



RULING OF THE TRIBUNAL IN RESPECT OF AN INTENDED ORDER FOR DISCOVERY AS AGAINST THE CHIEF OF STAFF OF THE DEFENCE FORCES

1. Section 1(1)(b) of the Tribunals of Inquiry (Evidence) Acts 1921 to 2011 confers upon the Tribunal all such powers, rights, and privileges as are vested in the High Court in respect of the production of documents. Section 4 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1979 provides that a tribunal may make such orders as it considers necessary for the purposes of its functions, and it shall have, in relation to their making, all such powers, rights and privileges as are vested in the High Court or a judge of that Court in respect of the making of orders.

2. The Tribunal is bound by the requirement to observe fair procedures in making any order for discovery. While the Tribunal has a broad power to make discovery, fair procedures require that those affected by an Intended Order for Discovery must be given notice of its terms and afforded the opportunity to make submissions, by reference to the Terms of Reference, in relation to relevance, necessity and proportionality of the proposed discovery order, as well as any other relevant matters which may be relevant, including confidentiality (*Haughey v Moriarty* [1999] 3 IR 107).

3. In compliance with its obligation to observe fair procedures, the Tribunal on 28th day of November 2024, issued a Notice of its intention to make an Order for Discovery, as against the Chief of Staff of the Defence Forces ('the Notice'). The Notice and the Intended Order for Discovery were published in four national newspapers and on the Tribunal's website (www.toidf.ie). The Tribunal published the said Notice so as to afford all persons who believed that they may be affected by the terms of the Intended Order for Discovery an opportunity to make submissions, in writing, to the Tribunal by close of business on the 13th day of January 2025.

4. A written submission on behalf of the Defence Forces on the Intended Order for Discovery was received by the Tribunal on the 13th day of January 2025. The Tribunal has had regard to this submission in the making of the Order requiring the Chief of Staff of the Defence Forces to make discovery. No other written submission in relation to the Intended Order in respect of the Defence Forces was received by the Tribunal.

5. The legal principles applicable to discovery have developed through case law and are well settled; these are relevance, necessity and proportionality (*Compagnie Financière du Pacifique v Peruvian Guano Co.* (1882) 11 Q.B.D. 55; *Ryanair p.l.c. v Aer Rianta c.p.t.* [2003] 4 I.R. 264; and *Tobin v The Minister for Defence, Ireland and the Attorney General* [2020] 1 IR 211).

6. As stated in the Notice of the Intended Order for Discovery, the Tribunal considers that in respect of documents falling within the terms of the Intended Order for Discovery, it is appropriate, at this time, that the documents be discovered with anonymisation or pseudonymisation of names and other information which might lead to the identification of persons. In this regard, a Discovery Protocol governing anonymisation and pseudonymisation will apply.

7. All of the categories of discovery concern documents that fall within the period of the 1st day of January 1983 to the 20th day of June 2024. The term 'documents' includes statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind.

The Ruling of the Tribunal, delivered on the 28th day of January 2025, is as follows:

8. The Intended Order for Discovery contained thirteen (13) categories.

CATEGORY 1

9. The first intended category of documents read as follows:

“all complaints files relating to complaints of abuse, as defined in the Terms of Reference, made pursuant to the Defence Forces Administrative Instruction A7 Chapter 2, and all later versions of Chapter 2, for the period 14 May 1996 to 20 June

2024, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind”.

10. The Defence Forces submit, *inter alia*, that this category is relevant and necessary but that the term ‘complaint file’ ought to be defined to assist with clarity. It submits that it should be defined as being “*a file opened and maintained by the Defence Forces on receipt of such a complaint.*” The Defence Forces further submit that the category should be expanded to ensure that “certain key documents” are discovered to the Tribunal where such documents are not contained on the relevant complaint file. The Defence Forces say that the words ‘*contained on such a complaint file*’ should be added to the end of the category to make clear that what is being discovered in this category are the documents that are contained on the complaint file, as defined. The Defence Forces submit that category 1 should be reformulated as follows:

“(a) All complaint files relating to complaints of abuse, as defined in the Terms of Reference, made pursuant to the Defence Forces Administrative Instruction A7 Chapter 2, and all later versions of Chapter 2, being a file opened and maintained by the Defence Forces on receipt of such a complaint, for the period 14 May 1996 to 20 June 2024, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind contained on such a complaint file.

(b) All

i. complaint forms or equivalent initiating complaint documents,

ii. Annex A document,

iii. Report(s) of investigating officer(s).

iv. Determination(s) of complaints

relating to such complaints of abuse referred to in paragraph (a) not previously discovered at (a) above”.

11. The Tribunal considers that the definition of a complaint file as put forward by the Defence Forces is helpful and that the addition of the qualifying words ‘*contained on such a complaint file*’ clarifies the scope of the category of documents to be discovered. The Tribunal further considers that it is reasonable to expect that the documents referred to in the complaints procedures as outlined in the *Defence Forces Administrative Instruction A7 Chapter 2 (1996 and in all subsequent amendments of the procedure)* would be included in the ‘complaint file’. Nevertheless, it notes from the Defence Forces’ submission that certain key documents may not be contained on the relevant complaint file. In such circumstances, the Tribunal accepts that it is necessary to list the suggested key documents to ensure that they are discovered to the Tribunal where such documents are not already contained on the relevant ‘complaint file’.

12. To the extent that other relevant documents referred to in the complaints procedure as set out in the *Defence Forces Administrative Instruction A7 Chapter 2* may

not, in fact, be contained within a complaint file of a complainant, the Tribunal will address this matter later in this Ruling when considering category 4 of the Order for Discovery.

13. Accordingly, the Tribunal orders the Chief of Staff of the Defence Forces to make discovery of:

“all complaint files relating to complaints of abuse, as defined in the Terms of Reference, made pursuant to the Defence Forces Administrative Instruction A7 Chapter 2, and all later versions of Chapter 2, for the period 14 May 1996 to 20 June 2024, a complaint file being a file opened and maintained by the Defence Forces on receipt of such a complaint, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind contained on such a complaint file. This includes the following documents relating to such complaints of abuse, where such documents are not contained on a complaint file:

(i) complaint forms or equivalent initiating complaint documents;

(ii) Annex A document;

(iii) report(s) of investigating officer(s);

(iv) determination(s) of complaints”.

CATEGORY 2

14. The second intended category of documents read as follows:

“all complaints files relating to complaints of abuse, as defined in the Terms of Reference, made pursuant to Defence Forces Administrative Instruction A7 Chapter 1, and all later versions of that document, from the date of its entry into force up to 20 June 2024, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind”.

15. The Defence Forces submit, *inter alia*, that this category is relevant and necessary and that it is proportionate having regard to the appropriate temporal period within which it is required to make discovery. Repeating the submission made in respect of category 1, the Defence Forces submit that category 2 should be reformulated as follows:

“(a) All complaint files relating to complaints of abuse, as defined in the Terms of Reference, made pursuant to Defence Forces Administrative Instruction A7 Chapter 1, and all later versions of that document, from the date of its entry into force up to 20 June 2024, a complaint file being a file opened and maintained by the Defence Forces on receipt of such a complaint, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind contained on such a complaint file.

(b) All

- i. complaint forms or equivalent initiating complaint documents,*
- ii. Consideration of Commander(s) (if any)*
- iii. Determination(s) of complaints*
- v. Annex C document*

relating to such complaints of abuse referred to in paragraph (a) not previously discovered at (a) above”.

16. The Tribunal considers that the definition put forward by the Defence Forces of a ‘complaint file’ is of assistance and the addition of the qualifying words ‘*contained on such a complaint file*’ clarifies the scope of the category of documents to be discovered. The Tribunal considers that it is reasonable to expect that the documents referred to in the complaints procedure outlined in *Defence Forces Administrative Instruction A7 Chapter 1* would be included in the ‘complaint file’. In this regard, the Tribunal observes that paragraph 168 of the *Defence Forces, Administrative Instruction A7 Chapter 1 (2013)*, lists the contents of a ‘Complaint File’ and requires that the complaint file be ‘*placed in the DFHQ level (OAS or ORA) personal file of the complainant, as a permanent record.*’ Nevertheless, it notes from the Defence Forces’ submission that certain key documents may not be contained on the relevant complaint file. In such circumstances, the Tribunal accepts that it is necessary to list the suggested key documents to ensure that they are discovered to the Tribunal where such documents are not already contained on a relevant ‘complaint file’.

17. To the extent that other relevant documents referred to in the complaints procedures outlined in *Defence Forces Administrative Instruction A7 Chapter 1* may not be contained within a complaint file of a complainant, the Tribunal will address this matter later in this Ruling when considering documents covered by category 4 of the Intended Order for Discovery.

18. Accordingly, the Tribunal orders that the Chief of Staff of the Defence Forces makes discovery of:

“All complaint files relating to complaints of abuse, as defined in the Terms of Reference, made pursuant to Defence Forces Administrative Instruction A7 Chapter 1, and all later versions of Chapter 1, from the date of its entry into force up to 20 June 2024, a complaint file being a file opened and maintained by the Defence Forces on receipt of such a complaint, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind contained on such a complaint file. This includes the following documents relating to such complaints of abuse, where such documents are not contained on a complaint file:

(i) complaint forms or equivalent initiating complaint documents;

(ii) Consideration of Commander(s) (if any);

(iii) Determination(s) of complaints;

(vi) Annex C document. “

CATEGORY 3

19. The intended third category of documents read as follows:

“all complaint files relating to complaints of abuse, as defined in the Terms of Reference, made pursuant to section 114 of the Defence Act 1954 (Redress of Wrongs) for the period 1 January 1983 to 20 June 2024, not covered by categories 1) and 2) above to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind”.

20. The Tribunal considers that the definition put forward by the Defence Forces of ‘complaint file’ is of assistance and that the addition of the qualifying words ‘*contained on such a complaint file*’ clarifies the scope of category 3 documents required to be discovered. The Tribunal observes the Defence Forces’ submission in terms of the relevance, necessity and proportionality of discovery of documents set out in category 3. The Tribunal considers that it is reasonable to expect that documents generated in the course of a complaint made pursuant to the section 114 of the *Defence Act 1954 (as amended) (Redress of Wrongs)* would be included in a ‘complaint file’. Nevertheless, it notes from the Defence Forces’ submission that certain key documents may not be contained on the relevant complaint file. In such circumstances, the Tribunal accepts that it is necessary to list the suggested key documents to ensure that they are discovered to the Tribunal where such documents are not already contained on the relevant complaint file.

21. To the extent that other relevant documents referred to in the complaints procedures outlined in section 114 of the *Defence Act 1954 (as amended) (Redress of Wrongs)* may not be contained within a complaint file of a complainant, the Tribunal will address this matter later in this Ruling when considering documents covered by category 4 of the Intended Order for Discovery.

22. Accordingly, the Tribunal orders the Chief of Staff of the Defence Forces to make discovery of:

“all complaint files relating to complaints of abuse, as defined in the Terms of Reference, made pursuant to section 114 of the Defence Act 1954 (Redress of Wrongs) for the period 1 January 1983 to 20 June 2024, not covered by categories 1 and 2, a complaint file being a file opened and maintained by the Defence Forces on receipt of such a complaint, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind contained on such a complaint file. This includes the following documents relating to such complaints of abuse, in the event that such documents are not contained on the complaint file:

- (i) complaint forms or equivalent initiating complaint documents;*
- (ii) consideration of Commander(s)/Reports of investigation(s) (if any);*
- (iii) Determination(s) of complaints”.*

CATEGORY 4

23. The intended fourth category of documents read as follows:

“all documents relating to or referring to complaints of abuse, as defined in the Terms of Reference, for the period 1 January 1983 to 20 June 2024, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind.”

24. The Defence Forces submit, *inter alia*, that this category is overly broad, disproportionate and that the searches required in order to comply with this category of discovery would be unduly burdensome and onerous. It further submits that it would be impossible to comply with an order for discovery in these terms within the timeframe afforded by and to the Tribunal. Moreover, the Defence Forces say that this category is not relevant or necessary for the Tribunal’s purposes given the extensive discovery being provided by the Defence Forces in other categories, particularly, categories 1, 2 and 3 and that it would not confer any forensic benefit on the Tribunal. Having regard to the foregoing and to the Terms of Reference, the Defence Forces submit that this category should be omitted.

25. The Tribunal has considered the submission made by the Defence Forces, as summarised above, and accepts that, as currently drafted, category 4 could entail an

unduly burdensome and disproportionately onerous search. However, the Tribunal is not convinced that **all** relevant and necessary documents for the Tribunal's purposes are captured by categories 1, 2 and 3, as now amended. Its reasoning is as follows. The Defence Forces' suggested definition of a 'complaint file' being '*a file opened and maintained by the Defence Forces on receipt of such a complaint*' and its proposed qualifying phrase '*contained on such a file*', limits discovery to those documents that have been kept on a complaint file by the Defence Forces. Moreover, the Defence Forces' submission that categories 1, 2 and 3 be expanded to ensure that '**certain**' key documents, as identified by the Defence Forces, are discovered to the Tribunal where such specified documents are not contained on the relevant complaint file, is an implicit acknowledgement that not **all** key documents are, necessarily, kept on a complaint file. To the extent that **any** key documents relevant to a complaint of abuse, as defined in the Terms of Reference, are retained other than on a complainant's complaint file, such documents are relevant to the complaints processes into which the Tribunal is obliged to inquire.

26. As to where such documents might be retained, paragraph 168 of the *Defence Forces Administrative Instruction A7 Chapter 1 (2013)* offers some guidance, it states:

- a. *Contents The Complaint File shall contain all written submissions by the complainant and the person complained of, written or recorded statements of any witnesses, written decisions or comments of the Commander(s) concerned, written decisions following a review by a superior authority and the original report, Annex 'C', completed by the Commander.*

- b. Disposal *The Complaint File will be forwarded by the Commander to the Bde Adj, or equivalent, under confidential cover who will have it placed at DFHQ level (OAS or ORA) **personal file of the complainant** as a permanent record.*
(Emphasis added)

In view of the foregoing, it appears to the Tribunal that, as a matter of general practice, complaint files, being the files opened and maintained by the Defence Forces on receipt of a complaint, are stored on the personal files of complainants.

27. Having regard to the foregoing, the Tribunal is not convinced that once a 'complaint file', as defined by the Defence Forces in its submission, is opened, all documents created in the relevant complaints process, whether that is the process under *Defence Forces Administrative Instruction A7 Chapter 1, Defence Forces Administrative Instruction A7 Chapter 2* or *section 114 of the Defence Act 1954 (Redress of Wrongs)* will, , fall, automatically, to be discovered under categories 1, 2 and 3. To the extent that the personal files of complainants in respect of whom a complaint file have been opened, may contain any documents relevant to the complaints processes which are not included in the suggested "certain key documents" listed by the Defence Forces, the Tribunal requires such documents to be discovered. The Tribunal does not consider it unduly burdensome for the Defence Forces to conduct a search of the personal file of each complainant in respect of whom a complaint file has been opened in order to ascertain whether any other documents relevant to the complaints process are on the personal file other than the 'certain' key documents now specified under categories 1,2 and 3.

28. Accordingly, the Tribunal will modify the terms of category 4 and orders the Chief of Staff of the Defence Forces to make discovery of:

“All documents that relate to complaints of abuse and which are contained on the personal file of a complainant in respect of whom a complaint file has been opened, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind, where such documents are not discovered at categories 1,2 and 3.”

CATEGORY 5

29. The fifth intended category of documents read as follows:

“all documents relating to complaints of abuse, as defined in the Terms of Reference, made to Personnel Support Service or a Barracks Personnel Support Officer for the period 1 May 1991 to 20 June 2024, to include but not limited to all statements, records of investigations and interviews, recordings, reports, determinations, memoranda and records of written and electronic correspondence and communications of any kind”.

30. The Tribunal observes that the Personnel Support Service (PSS) is a service available to members of the Defence Forces and their families, details of which are found

in *Defence Forces Administrative Instruction A7 Chapter 1 (2013)*. It provides, *inter alia*, confidential information, education, and other support services, including, counselling and advice. The Defence Forces submit that the PSS is not a mechanism for the submission of complaints and has no mandated role in the handling and administration of complaints. The Defence Forces say that the information provided to the PSS or a Barracks Personnel Support Service Officer is highly confidential and that discovery of such information would involve the disclosure of information involving the confidence of persons who are not represented before the Tribunal. The Defence Forces submit that category 5 should be omitted.

31. The Tribunal is doubtful as to the Defence Forces' submission that the PSS is not a mechanism for the submission of complaints. Paragraph 153 of the *Defence Forces Administrative Instruction A7 Chapter 1 (2013)* sets out the specific role which a PSS mediator plays in the informal complaints process which members are encouraged to use for the early resolution of issues. The Tribunal does, however, accept that information provided to the PSS or to a Barracks Personnel Support Service Officer is of a confidential nature and that the integrity of the PSS should be maintained. As part of its inquiry, the Tribunal intends to engage, directly, with the PSS in relation to its procedures, as envisaged in paragraph (I)(h) of the Terms of Reference.

32. In the circumstances, the Tribunal defers its decision in relation to discovery of documents under category 5, pending such engagement and any such further consideration of the necessity for the making of such an order, as may be required.

CATEGORY 6

33. The sixth intended category of documents read as follows:

“all documents relating to complaints of abuse, as defined in the Terms of Reference, that were referred or reported to the Military Police, or that were investigated by the Military Police prior to being investigated by An Garda Síochána, in the period from 1 January 1983 to 20 June 2024, to include, but not limited to, reports, investigations, statements, notes, records of interviews, determinations, Courts Martial files and transcripts or records of proceedings, memoranda and records of written and electronic correspondence and communications of any kind”.

34. The Defence Forces submit, *inter alia*, that this category should be reformulated and divided into two separate categories - the first dealing with the Military Police and the second dealing with Court Martials.

35. The Defence Forces suggest that the category should read:

“All documents relating to complaints of abuse, as defined in the Terms of Reference, that were referred to, or reported to, or investigated by the Military Police, and/or that were investigated by the Military Police prior to being investigated by An Garda Síochána, in the period from 1 January 1983 to 20 June 2024, where not already provided”.

and

“All documents relating to abuse, as defined in the Terms of Reference, that were the subject matter of Court Martial proceedings, in the period from 1 January 1983 to 20 June 2024”.

36. Where a Military Police investigation has been initiated as a result of an individual submitting a complaint under categories 1, 2 and 3 and, potentially, across further categories, the Defence Forces say, that the Military Police investigation file will be contained within the actual complaint file itself. Therefore, it is submitted by the Defence Forces, that searching for all relevant Military Police files under this category will produce duplication of files already located. Accordingly, it is proposed that this category should include the limited words ‘where not already provided’.

37. The Defence Forces submit that the Court Martial process is encompassed under the complaints process falling under section 169 of the Defence Act 1954 (as amended). The Defence Forces observe that category 6 as drafted in the Intended Order for Discovery would only capture Court Martials that were initiated in relation to ‘complaints of abuse’. However, it is submitted that in many cases a Court Martial will have been initiated without the submission of a ‘complaint of abuse’ and may, for example, have been initiated by a Commanding Officer ordering an investigation into potential abuse. The Defence Forces, therefore, further submit that the latter category should be expanded to include not just Court Martial files relating to ‘Complaints of Abuse’ but all Court Martial files relating to abuse.

38. The Tribunal accepts the Defence Forces' submission in respect of the reformulation and division of category 6 into two separate categories. The Tribunal also welcomes the expansion of the category in relation to Court Martial files.

39. Accordingly, the Tribunal orders the Chief of Staff of the Defence Forces to make discovery of:

“All documents relating to complaints of abuse, as defined in the Terms of Reference, that were referred to, or reported to, or investigated by the Military Police, and/or that were investigated by the Military Police prior to being investigated by An Garda Síochána, in the period from 1 January 1983 to 20 June 2024, where not already provided”.

and

“All documents relating to abuse, as defined in the Terms of Reference, that were the subject matter of Court Martial proceedings, in the period from 1 January 1983 to 20 June 2024”.

The above categories will now appear as category 5 and category 6 in the Order of Discovery.

CATEGORY 7

40. The seventh intended category of documents read as follows:

“all documents relating to complaints of abuse, as defined in the Terms of Reference, arising from or leading to referrals or reports to An Garda Síochána in the period from 1 January 1983 to 20 June 2024, to include, but not limited to, reports, investigations, statements, notes, records of interviews, recordings, determinations, files and transcripts or records of proceedings, memoranda and records of written and electronic correspondence and communications of any kind”.

41. The Defence Forces submit that discovery of this category is not necessary because a complaint of abuse leading to referrals or reports to An Garda Síochána would already be discovered by the reformulated category, now category 5 in the Tribunal’s Order.

42. The Tribunal points out that the intended category referred to complaints of abuse ‘*arising from*’ and not just ‘*leading to*’ referrals or reports to An Garda Síochána. The Tribunal is of the view that this category is necessary in the event that documents exist within the Defence Forces as a result of complaints of abuse ‘*arising from*’ referrals or reports to An Garda Síochána and which were subsequently brought to the attention of the Defence Forces. To the extent that such documents may exist and are not discovered under any other category, the Tribunal considers this category is both relevant and necessary, and it will add qualifying words to the end of the paragraph to avoid any duplication of work on the part of the Defence Forces.

43. Accordingly, the Tribunal orders the Chief of Staff of the Defence Forces to make discovery of:

“all documents relating to complaints of abuse, as defined in the Terms of Reference, arising from or leading to referrals or reports to An Garda Síochána in the period from 1 January 1983 to 20 June 2024, to include, but not limited to, reports, investigations, statements, notes, records of interviews, recordings, determinations, files and transcripts or records of proceedings, memoranda and records of written and electronic correspondence and communications of any kind, where such documents are not already discovered under category 5”.

CATEGORY 8

44. The eighth intended category of documents read as follows:

“all documents relating to complaints of hazardous chemicals, as defined within the Terms of Reference, for the period 1 January 1983 to 20 June 2024, to include, but not limited to, statements, records of investigations and interviews, reports, determinations, notes, memoranda and records of written and electronic correspondence and communications of any kind”.

45. The Defence Forces submit, *inter alia*, that concerns or issues regarding the use of hazardous chemicals in the Defence Forces are addressed through localised Health and Safety structures within the area where the chemical is being used, namely, through the Health and Safety Unit Representative or the Health and Safety Officer of the Unit. The

Defence Forces further submit that this interaction would generally be addressed and recorded as Unit Health and Safety minutes and that incidents and accidents involving hazardous chemicals would be recorded as any other Health and Safety incident.

46. The Defence Forces say that the Air Corps have electronic reports going back to 2003. Before that year, only paper records exist. It submits that prior to the commencement of litigation by a small number of former employees in 2016, there were no recorded complaints regarding the use of hazardous chemicals in the Air Corps. The Defence Forces submit that this category should be reformulated as follows:

“(a) All complaint files relating to complaints of hazardous chemicals, as defined within the Terms of Reference, for the period 1 January 1983 to 20 June 2024 being a file opened and maintained by the Defence Forces on receipt of such a complaint, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, recordings, memoranda and records of written and electronic correspondence and communications of any kind contained on such a complaint file.

(b) All complaint file documentation relevant to the complaint process as utilised by the complainant

(i) For a Chapter 1 complaint, Para 61(b) above refers

(ii) For a Chapter 2 complaint, Para 63 (b) above refers’

(iii) For a Section 114 complaint, Para 65 (b) above refers.

relating to such complaints of abuse referred to in paragraph (a) not previously discovered at (a) above”.

47. In the Defence Forces' submission it is stated that the Defence Forces do not anticipate having any such '*complaint files*' under either the intended category of discovery or the category as proposed above by the Defence Forces.

48. The Tribunal observes that the Defence Forces submit that there is no specific complaints or recording procedure for the use of hazardous chemicals and that there existed no formal mechanism for the submission of complaints specific to the use of hazardous chemicals. However, the Tribunal observes the Defence Forces' submission refers to concerns or issues regarding the use of hazardous chemicals being addressed through localised Health and Safety structures within the area where the chemical is being used, namely, through the Unit Health and Safety Representative or the Health and Safety Officer of the Unit. It notes that such interaction would, generally, be addressed and recorded as Unit Health and Safety minutes. The Tribunal considers that any such documents regarding concerns or issues raised in respect of the use of hazardous chemicals would be relevant to its inquiry. Considering the principle of proportionality, the Tribunal will limit the relevant time period to the year in which electronic reports were first maintained by the Air Corps. The Tribunal will defer making an order in relation to documents that pre-date 2003, pending such further consideration of the necessity for the making of such an order, as may be required.

49. Accordingly, the Tribunal orders the Chief of Staff of the Defence Forces to make discovery of:

“all documents relating to complaints of hazardous chemicals, as defined within the Terms of Reference, for the period 1 January 2003 to 20 June 2024, to include, but not limited to, statements, records of investigations and interviews, reports, determinations, notes, memoranda and records of written and electronic correspondence and communications of any kind”.

CATEGORY 9

50. The ninth intended category of documents read as follows:

“all notifications to the Health and Safety Authority of incidents in the workplace concerning hazardous chemicals in respect of which complaints of hazardous chemicals, as defined in the Terms of Reference, were made, and all responses thereto, in the period from 1 January 1983 to 20 June 2024”.

51. In relation to this category the Defence Forces submit that if category 8 is reformulated, as proposed, then category 9 is both necessary and proportionate. For the reasons set out above, the Tribunal has decided not to accept the proposed reformulation of category 8 but has qualified the scope of that category. The Tribunal remains satisfied that discovery of the intended category 9 documentation is relevant, necessary and proportionate.

52. Accordingly, the Tribunal orders the Chief of Staff of the Defence Forces to make discovery of:

“all notifications to the Health and Safety Authority of incidents in the workplace concerning hazardous chemicals in respect of which complaints of hazardous chemicals, as defined in the Terms of Reference, were made, and all responses thereto, in the period from 1 January 1983 to 20 June 2024”.

CATEGORY 10

53. The tenth intended category of documents read as follows:

“all documents relating to investigations initiated by commanding officers of their own volition into abuse, as that term is defined in the Terms of Reference, or incidents of retaliation, reprisals, intimidation against persons who made complaints of abuse or the imposition of a penalty or burden upon such persons, to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, memoranda and records of written and electronic correspondence and communications of any kind for the period from 1 January 1983 to 20 June 2024”.

54. The Defence Forces submit, *inter alia*, that outside of investigations by the Military Police, the Chapter 1 process, the Chapter 2 process and the Section 114 process, there exists no process within the Defence Forces for Commanding Officers to initiate investigations into abuse and/or retaliation/reprisals/intimidation/penalisation of

persons who made or supported complaints, of their own volition. It submits that the intended category 10 is not proportionate and that compliance with its terms would be impossible to verify on affidavit. It submits that the category should be reformulated as follows:

“All documents relating to complaints of:

- (a) retaliation or reprisals against those who made a Complaint of Abuse;*
- (b) intimidation consequent on the making of a Complaint of Abuse; or*
- (c) the imposition of any penalty or burden upon a person who made a Complaint of Abuse*

From 1 January 1983 to 20 June 2024”.

55. The Tribunal observes that *Administrative Instruction A7 Chapter 1*, at paragraph 169 provides that a Commanding Officer may use the Chapter 1 process to investigate a report of an incident without a formal complaint having been made. However, in the event that such an investigation had been initiated by a Commanding Officer, the Tribunal accepts that relevant documents would be discovered under category 2. The Tribunal further accepts that the intended category 10, as drafted, may be disproportionate where, outside of the earlier named processes, there exists no process within the Defence Forces for Commanding Officers to initiate investigations into abuse and/or retaliation/reprisals/intimidation/penalisation of persons who made or supported complaints, of their own volition. The Tribunal, therefore, accepts the proposed reformulation of category 10.

56. Accordingly, the Tribunal orders the Chief of Staff of the Defence Forces to make discovery of:

“All documents relating to complaints of:

- (i) retaliation or reprisals against those who made a Complaint of Abuse;*
- (ii) intimidation consequent on the making of a Complaint of Abuse; or*
- (iii) the imposition of any penalty or burden upon a person who made a Complaint of Abuse*

to include, but not limited to, all statements, notes, records of investigations and interviews, reports, determinations, memoranda and records of written and electronic correspondence and communications of any kind for the period from 1 January 1983 to 20 June 2024”.

CATEGORY 11

57. The eleventh intended category of documents read as follows:

“all protected disclosures made pursuant to the Protected Disclosures Act 2014 and the Protected Disclosures (Amendment) Act 2022 by any serving or former member of the Defence Forces, current or former civilian employee of the Defence Forces or current or former civil servant to the Defence Forces, in respect of the handling of complaints of abuse and/or complaints of hazardous chemicals, as defined in the Terms of Reference, and/or reports of retaliation, reprisals, intimidation, or the imposition of a penalty or burden on a person as a consequence of making a

complaint of abuse, or actions or behaviour intended to deter the making of a complaint of abuse covering the period from 15 July 2014 to 20 June 2024”.

58. The Defence Forces submit, *inter alia*, that protected disclosures for the Department of Defence and the Defence Forces are currently governed and managed by a Joint Protected Disclosures Office. It further submits that the central storage of files, the maintenance and communication of the defence related Protected Disclosures central registry for internal record keeping, and for communication to the Protected Disclosures Advisory Group is done by the Department of Defence.

59. The Tribunal accepts that protected disclosures for the Department of Defence and the Defence Forces are managed by a Joint Protected Disclosures Office. In circumstances where the Department of Defence has primacy in the collation and administration of Protected Disclosures, the Tribunal is satisfied that all relevant information in relation to Protected Disclosures ordered to be discovered, should be obtained from the Department of Defence.

60. Accordingly, no order for discovery in terms of the intended category 11 is necessary in respect of the Chief of Staff.

CATEGORY 12

61. The twelfth intended category of documents read as follows:

“all versions of Administrative Instruction A7, Chapter 1 and Chapter 2 since those procedures first came into force up to 20 June 2024”.

62. The Defence Forces accept that this category is relevant and necessary and that no issues of proportionality or other relevant considerations arise.

63. Accordingly, the Tribunal orders the Chief of Staff of the Defence Forces to make discovery of:

“all versions of Administrative Instruction A7, Chapter 1 and Chapter 2 since those procedures first came into force up to 20 June 2024”.

CATEGORY 13

64. The thirteenth intended category of documents read as follows:

“all documents, to include submissions, memoranda, reports, and written and electronic correspondence of any kind, from the Chief of Staff, Deputy Chiefs of Staff and/or General Officers Commanding, to the Minister for Defence and/or Department of Defence requesting amendments to the Defence Forces Act 1954, and all amending Acts, and Regulations made thereunder, relating to the complaints

processes identified at A, B, and C of the Terms of Reference insofar as they concern complaints of abuse, as defined in the Terms of Reference, for the period from 1 January 1983 to 20 June 2024, together with any assessments in respect of the efficacy and functioning of the said complaints processes”.

65. The Defence Forces submit, *inter alia*, that the intended category is not proportionate having regard to the Terms of Reference and the time span of the inquiry. It submits that discovery of documentation in category 13 would involve liaising with every Chief of Staff, Deputy Chiefs of Staff and/or General Officers Commanding during a 41-year period in circumstances where the receiving party, the Department of Defence, would have all such information. It says that discovery of relevant documents within category 13 should be sought from the Department of Defence. It submits that the Chief of Staff, as a deponent, would not be in a position to swear that all such material had been provided, particularly, material sent outside the formal channels. Notwithstanding this, the Defence Forces submit that there are records of formal correspondence submitted by members of the General Staff to both the Department of Defence and the Minister for Defence that are ‘*potentially relevant*’ to this category, and that such identified formal correspondence will be included. In this regard the Defence Forces propose a reformulation of category 13 to read as follows:

“All correspondence sent by the Defence Forces to the Minister for Defence and/or Department of Defence requesting amendments to the Defence Act 1954 and all amending Acts, and Regulations made thereunder relating to the complaints processes identified at A, B and C of the Terms of Reference, for the period from 1 January 1983 to 20 June 2024”.

66. Having considered, the Defence Forces' submission in respect of category 13, the Tribunal accepts that the intended category, as drafted, may be disproportionate, particularly, in circumstances where documentation under the intended category will have been received by the Minister for Defence or the Department of Defence, as recipients. It is satisfied with the proposed reformulated category.

67. Accordingly, the Tribunal orders the Chief of Staff of the Defence Forces to make discovery of:

"All correspondence sent by the Defence Forces to the Minister for Defence and/or Department of Defence requesting amendments to the Defence Act 1954 and all amending Acts, and Regulations made thereunder relating to the complaints processes identified at A, B and C of the Terms of Reference, for the period from 1 January 1983 to 20 June 2024".

Discovery Protocol

68. There are two amendments suggested by the Defence Forces in relation to the Discovery Protocol. The first proposed amendment refers to the pseudonymisation code applicable to a complainant referred to on a complaints file. The Defence Forces say that a complaint file opened by the Defence Forces will only refer to one complainant. Consequently, there is a need only to redact that complainant's name and use the code 'C'

in its place. There is no requirement to insert a number after C as there will only ever be one complainant on any given complaint file.

69. The second amendment concerns the reference to an overseas installation, 'Camp Shamrock'. It is proposed to replace this with 'UNIFIL' as this is the correct title of the United Nations' peacekeeping operation.

70. The Tribunal accepts the proposed amendments.

Timeframe

71. The Defence Forces submit that the timeframe of fifteen weeks provided for in the intended Order is an insufficient timeframe within which to make discovery having regard to the breadth of the discovery sought. It anticipates that if such a timeframe is ordered by the Tribunal, the Defence Forces will require an extension of time to comply with the Order. It submits that the Order be subdivided in terms of the discovery sought, with a Part A Order directing that discovery be provided in respect of Categories 1, 2, 3 and 8 (hazardous chemicals), within a first period of twenty weeks and a Part B Order directing that discovery of the remaining categories be provided within a further period in respect of which the Defence Forces will make a short further submission as regards timing.

72. The Tribunal has a duty, *inter alia*, to conduct its inquiry as expeditiously as possible and is obliged to endeavour to complete its work no later than three years from the date of its establishment. To this end, the Tribunal requires that documents be discovered to the Tribunal, promptly, and within a definite timeframe. However, having regard to the Defence Forces' submission on the timeframe for making discovery, the Tribunal will extend the timeframe for delivery of the documents to be discovered to twenty-two (22) weeks, that is, on or before the 2nd day of July 2025. This extension is granted on the understanding that discovery will be made, expeditiously, and on a continuous basis within the 22-week period, commencing upon the making of the Order for Discovery.

Dated this the 28th day of January 2025.