



**Tribunal of Inquiry into Issues Relating to the Complaints Processes in the
Defence Forces and the Culture Surrounding the Making of Complaints
(‘the Tribunal’)**

Established by the Government under the Tribunals of Inquiry (Evidence) Acts 1921 to 2011 by statutory instrument signed by the Tánaiste and Minister for Defence on the 20th day of June 2024.

NOTICE OF PUBLIC SITTING OF THE TRIBUNAL

TAKE NOTICE that the Tribunal has fixed **Monday, 16th day of June 2025 at 10.30am**, as the intended hearing date for parties to address the Tribunal, should they wish to do so, in relation to the matters outlined below by reference to their written submissions.

The hearing will be held at the Tribunal’s premises situate at The Infinity Building, Third Floor, George’s Court, George’s Lane, Smithfield, Dublin 7, D07 E98Y.

I. Interpretation of the Tribunal’s Terms of Reference

(i) Interpretation of ‘abuse’

The word ‘*abuse*’ is defined in the Terms of Reference as meaning:

“discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment and any form of sexual misconduct (including sexual assault, aggravated sexual assault and rape)”.

The Tribunal was established, *inter alia*, to inquire into and report on the complaints processes in the Defence Forces in respect of ‘*complaints of abuse*’, to consider how the Defence Forces responded to ‘*complaints of abuse*’ and to investigate whether such

complaints were actively deterred or whether there was a culture that discouraged the making of complaints of abuse. The Tribunal is not concerned with whether claims of abuse are well-founded. Nevertheless, the Tribunal considers it necessary that all parties have a clear understanding of what each category of ‘abuse’ is interpreted by the Tribunal to mean.

Schedule One of this Notice sets out the Tribunal’s interpretation of each category of ‘abuse’ as that term is defined in the Terms of Reference.

(ii) Request for a broader interpretation of ‘abuse’

The Tribunal has received correspondence requesting it to adopt a broader interpretation of ‘abuse’ in order to encompass allegedly persistent violations of health and safety legislation by the Defence Forces.

The rationale provided to the Tribunal for the request seeking this broader interpretation of ‘abuse’ is based on the assertion that allegedly systemic failures relating to health and safety, in circumstances where the risks were known to the Defence Forces, repeated by the Defence Forces and were not remedied by the Defence Forces, amount to abusive treatment.

(iii) Interpretation of Term of Reference (iv)

The text of Term of Reference (iv) reads as follows:

“investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of the Complaints of Abuse.”

‘Complaints of Abuse’ is a defined term in the Terms of Reference which means:

“complaints made by:

- serving or former members of the Defence Forces to the Defence Forces/Minister for Defence;*
- current or former civilian employees to the Defence Forces/Minister for Defence;*
- and*

- *current or former Civil Servants to the Defence Forces/Minister for Defence*".

The Tribunal in its interpretation of its Terms of Reference (available on the Tribunal's website) adopted an interpretation of this Term of Reference to mean that:

"If a complaint of abuse was not made, whether due to a perceived culture or a fear of retaliation or otherwise, such failure to complain at the relevant time, will not act as a bar to any person who wishes to give evidence to this Tribunal".

For the avoidance of doubt, the Tribunal interprets Term of Reference (iv) to encompass persons who allege that they suffered abuse but did not make a complaint to the Defence Forces and/or the Minister for Defence concerning such alleged abuse during the relevant period, either due to being actively deterred from doing so or due to a perception that there existed a culture that discouraged the making of such a complaint.

II. Application seeking an Extension of Time in respect of Order for Discovery

The Chief of Staff of the Defences Forces has indicated to the Tribunal that he intends to seek an extension of time within which to comply with the Tribunal's Order for Discovery dated the 28th day of January 2025.

Any application in respect of an extension of time within which to comply with any Order for Discovery will be heard by the Tribunal at its public sitting on the 16th day of June 2025.

Written Submissions

The Tribunal invites those who have made a statement to the Tribunal and/or who have been granted representation and who wish to address the Tribunal in respect of any of the matters set out at **I** and **II** above, or any other matter relevant to the Terms of Reference, to make submissions, in writing, to the Tribunal **by 5pm** on the **3rd day of June 2025**.

Written submissions **should not exceed 2,500 words** and should be sent to the Solicitor to the Tribunal by email to info@toidf.ie or by post to the Defence Forces Tribunal, The Infinity Building, Third Floor, George's Court, George's Lane, Smithfield, Dublin 7, D07 E98Y.

Notification of an intention to appear before the Tribunal should be furnished to the Solicitor to the Tribunal by email to info@toidf.ie or by post to the Defence Forces Tribunal no later than close of business on the **12th day of June 2025**.

Subject to any necessary redactions, the Tribunal will make available all submissions received from parties via the Tribunal's website (www.toidf.ie) in advance of the hearing.

Schedule One

The Tribunal's interpretation of each category of 'abuse', as that term is defined in the Terms of Reference, is as set out hereunder.

A. Discrimination

The Tribunal adopts the definitions of direct and indirect discrimination as provided for in the *Employment Equality Acts 1998 – 2021* which are summarised below.

(i) Direct discrimination occurs where a person is treated less favourably on any of the nine grounds (gender, civil status, family status, sexual orientation, disability, age, race, religious belief and membership of the Traveller Community) in a situation that exists, existed but no longer exists, may exist in the future or is imputed to a person. Discrimination may also occur by association when a person who is associated with another person is treated by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation.

(ii) Indirect discrimination occurs where an apparently neutral provision puts a person who is a member of one of the nine grounds (gender, civil status, family status, sexual orientation, disability, age, race, religious belief, membership of the Traveller Community) at a particular disadvantage due to being a member of that group, unless the provision is objectively justified by a legitimate aim and the means of achieving the aim are appropriate and necessary.

B. Bullying

The Tribunal adopts the definition of bullying as provided for in section 5 of *S.I. No. 17/2002 - Industrial Relations Act 1990 (Code of Practice Detailing Procedures For Addressing Bullying in The Workplace) (Declaration) Order 2002* which provides that:

"Workplace Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or

others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying."

However, cyber bullying may occur as a result of a once-off incident.

C. Harassment

The Tribunal adopts the definition of harassment as provided for in section 14A (7) of the *Employment Equality Acts 1998 – 2021* which provides as follows:

"(a) In this section—

(i) references to harassment are to any form of unwanted conduct related to any of the discriminatory grounds, and

(ii) [...]

being conduct which in either case has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

(b) Without prejudice to the generality of paragraph (a), such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material."

D. Physical torture

The Tribunal adopts the definition of torture as provided for in section 1 of the *United Nations Convention Against Torture and the Criminal Justice (United Nations Convention Against Torture) Act 2000 (as amended)* insofar as it relates to physical torture as follows:

"... an act or omission done or made, or at the instigation of, or with the consent or acquiescence of a public official by which severe physical pain or suffering, is intentionally inflicted on a person—

(a) for such purposes as—

- (i) *obtaining from that person, or from another person, information or a confession,*
 - (ii) *punishing that person for an act which the person concerned or a third person has committed or is suspected of having committed, or*
 - (iii) *intimidating or coercing that person or a third person,*
- or*

(b) for any reason that is based on any form of discrimination,

but does not include any such act that arises solely from, or is inherent in or incidental to, lawful sanctions.”

E. Physical assault

The Tribunal adopts the definition of assault as provided for in section 2 of the *Non-Fatal Offences against the Person Act 1997 (as amended)* insofar as it relates to physical assault as follows:

“... the, without lawful excuse, intentional or reckless, direct or indirect application of force to, or causing an impact on the body of another, without the consent of the other.

‘force’ (within the meaning of the definition of physical assault) includes—

(a) application of heat, light, electric current, noise or any other form of energy, and

(b) application of matter in solid liquid or gaseous form.”

F. Psychological harm

The mere occurrence of psychological harm, howsoever caused, could not reasonably be said to be abuse. The other categories of ‘*abuse*’ as defined in the Terms of Reference involve some action on the part of a perpetrator. The linguistic context, therefore, suggests that ‘*psychological harm*’ should be interpreted to mean:

“A wrongful act which caused a complainant to suffer harm to the mind resulting in a recognised psychological injury. Recognised psychological injuries comprise those

identified in Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR)—‘Classification: Trauma - and Stressor-Related Disorders’—and include Post-Traumatic Stress Disorder, Acute Stress Disorder, Adjustment Disorders, Reactive Attachment Disorder, Disinhibited Social Engagement Disorder, Other Specified Trauma and Stressor-Related Disorder, and Unspecified Trauma and Stressor-Related Disorder.”

A complaint of psychological harm is, therefore, an allegation of a wrongful act which is said to have caused a recognised psychological injury.

G. Sexual harassment

The Tribunal adopts the definition of harassment as set out in section 14A (7) of the *Employment Equality Acts 1998 – 2021* which provides as follows:

“(a) In this section—

[. . .]

(ii) references to sexual harassment are to any form of unwanted verbal, non-verbal or physical conduct of a sexual nature,

being conduct which in either case has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

(b) Without prejudice to the generality of paragraph (a), such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.”

H. Sexual misconduct

The Tribunal interprets sexual misconduct as meaning adverse conduct, of whatever nature related to sex (including, sexual assault, aggravated sexual assault (as defined in the Criminal Law (Rape) (Amendment) Act 1990 (as amended)), and rape (as defined in section 2 of the Criminal Law (Rape) Act 1981 (as amended) and in section 4 of the

Criminal Law (Rape) (Amendment) Act 1990 (as amended)), and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed.