formally made the complaint. However, no complaint would ever have been made but for the fact of the interaction between 'Nina Carlson' and Joe Queenan and that was the whole basis for the complaint and it is submitted with respect that a complaint cannot be 'a shell' without a kernel and clearly the kernel here is the interaction between the two people and to try and side-step Section 8 or indeed the common law generally on this basis is not well-founded.
25. It is not a question of the Commission not having the power to marshal the relevant evidence and it is submitted that it cannot be suggested that the evidence of 'Nina Carlson' would not be relevant or that her cross-examination would not be relevant. Even if relevant for no other reason, it is relevant because a person accused and facing reputational annihilation of this sort should be given the opportunity to test the credibility of every aspect of the evidence against him and it is also important that justice not just be done but be seen to be done in this regard.
26. It is clear that pursuant to Section 6, the Commission has the power to marshal the relevant evidence with Section 6(2)(a) providing that where cases where the Commission requests an inquiry officer to assist it in the performance of its functions, one of the powers the inquiry officer has is: -
- “(a) requesting the person who made the complaint, or any other person whose evidence would or might, in the opinion of the officer, be relevant to the inquiry, at the option of the person, to: -*
- (i) provide him or her with a statement in writing of the evidence that the person would give to the Commission in relation to the matter at an investigation of the complaint by the Commission under Section 23 of the Principal Act, or*
- (ii) make a statement of the evidence aforesaid at a meeting with him or her which the officer shall write down,*
- within such reasonable period as may be specified by the officer....”*
27. Additionally, an inquiry officer may, pursuant to Section 6(5): -
- “(a) request the production by a person of any document in the possession or control of the person that the officer considers relevant to his or her inquiry.”*
28. It is therefore clear that the Commission has the power to: -

- (a) Determine that the evidence of 'Nina Carlson' is relevant;
 - (b) Direct that she attend a meeting a give a statement or else allow her answers to be written down;
 - (c) Direct that she produce documents and, in this case, her personal telephone records could be important for the days in question and/or any other messages which passed between her and the other members of the RTE team as to the level of entrapment and level of pre-planning that went into the operation.
29. Regrettably, RTE have managed to put a selection of the evidence that they have and have managed to successfully withhold and conceal other evidence and witnesses and this is wrong, contrary to fair procedures and natural justice and also contrary to common-sense and logic.
30. The Commission, by not acceding to the Accused's application and by not utilising its own powers to force answers from Conor Ryan and to force documents and an interview with the person describing herself as 'Nina Carlson', have handed control of this process to RTE or, in the alternative, have failed to marshal all relevant evidence as is the Prosecutor's duty to do and is the duty of any fair investigator in any civil case also.
31. The Commission has a complex and convoluted statutory mandate to investigate, prosecute and make findings and report and it is respectfully submitted that the investigation stage was not robust enough vis à vis RTE where all of the evidence was sourced and held but where not all of the evidence was released.

UNRELIABLE NATURE OF THE TRANSCRIPTS AS FLAGGED BY RTE

32. It is noteworthy that when Elaine Laird, the inquiry officer, did seek documentation pursuant to Section 6(5) of the 2001 Act, she was told by RTE that they were not in a position to provide her with all of the documentation and she was also warned that: -

“Kindly note that these transcripts are not official transcripts prepared by a stenographer and reliance should not be placed on them.”

33. Ms. Laird was also denied access to transcripts of telephone conversations between the RTE reporter ‘Nina’ and other RTE personnel with the excuse: -

“To that end, RTE is not in a position to provide same as they relate to journalistic work carried out in the context of preparation of the programme.”

34. This again speaks to the selective evidence released by RTE and the acceptance of that selectivity by the Commission.

35. The inquiry officer also sought fit to ask a number of other questions, the relevance of which was queried by RTE (a recurring theme when some of their witnesses gave evidence) and these questions were: -

- (i) When did the research begin – how long did it take to prepare for the programme?
- (ii) How many councillors were selected and contacted at the initial stage?
- (iii) On what basis were those councillors selected?
- (iv) The basis for selecting the three councillors who appeared in the programme?
- (v) How did ‘Nina’ prepare for the meetings?
- (vi) Were questions agreed in advance?
- (vii) What was her brief, i.e. the purpose of the meetings?

36. If the inquiry officer saw fit to ask these relevant questions, which were clearly relevant, then it ought to have been and ought to remain a very significant point of concern that RTE refused to release this information and again fell back on their interpretation of relevance which their reporter, Conor Ryan attempted to do in evidence until challenged. It is important that the Commission is seen as independent in its functions and clearly many of the questions which Councillor Queenan’s representative wished to ask at the recent hearing were similar to the questions Elaine Laird had asked but was refused answers to and therefore, whilst RTE might not be the formal complainant, they are clearly the party which has held the evidential aces and selected evidence purely on an arbitrary basis to suit their own priorities and to protect their own sources and it is important not to lose sight of the fact that the rule against anonymity should only be invoked sparingly and in cases of genuine exceptional risks.

THE RULE AGAINST ANONYMOUS EVIDENCE

37. The rule against anonymous evidence and the right to confront the relevant and main witnesses which are lined up against a person in a case is a rule which runs as a sort of golden thread through not just criminal law but also civil law.
38. The Commission has made a preliminary ruling which is under challenge in a related case in the High Court and it appears that no decision should be made on this case until such time as that challenge is determined. Quite apart from that, the Commission has concluded in its preliminary ruling that the issues highlighted at the preliminary stage around anonymous evidence and selective evidence would be relevant when the Commission came to weigh the evidence and, to this extent, all of the Accused's submissions made at preliminary stage are repeated.
39. In *Flanagan v. University College Dublin*,³ Barron J. stated: -

"In my view, the procedures must approach those of a Court hearing. The Applicant should have received in writing details of the offence..... at the hearing itself, she should have been able to hear the evidence against her, to challenge that evidence in cross-examination, and to present her own evidence."
40. Barron J. also went on to state: -

"Nor was she given an opportunity to prepare her case or to present it. The refusal to permit her representation of her own choosing was a virtual denial of the former and the absence of anyone to give evidence against her at the hearing before the Committee was a denial of one aspect of the latter. It gave her no opportunity either to discover how the case against her was being put or to test its strength by cross-examination."
41. Based on the above dicta. of Barron J. in what was a civil setting or administrative tribunal at UCD, there is no basis to suggest that the present hearing could have been conducted in accordance with fair procedures and constitutional justice and this of course is not the fault of the Commission but is the fault of the party who control the evidential aces, namely RTE.
42. In *Re. Haughey*,⁴ the failure to permit cross-examination was held to be a breach of *audi alteram partem*. This of course arose out of the Dáil Committee of Public Accounts investigation into expenditure on grant aid in Northern Ireland. It is clear that Ó Dálaigh C.J., when writing in the *Haughey* case, and finding that the applicant in that case was entitled to cross-examine his 'accuser or accusers' was not taking a tight literal approach but rather the actual garda officer had to be available for cross-examination.
43. It ought to be recalled that in the *Haughey* case itself, the complainant was not the senior garda officer who was unavailable for cross-examination but in fact the complainant was the Committee of Public Accounts itself who had received hearsay evidence against Mr. Haughey. This did not stop the Supreme Court from finding that he was entitled to cross-examine his accusers and clearly the meaning of the word 'accuser' in that case is not the person who formally made the complaint but the people who were giving the hearsay evidence in the background. They were persons precisely in the position of 'Nina

³ [1988] I.R. 724.

⁴ [1971] I.R. 217.

Carlson' other than that 'Nina Carlson' was not a garda officer and did not have any statutory basis at all for her deceptive activities on behalf of RTE.

44. Ó Dálaigh C.J., in that case, made it clear that: -

“As to disallowance of cross-examination, an accused person has a right to cross-examine every witness for the prosecution, subject, in respect of any question asked, to the Court’s power of disallowance on the grounds of irrelevancy. An accused, in advance of cross-examination, cannot be required to state what his purpose in cross-examining is. Moreover, the right to cross-examine ‘to credit’ narrows considerably the scope of the irrelevancy rule. Mr. Haughey, in my opinion, was wrongly denied the right to cross-examine.”

45. Another recent example of the necessity to allow cross-examination of witnesses arises in the case of *W.M. v. The Child & Family Agency* (not a criminal case) where McDermott J. held that despite the informality in family law and the difficulties of investigating and assessing alleged child abuse, he held at paragraph 71: -

*“It is important to emphasise that the present case was investigated and assessed without a written procedure and prior to the introduction of the 2014 procedure which provides a process under para. 24.1(b) where the assessors, in the course of an investigation or assessment, may receive an application from an alleged abuser to be provided with the facility to cross-examine the complainant. Such an application must be considered in a fair and proportionate manner. It must take account of all the circumstances and balance the rights of all concerned before a decision is made. I am satisfied that this case comes within the ambit of cases such as *P.D.F.* in which an opportunity to cross-examine should have been afforded to the applicant absent any reason related to the complainant’s mental health that would render it inappropriate or impossible. However, it is clear that this matter was not even considered in the process which was initiated by the Respondent.”*

46. The facts of that case involved a sister who suffered from significant mental illness making a complaint of historic sexual abuse against her brother and, as such, the sister was the accuser. However, another sister was also involved in that the letter of complaint alleged that the person who claimed to be a victim had informed her sister about it thirteen years previously.

47. Could it seriously be suggested that although this decision appears to relate to the cross-examination only of the alleged victim that if her sister had supported her in the allegations that cross-examination of her would not be allowed?

48. In many cases, there may be one complainant be that a substantive complainant or a person effectively discharging what he saw as a duty such as the CEO of Sligo County Council was (and based entirely on evidence held by RTE) but allied to that, there will often be another key witness on whose evidence the complaint will sink or swim and to assert that the right to cross-examine such a person is not available before a civil tribunal is simply misconceived in law.

49. The Supreme Court, in the case of *Redmond v. Attorney General*,⁵ held that elementary justice required that a person who was liable to some sanction or imposition, based on

⁵ [2015] 1 I.R. 84.

how a factual issue was resolved before a body, tribunal or committee obliged to proceed in accordance with natural justice, was entitled to confront his accusers and to cross-examine them or to have them cross-examined. To that end, an accused person had the right to be made aware of the material necessary for a proper cross-examination. The Court warned against the subversion of the right to cross-examine.

SPECIFIC RULE AGAINST ANONYMOUS EVIDENCE

50. In the case of *R. v. Davis*,⁶ the Court reiterated, including at paragraph 5, the long-established principle of the English common law that subject to certain exceptions and statutory qualifications the Defendant should be entitled to confront his accusers in order that he may cross-examine them and challenge their evidence.

51. As already opened to the Commission, the House of Lords relied on a civil case of *Duke of Dorset v. Girdler*,⁷ where the Court declared: -

"The other side ought not to be deprived of the opportunity of confronting the witnesses, and examining them publicly, which has always been found the most effectual method for discovering of the truth."

52. Clearly, this is not limited to accusers but is a right to confront witnesses who are relevant and clearly 'Nina Carlson' is relevant.

53. The House of Lords in that case went on to discuss possible exceptions including where television journalists, in the case of *R. v. Murphy*,⁸ did not want to give evidence as they were afraid of paramilitaries and they had filmed the murder of two British army corporals on television. The House of Lords, in *R. v. Davis* noted that there was a departure in that case but stated at paragraph 12: -

"If a departure from established principle, the decision in R. v. Murphy was nonetheless a small one: at trial, defence counsel raised no objection to the identities of the witnesses being withheld (C332); the defence did not challenge that the witnesses feared for their safety if their identities were revealed..."

54. Lord Carswell, in the *Davis* case, noting the protection of the identity of the witnesses in that case stated: -

"The extent of the inroad in the present case was substantial. The identity of the witnesses in question was withheld from the defence and the Defendant's Counsel was not permitted to ask questions which might lead to that being disclosed. The witnesses were screened in such a way that although the Judge and Jury could see them, neither the Defendant nor his Counsel could, nor could members of the public. Their voices were purposely distorted by amplifying equipment so that they could not be recognised by the Defendant, although again the Judge and Jury could hear their true voices. Their antecedent histories and records of any convictions were supplied to the defence but edited so as to conceal their identities."

55. At paragraph 51 he stated: -

"It is indisputable that this would have had a hampering effect on the conduct of the defence, which was that the appellant was falsely accused of the victim's murder for oblique reasons of the witnesses. The credibility of the Crown witnesses was squarely in issue, and the handicap which these restrictions imposed upon the

⁶ [2008] 3 All ER 461.

⁷ (1720) Prec. Ch. 531 at 532.

⁸ [1990] NI 306.

defence was accurately described by Fortas J. in the United States Supreme Court case in Smith v. Illinois (1968) 390 US 129 at 131”

56. Lord Carswell went on at paragraph 59 to state: -

“It is possible to distil some propositions from this review: -

- (a) There is a presumption in favour of open justice and confrontation of a Defendant by his accuser;*
- (b) It is possible in principle to allow departures from the basic rule of open justice to some extent, but a clear case of necessity should be made out;*
- (c) The Court should be sufficiently satisfied that the witness’s reluctance to give evidence in the ordinary manner is genuine and the extent of his or her fear justifies a degree of anonymity;*
- (d) Anonymising expedients may include the withholding of the witness’ name and address, screening of the witness from the Defendant and the public, screening from the Defendant’s legal advisors, disguising of the witness’ voice from the Defendant and the public and disguising of the voice from the legal advisors;*
- (e) The more of these expedients the Court might consider adopting, the stronger the case must be for invading the principle of open justice. Determination of the question depends on balancing to ensure that the trial continues to be fair;*
- (f) An important consideration is the relative importance of the witness’ testimony in the prosecution case. If it constitutes the sole or decisive evidence against the Defendant, anonymising which prevents or unduly hinders the Defendant and his advisors from taking steps to undermine the credit of the witness is most likely to operate unfairly. It is a question of fact in any given case what, if any, measures would be compatible with sufficient fairness of the trial. Courts trying criminal cases should not be over ready to resort to such measures*

57. The presumption of open justice has been stated clearly in this jurisdiction in the case of *Roe v. Blood Transfusion Service Board*⁹ where Laffoy J. emphasised Article 34 of the Constitution which provides: -

“Justice shall be administered in Courts established by law by Judges appointed in the manner provided by this Constitution and save in such special and limited cases as may be prescribed by law, shall be administered in public.”

58. The case tragically involved a Plaintiff who had contracted the Hepatitis C virus as a result of being infected with blood products and wished to use an assumed name for the purpose of proceedings to protect her privacy and prevent embarrassment and injustice to her. Laffoy J. found that she could not allow that relief to be granted even to the extent that where the true identity was known to the parties to the action and to the Court it also had to be known to the general public so that they could see that justice was being done.

⁹ [1996] 3 I.R. 67.

59. The *Roe* case raises an important point as to whether irrespective of what Councillor Joe Queenan might think or his lawyers, what would an ordinary person reading an account of the proceedings think of a case where a man is expected to defend himself against an anonymous witness whose identity has been consistently concealed? It is respectfully submitted that this would give rise to a real risk of a fear that justice is not being seen to be done in this case and it is submitted that the words of Laffoy J. in that regard are particularly relevant where she stated: -

“The Plaintiff’s stated objective in seeking to prosecute these proceedings under a fictitious name is to keep her identity out of the public domain. In my view, in the context of the underlying rationale of Article 34, s.1, the public disclosure of the true identities of parties to civil litigation is essential if justice is to be administered in public. In a situation in which the true identity of a Plaintiff in a civil action is known to the parties to the action and to the Court but is concealed from the public, members of the general public cannot see for themselves that justice is done.”

60. The Accused in this case also relies on the case of *Doe v. Revenue Commissioners*,¹⁰ where likewise Clarke J. held that an intending Plaintiff had to apply to Court for permission to remain anonymous and that the obligation that justice should be administered in public means that the identity of the parties to the proceedings (amongst other things) must be known.
61. Importantly, Clarke J. also held that in the absence of expressed statutory provision, the only circumstances in which a Court may restrain full publication of all that transpired during a Court hearing (including the names of the parties) is where such an Order is necessary to prevent a real risk of an unfair trial and where the damage that would result from not making the Order concerned would not be capable of being remedied by appropriate directions to a jury or otherwise.
62. It is clear from the above cases that it is not just the names of the parties but that all parts of a case must be open and justice must be seen to be done and this includes the evidence of witnesses and the names of an accuser or accusers.
63. The Commission has contended in its preliminary ruling that it is not relying on evidence from an anonymous witness. However, it has also conceded that the anonymous witness situation will have to be dealt with when weighing the evidence and, in particular, when considering the weight to be given to the recordings.
64. It is submitted that the weight to be given to the recording and any transcripts associated therewith must be a very light and flimsy weight indeed, if indeed any weight can be given to them for the following reasons: -
- (i) They represent merely a selection of evidence selected by a party who could have given a complete set of electronic and witness evidence but opted not to do so;
 - (ii) The absence of the ear piece evidence is significant because it conceals from view what instructions were being given at the time and it is not credible that this was not recorded also and the omission of this recording is of critical importance;

¹⁰ [2008] ITR 81.

(iii) The nasty attitude of the RTE reporters to Councillor Joe Queenan is revealed when he leaves the room when Cedric Culleton refers to him as a 'sleaze ball' and this shows an element of pre-meditation and pre-judgement against Councillor Queenan which ought to be weighed significantly in the interests of justice.

65. It is clear from the evidence of Conor Ryan that he and the fictitious woman, 'Nina Carlson' were parked at some beach near Ballyshannon plotting and planning as to how they would record Councillor Joe Queenan on the telephone.
66. It is also clear that 'Nina Carlson', after Councillor Queenan left the room, felt that he had not 'hung himself' and again, leaving aside the nasty and despicable nature of those comments, it is clear that she felt that he had not been sufficiently entrapped and it is suggested that this must be the explanation for the subsequent follow-up phone call which again sought to entrap Councillor Queenan.
67. It is also important that there is no direct evidence from 'Nina Carlson' that she consented to the recording and this raises questions about the legality of the recording and whether it is admissible. It is clear that Councillor Queenan did not consent to the recording as he was unaware of it and reliance is placed on the decision of *Herrity v. Associated Newspapers Ireland*,¹¹ a decision of Dunne J. where a husband had a wife secretly recorded by a private investigator without her consent and where significant damages were awarded for a breach of privacy. Dunne J. in that case found: -

"I also accept and there can be no doubt about this that the telephone line of the Plaintiff was interfered with and that a recording device had been attached to the telephone lines. Her telephone calls were recorded without her permission. There can also be no doubt that this was done at the instigation of Mr. Herrity, apparently by a private detective employed by Mr. Herrity."

68. Dunne J. went on to comment: -

"The amended Defence filed herein included a plea that if, which was denied, the articles complained of included content that was acknowledged in the articles to include extracts from recordings made of private telephone conversations held by the Plaintiff with a third party, it was denied that such conversations were held by the Plaintiff on her private telephone line as alleged. It was also further denied that the material had been obtained by a third party by means of an unlawful surveillance and recording of private conversations held by the Plaintiff on her telephone line, notwithstanding these pleas, I am satisfied that there is no doubt whatsoever that the articles complained of contain material which was obtained by means of the recording of telephone conversations of the Plaintiff with third parties without her knowledge or permission. To that extent, it appears there has been a breach of Section 98 of the Postal and Telecommunications Act, 1983."

69. As such, it is submitted herein that the evidence obtained in this case by the fictitious person, 'Nina Carlson' was illegally obtained and that the Commission should be very slow, in the first instance, to admit illegally obtained evidence and, in the second instance, must be very slow as to what weight they would attach to it, if any.

¹¹ [2008] IEHC 249.

70. The Commissioner being invited down a road of relying on illegally tainted evidence which features an interaction between a fictitious person who remains concealed and an unsuspecting councillor who was called on repeatedly to agree confidentiality and was called on repeatedly to specify whether “we could do something for you.”

ENTRAPMENT

71. What went on was described in another case where an undercover police officer repeatedly sought to lead a party into illegality as “*wholesale virtue testing*.” In the case of the *DPP v. Mills*,¹² Mahon J. examined the ingredients of entrapment. In doing so, the learned Judge relied on *R. v. Loosley*,¹³ where Lord Hoffman J. analysed the principles under various headings including: -

- (i) Causing and providing an opportunity;
- (ii) Suspicious and supervision;
- (iii) The nature of the offence;
- (iv) Predisposition;
- (v) Active and passive conduct;

72. Mahon J. also examined the case of *Nottingham Council v. Amin*,¹⁴ which was cited with approval by Lord Hoffman and that was the dicta. of Bingham C.J. in the *Nottingham* case as follows: -

“On the one hand, it is recognised as deeply offensive to ordinary notions of fairness if a Defendant were to be convicted and punished for committing a crime which he only committed because he had been incited, instigated, persuaded, pressurised or wheedled into committing by a law enforcement officer. On the other hand, it has been recognised that law enforcement agencies have a general duty to the public to enforce the law and it has been regarded as unobjectionable if a law enforcement officer gives a Defendant an opportunity to break the law, of which the Defendant freely takes advantage....”

73. As such, this seems to amount the ‘unexceptional opportunities’ test. It is submitted that it was the false reporter ‘Nina’ who repeatedly introduced the idea of confidentiality both at the meeting and in the telephone call.

74. It is further clear from the transcripts and from watching the video that on repeated occasions Councillor Queenan asserted that he did not want anything out of helping the fictitious company and that he was doing this for the good of Sligo.

75. After repeated ‘virtue testing’ of ‘Nina’, Councillor Queenan did make the mistake of indicating that an opportunity could arise in the future for this fictitious company to invest in one of his businesses and this was a mistake. However, this has to be weighed against questions such as: -

- (i) Who instigated the conversation around investments?
- (ii) Who incited the situation?

¹² [2015] 4 I.R., Court of Appeal.

¹³ [2001] UK HL 53.

¹⁴ [2001] 1 WLR 1071.

(iii) Was Councillor Queenan active or passive?

76. It is respectfully suggested that he was passive and that he was played by this fictitious woman at all times and she led him down various angles of conversation which were inappropriate including one where she talked about how long she would wait in a hot shower showering herself Any Court or any commission of inquiry or adjudicative body should set its face against this type of nefarious conduct, particularly in circumstances where it was admitted that the nastiness displayed towards Councillor Queenan after he had left the room was completely unwarranted and had no basis.
77. Councillor Queenan has only been given minor glimpses into the RTE operation and even with those minor glimpses and accidental taping of themselves after he left room, one can see the nasty element that was at play. Elaine Laird, who did her best to gather the information, was frustrated by RTE as was Counsel for Councillor Queenan at the hearing.

CONCLUSIONS

78. It is clear that Councillor Queenan's constitutional rights to a fair and open hearing cannot be respected given that evidence is being withheld and there is a continuing duty on the Commission to ensure that Councillor Queenan's constitutional rights to fair procedures are upheld and that Article 34 of the Constitution is upheld regardless of the procedural ruling already made. This continuing obligation remains on the Commission until the time of determination of this issue.
79. The reputational stakes for Councillor Queenan are severe. Councillor Queenan was willing to give evidence to the Commission and cooperated at all stages with the Commission including on the day of the hearing when others might not have cooperated and opened himself up to cross-examination which was extensive and was not a man trying to hide anything. Of course, this underlined the gross unfairness of the other person in this interaction being shielded from open enquiry.
80. Councillor Queenan is accused of a number of things and it is respectfully submitted that Counts 2, 3 and 4 are simply without any evidence at all and there is no evidence whatsoever that Councillor Queenan, for instance, was "*seeking assurances of payment and indicating a willingness to provide assistance to the company as a member of the local authority in return for payment.*"
81. It is submitted that no matter how one looks at the evidence, be it the tape, Councillor Queenan's own evidence and any submissions, there is no evidence to sustain a breach of Section 170 of the Local Government Act, 2001. Neither is there any evidence to suggest that there was a 'company' in the first place and therefore the charge, as preferred and drafted, is in itself unstateable.
82. It is submitted that the alleged breach of Section 169(3) that Councillor Queenan somehow had 'indicated a willingness to provide assistance with local landowners and with the planning application in the local authority on behalf of the company in return for financial reward' is unsupported by any evidence. The most that can be gleaned is that Councillor Queenan was willing to give the benefit of his knowledge to this fake company as regards where he thought planning might or might not be granted (but he stressed it was only his view and he could not guarantee it). There is no way in which it could be said that he was doing this in return for financial reward and one could not stretch the hypothetical future investment as coming within the charge 'in return for financial reward'. In addition, the charge as drafted and preferred is unstateable as there was no 'company' and Vinst Opportunities never existed.
83. Count 4, which alleged a breach of Section 171 of the Local Government Act, 2001, relates to the declarable interests and Councillor Queenan has already outlined his position on that that there was a technical breach and he has explained in evidence the context of that whereby a form was put in front of him for signing as he chaired a Council meeting by a member of staff and he inadvertently failed to disclose the interests. However, the interests had been disclosed the previous year and were subsequently amended and full particulars provided. Clearly, Councillor Queenan was well known locally and people knew he was an auctioneer and had shops and the view is urged on the Commission that this breach was inadvertent, not intentional or in any way devious.
84. As regards the remaining charge being the charge that he breached Section 168 of the Local Government Act, 2001 by failing to maintain proper standards of integrity, conduct

and concern for the public interest, it is submitted that this charge is stateable in that it is clear that it relates to a fictitious company (whereas the other charges are not said to relate to a fictitious company) and have never been amended.

85. With respect to this charge, the Commission has to look to the totality of the evidence and the weight to be given to that evidence in the context of the submissions already made herein. The Commission is asked to find that Councillor Queenan lacked integrity or that he failed to maintain proper standards when met with the 'wholesale virtue testing' of a fictitious person who has never been cross-examined and whose credibility has never been established. This person, who it is claimed is an RTE reporter, engaged in behaviour after the meeting which gave a glimpse as to the character of her and the others operating with her and whilst her demeanour could not be properly assessed due to her absence, she does for whatever reason button up her clothing, rearrange her hair and laughs heartily at Councillor Queenan. Meanwhile, her collaborator, Mr. Culleton calls him a 'sleaze ball' and it is particularly unfair that Councillor Queenan has not been able to fully examine the *modus operandi* and riding instructions of 'Nina Carlson' and that this has been frustrated and concealed by RTE.
86. Even if somehow all of these constitutional issues are overcome and the evidence is deemed admissible or somehow credible or probative (which it is submitted it cannot by definition be), then one, when looking at the totality of the matter, sees somebody who rushes to a meeting, is eager to help and eager to please the person looking for help. The Commission sees a man who repeatedly says that he is not looking for anything out of it and gives advice not to be seeking planning in an area of sensitivity. There is also the evidence of Tom McHugh, a councillor who has not been charged but who was also targeted by the RTE sting who felt that it would not be practical not to keep a confidence for somebody who was looking to invest in an area. There is the evidence of both of these men to the effect that in order to attract investment into an area, it is part of a councillor's job to meet with interested parties who may bring jobs to an area and, in particular, the West Sligo area is particularly deprived as outlined by Councillor Queenan. In that context, it does not seem to be a breach of standards or amount to a lack of integrity simply to keep the confidence of such a company and the only potential area of any difficulty for Councillor Queenan is the mention of a few future investment but, again, in his evidence, the Commission will note that Councillor Queenan was clear that that was completely hypothetical and that if it ever did happen, he would have declared it.
87. Therefore, on balance, even if the constitutional issues and the evidential admissibility issues are overcome, there is no probative value or little probative value in the evidence being offered against Councillor Queenan but the Commission has had the advantage of seeking Councillor Queenan face the allegations despite the selective evidence being produced against him and despite having access to all of the relevant witnesses and recordings.
88. The Commission must be fair to Councillor Queenan and it has promised to weigh the evidence. There can be little, if any, weight given to the evidence that was produced and the Commission must be mindful that the entire process of flushing Councillor Queenan into a situation where he felt obliged to defend himself is in itself a drastically unfair situation to put him in. The man has clearly been pilloried in public on the basis of an anonymous attack and in the context of defending himself to what limited extent he could, he finds that he has been internally defamed by RTE and being called a 'sleaze

ball' (a fact which has only recently come to light). The benefit of the doubt should be given to Councillor Queenan in all the circumstances.

89. Finally, it is submitted that the burden of proof on the Commission ought to be the criminal standard in a case of this nature where the right to a good name is clearly in issue and there are constitutional rights at play. In this regard, reliance is placed on the work of Caroline Fennell on evidence and, in particular, on the chapter on the standard of proof where she comments at paragraph 3.97 under the heading 'Tribunals: Other Contexts' that, for instance, in the case of the *Kerry Babies*, it was found that the ordinary civil standard was not sufficient. The learned author states:-

"Occasions when the strict application of the general rule as to the standards of proof and their effect may well be departed from or provided by tribunal proceedings, and less obviously perhaps by instances on the civil side, when particular circumstances seem to warrant greater caution in reaching a determination on an issue. In other words, the basic civil standard will never have to be less than satisfied but may occasionally be augmented. Firstly, in the case of tribunals, rules of evidence may well be relaxed or not adhered. No general provisions exist with regard to same, and judicial discretion as to satisfaction on the issues concerned is the standard mooted. It is interesting to note as an example of this the statement of Lynch J. in the report of Kerry Babies Tribunal to the effect, "with one exception... the tribunal finds facts only if the tribunal is satisfied of such facts as a matter of substantial probability. This is a degree of proof in excess of the mere balance of probabilities and short of proof beyond reasonable doubt."

90. Caroline Fennell goes on to state at paragraph 3.98: -

"Secondly, in the Goodman Tribunal, the standard adopted by Hamilton J. was onus of proof beyond reasonable doubt. It would seem that the civil standard is the benchmark which, on occasion, may be raised for reasons of pragmatism or policy."

91. The Accused herein, Councillor Queenan, whilst not accused in a criminal context, is accused of improper behaviour, breach of standards, lack of integrity and breach of the Code of Conduct for Councillors and the Local Government Act, 2001 and is therefore entitled to a higher standard than the ordinary civil standard.
92. For all of the above reasons, it is respectfully submitted that the charges against Councillor Queenan, other than the declarable interest charge (which should be seen in the context as explained by Councillor Queenan in writing and in evidence) are not made out and the report should reflect this fact.

MICHAEL C. O'CONNOR LLM, BARRISTER-AT-LAW

**IN THE MATTER OF THE ETHICS IN PUBLIC OFFICE ACT, 1995
AND IN THE MATTER OF THE STANDARDS IN PUBLIC OFFICE ACT, 2005
AND IN THE MATTER OF THE LOCAL GOVERNMENT ACT, 2001
AND IN THE MATTER OF AN INVESTIGATION AND HEARING INTO ALLEGED
CONTRAVENTIONS OF THE LOCAL GOVERNMENT ACT, 2001
BY COUNCILLOR JOE QUEENAN**

BETWEEN/

**STANDARDS IN PUBLIC OFFICE COMMISSION
PROSECUTOR**

-AND-

**JOSEPH QUEENAN
ACCUSED / RESPONDENT**

LEGAL SUBMISSIONS

S. Durkan Solicitors
Solicitors for the Accused / Respondent
Cliff Road
Enniscrone
Co. Sligo