

THE TRIBUNAL OF INQUIRY INTO CERTAIN MATTERS RELATING TO
THE COMPLAINTS PROCESSES IN THE DEFENCE FORCES AND THE
CULTURE SURROUNDING THE MAKING OF COMPLAINTS ("THE
TRIBUNAL")

AS ESTABLISHED ON 20TH DAY OF JUNE 2024 BY S.I. 304/2024

PUBLIC SITTING OF THE TRIBUNAL FOR PARTIES TO ADDRESS THE
TRIBUNAL IN RELATION TO THE FOLLOWING MATTERS:

I. INTERPRETATION OF THE TRIBUNAL'S TERMS OF REFERENCE

II. APPLICATIONS SEEKING AN EXTENSION OF TIME IN RESPECT
OF

ORDERS FOR DISCOVERY

BEFORE THE SOLE MEMBER, MS. JUSTICE ANN POWER,

AT THE INFINITY BUILDING, THIRD FLOOR,

GEORGE'S COURT, GEORGE'S LANE, SMITHFIELD, DUBLIN 7

ON MONDAY, 16TH JUNE 2025

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APPEARANCES

FOR THE DEFENCE FORCES TRIBUNAL: MR. AEDAN McGOVERN SC
MR. NIALL BEIRNE SC
MR. MICHAEL CUSH SC
MR. TIM O'HANLON BL
MS. ÁINE SMYTH BL
MS. LALITA MORGAN PILLAY BL

INSTRUCTED BY: MR. JOHN V. NOLAN
SOLICITOR

FOR DEFENCE FORCES LARIAM
JUSTICE GROUP, AIR CORPS CHEMICAL
ABUSE SURVIVORS GROUP AND THE
SEARCH AND RESCUE GROUP: MR. JOHN GORDON SC
MR. ALAN BRADY BL
MR. PATRICK MARRON BL

INSTRUCTED BY: COLEMAN LEGAL

FOR THE MINISTER FOR DEFENCE: MR. DIARMAID MCGUINNESS SC
MS. SINÉAD McGRATH SC
MS. RUTH MYLOTTE BL
MR. KARL SHIRHAN BL

INSTRUCTED BY: MS. SARAH MAGUIRE
SOLICITOR
CSSO

FOR THE DEFENCE FORCES: MR. PATRICK McCANN SC
MR. DARREN LEHANE SC
MS. ELIZABETH DONOVAN BL
MS. CAROLINE A. CARNEY BL

INSTRUCTED BY: MR. RONAN COTTER
SOLICITOR
CSSO

FOR WOMEN OF HONOUR: MR. RAYMOND BRADLEY SC
(SOLICITOR)
MR. KARL SWEENEY BL

FOR THE DEFENCE FORCES JUSTICE ALLIANCE
AND THE 34TH PLATOON ARMY APPRENTICE SCHOOL
JUSTICE GROUP AND THE DF WHISTLEBLOWERS
PROTECTED DISCLOSURE JUSTICE GROUP: MR. JOHN GEARY (SOLICITOR)
JV GEARY SOLICITORS

FOR A NUMBER OF INDIVIDUALS: MR. JOHN CULLEN (SOLICITOR)
JOHN GERARD CULLEN SOLICITORS

FOR CAPTAIN COLIN TREACY:

MR. SETANTA LANDERS
(SOLICITOR)
SETANTA SOLICITORS

FOR MR. JERRY LANE:

MR. PAUL McGARRY SC
MR. PADRAIG D LYONS BL

INSTRUCTED BY:

SEÁN COSTELLO SOLICITORS

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1 THE HEARING COMMENCED ON MONDAY, 16TH JUNE 2025 AS
2 FOLLOWS:

3
4 INTRODUCTORY REMARKS BY THE SOLE MEMBER

5
6 SOLE MEMBER: Good morning everybody and welcome to
7 this public sitting of the Defence Forces Tribunal.

8
9 Please remember that the recording of these proceedings
10 in any shape or form, including by way of image
11 capture, is strictly prohibited. A stenographer is
12 present for the purpose of maintaining a formal record
13 of today's hearing.

14
15 Before proceeding I would like to ask Mr. MacCriostail,
16 our Tribunal Registrar, to take the attendances,
17 please.

18
19 REGISTRAR: Could I ask for attendances in the first
20 instance by the table of contents or running order from
21 the parties representing or instructed by Coleman
22 Legal, please.

23 MR. GORDON: Yes. The name is John Gordon with two
24 juniors instructed by Coleman Legal in relation to the
25 three applications which we have before the Tribunal.

26 SOLE MEMBER: Thank you, Mr. Gordon.

27 REGISTRAR: And the Chief State Solicitor's Office for
28 the Minister for Defence.

29 MR. McGUI NNESS: Thank you, Judge. My name is Diarmaid

1 McGuinness SC and I'm appearing on behalf of the
2 Minister for Defence together with Ms. Sinéad
3 McGrath BL and Ms. Ruth Mylotte BL instructed by the
4 Chief State Solicitor's Office through Ms. Sarah
5 Maguire. 10:32

6 SOLE MEMBER: Thank you, Mr. McGuinness.

7 REGISTRAR: JV Geary Solicitors.

8 MR. GEARY: Yes, good morning, Judge. John Geary,
9 solicitor. I'm here representing the Defence Forces
10 Justice Alliance, the 34th Platoon Army Apprentice 10:33
11 School, and the Defence Forces -- sorry, the
12 whistleblowers Protected Disclosure Group as well,
13 thank you.

14 SOLE MEMBER: Mr. MacCriostail we might just take it in
15 the order of attendances. I see an individual. 10:33

16 MR. O'BRIEN: My name is Anthony O'Brien. I'm a
17 retired Sergeant out of the Defence Forces. I have
18 3,000 friends on Facebook --

19 SOLE MEMBER: Sorry, Mr. O'Brien, at the moment we're
20 just taking attendances. We will call you in due 10:33
21 course, okay, if you've notified the Tribunal of your
22 attendance.

23 MR. O'BRIEN: Yeah, and I was a fire officer in the
24 Health Service as well, just to let you know, so I'm
25 not just an auld Sergeant out of the Army, okay. 10:33

26 SOLE MEMBER: Okay. Thank you, Mr. O'Brien. So we'll
27 continue to take attendances, please, in the order as
28 prescribed. Thank you.

29 REGISTRAR: The next party then is Malcomson Law

1 solicitors.

2 MR. BRADLEY: Good morning, Chairperson. I appear on
3 behalf of Women of Honour. My name is Raymond
4 Bradley SC and solicitor for Women of Honour, appearing
5 with Mr. Karl Sweeney BL. 10:33

6 SOLE MEMBER: Good morning, Mr. Bradley.

7 REGISTRAR: And the Defence Forces represented by the
8 Chief State Solicitor's Office.

9 MR. McCANN: Yes, good morning, Chair. I'm
10 Patrick McCann, and the Defence Forces team are 10:34
11 Darren Lehane, Elizabeth Donovan and Caroline Carney.
12 I'm instructed by the Chief State Solicitor's Office
13 and Ronan Cotter is the solicitor in attendance on us
14 today. Thank you.

15 SOLE MEMBER: Thank you, Mr. McCann. 10:34

16 REGISTRAR: John Gerard Cullen Solicitors.

17 MR. CULLEN: Good morning, Judge. I represent eight
18 persons. My name is Gerard Cullen. I think one of
19 them is due to arrive here, one of the complainants,
20 later. 10:34

21 SOLE MEMBER: Thank you, Mr. Cullen.

22 MR. CULLEN: Thank you.

23 REGISTRAR: Setanta Solicitors.

24 MR. TREACY: Good morning, Chair. Captain Colin Treacy
25 is my name. My solicitor assures me he is on the way, 10:34
26 he'll be here in five or ten minutes.

27 SOLE MEMBER: Thank you, Captain Treacy.

28 REGISTRAR: Seán Costello & Company Solicitors.

29 MR. McGARRY: Good morning, Chair. Paul McGarry, I'm

1 with Padraic Lyons, instructed by Seán Costello for
2 Jerry Lane.

3 SOLE MEMBER: Thank you, Mr. McGarry.

4 REGISTRAR: Are there any other attendances before the
5 Tribunal this morning?

10:34

6 SOLE MEMBER: I think anybody who had written to the
7 Tribunal and indicated their intention of speaking --
8 of wishing to address the Tribunal has already notified
9 the Tribunal. So we'll commence the proceedings in the
10 order in which -- we're not going to take any questions
11 at the moment but we will come back to you at the end.

10:35

12 MR. O'BRIEN: I'm not giving a question. I was asked
13 would I do a little speech at the Tribunal as well. I
14 got a letter from Mr. Nolan.

15 SOLE MEMBER: Right. We will come back to that. At
16 the moment we're dealing with those who notified the
17 Tribunal of their intention to address the Tribunal
18 this morning.

10:35

19
20 OPENING ADDRESS BY THE SOLE MEMBER

21
22 SOLE MEMBER: The purpose for which the Tribunal has
23 been established is a matter of common knowledge and
24 today's public hearing was scheduled in response to two
25 specific matters that have arisen during the course of
26 the private investigative stage of the Tribunal's
27 Inquiry.

10:35

28
29 The first concerns how the Tribunal should interpret

1 certain provisions of its Terms of Reference, and the
2 second was in response to an application for an
3 extension of time within which discovery is to be made.
4 The format of today's proceedings has been published.
5 Mr. McGovern SC will address the first issue on 10:35
6 interpretation, and later in the day Mr. Beirne SC will
7 set out the position in relation to the applications
8 for an extension of time. And thereafter those who
9 have filed written submissions, and who have notified
10 the Tribunal of their wish to be heard with reference 10:36
11 thereto, will be invited to address the Tribunal.
12

13 The hearing today will focus only on those two specific
14 matters mentioned above. So this is not an occasion
15 upon which to make applications for representation or 10:36
16 indeed for any other matter.
17

18 When addressing the Tribunal, please bear in mind that
19 every submission received has been read by the
20 Tribunal. 10:36
21

22 There are several parties here today who wish to be
23 heard and in these circumstances you might please make
24 your oral submissions as succinctly as possible.
25

26 After today's hearing the Tribunal will deliberate on
27 all submissions received and will in due course deliver
28 a ruling on the matters that fall to be determined.
29

1 Before turning to counsel who will introduce today's
2 proceedings I want to take a few moments to inform the
3 public about the work of the Tribunal during the
4 investigative stage of its inquiry. I'm going to touch
5 upon ten aspects of our work to date.

10:37

6
7 First, the call for information. Within days of its
8 establishment the Tribunal held its first public
9 sitting on 24th June 2024, during which I explained the
10 task of the Tribunal, the various stages of its work,
11 and the limits of its jurisdiction in terms of what it
12 may and may not do. On the same day the Tribunal
13 issued its first call for information, anyone with
14 knowledge or information that could assist the Tribunal
15 with its inquiry was asked to come forward and to do so
16 by 16th August 2024. Once the Tribunal had considered
17 the information received it had intended to invite
18 applications for legal representation.

10:37

10:37

19 20 2. Applications For Representation

10:37

21 However, it soon emerged that individuals and groups
22 who expressed an interest in assisting the Tribunal
23 with its inquiry also expressed considerable concern
24 about doing so in the absence of legal assistance,
25 particularly given the serious nature of the
26 allegations of abuse which had triggered the
27 deployment, or not, of the complaints processes within
28 the Defence Forces.

10:38

1 whilst it was generally understood that the Tribunal
2 cannot examine whether any allegation of abuse is well
3 founded, there were concerns that allegations of
4 serious wrongdoing would be made in the context of the
5 Tribunal's inquiry. Arising from such concerns,
6 several bodies requested legal representation in
7 advance of submitting statements to the Tribunal.

10:38

8
9 On 22nd July 2024, a public hearing was held and
10 applications for legal representation from the
11 following representative groups were heard:

10:38

12 The Chief of Staff of the Defence Forces, the Minister
13 for Defence, Permanent Defence Forces Other Ranks
14 Representative Association (PDFORRA), Women of Honour,
15 Defence Forces Justice Alliance, the 34th Platoon Army
16 Apprentice School Justice Group, the Air Corps Chemical
17 Abuse Survivors Group, the Defence Forces
18 Whistleblowers Protected Disclosure Justice Group, the
19 Defence Forces Lariam Justice Group, and the Jadotville
20 Justice Community Group, and a group that styled itself
21 as the Victims of the Complaints Processes.

10:38

10:39

22 23 3. Grants of Representation

24 On 25th July, the Tribunal delivered its ruling. With
25 the exception of the Minister for Defence and the
26 Defence Forces, the Tribunal was satisfied that limited
27 representation should be granted to all but two of the
28 groups listed above. Such representation was for the
29 purpose of (a) assisting group members who had relevant

10:39

1 information and who wished to submit statements to the
2 Tribunal; (b) attending upon any members of the group
3 if called for interview; and (c) making submissions on
4 behalf of the group's membership.

5
6 Anyone who was granted limited representation during
7 the investigative phase was advised that applications
8 could be renewed when the Tribunal begins its next
9 phase of work.

10
11 The Tribunal considered that the Defence Forces and the
12 Minister for Defence were in a position that was
13 different to other parties. To a greater or lesser
14 extent those matters may be accused of operating and/or
15 overseeing a complaint process that was unfair, of 10:40
16 perpetrating a culture that deterred the making of
17 complaints of abuse and of punishing those who did.
18 For that reason, full representation was granted to the
19 Defence Forces and to the Minister for Defence in
20 circumstances where the Tribunal was satisfied that 10:40
21 they required such representation.

22
23 Parties were reminded that a grant of representation
24 does not confer an automatic entitlement to an order
25 for costs at the completion of the Tribunal's inquiry. 10:40
26 The date for receipt of submissions was extended to
27 30th September 2024, and that date was further extended
28 to 16th December 2024, the Tribunal having issued,
29 prior to then, its final call for information.

1
2 The Tribunal's call for information was published
3 periodically across nine national newspapers and seven
4 regional papers, and it was also published on the
5 Tribunal's website. I should add that the Tribunal was 10:41
6 satisfied to grant limited legal representation to
7 several individuals who applied in writing for same.

8
9 4. Meetings with Stakeholders

10 The Tribunal's legal team conducted many meetings with 10:41
11 interested groups, and arising from feedback received
12 during those meetings the Tribunal wrote to the Chief
13 of Staff of the Defence Forces in August 2024,
14 requesting that a specific direction be issued and
15 disseminated down through the chain of command. 10:41

16
17 The requested direction would confirm that members of
18 the Defence Forces who engaged with this Tribunal were
19 encouraged to do so and that those who chose to engage
20 would be supported and not penalised by any superior 10:41
21 officer for so doing.

22
23 The Chief of Staff was also asked to disseminate, again
24 throughout the chain of command, a comprehensive
25 document which the Tribunal had prepared containing 10:42
26 answers to frequently asked questions, or FAQs, about
27 the Tribunal. That document was published on the
28 Tribunal's website and circulated to every interested
29 party.

1
2 The Chief of Staff responded positively and confirmed
3 that the requested direction and the FAQs had been
4 issued through the chain of command.

10:42

6 Discovery

7 This Tribunal has been tasked with conducting a public
8 inquiry that extends over a period of 41 years, a
9 period during which volumes of documents and files
10 relevant to the work of the Tribunal were no doubt
11 created. Mindful of the fact that orders for extensive
12 discovery would be required, the Tribunal, on the date
13 of its establishment, made orders for the preservation
14 of documents against the Chief of Staff of the Defence
15 Forces and the Minister for Defence.

10:42

10:43

16
17 The Tribunal considers that in order to conduct a
18 rigorous and a robust investigation into the complaints
19 processes within the Defence Forces in respect of
20 complaints of abuse, that it is necessary for it to
21 examine every complaint file that had been created
22 arising from every relevant complaint that was made
23 over the 41-year period.

10:43

24
25 At an early stage, the Tribunal's legal team met with
26 the Tribunal liaison officer for the Defence Forces
27 with a view to ascertaining the approximate number of
28 relevant complaints that have been filed under the
29 various processes identified in the Terms of Reference

10:43

1 and whether the Defence Forces had retained a system
2 for the recording of such complaints. As the Tribunal
3 must endeavour to complete its work within three years,
4 it sought to gauge the volume of documentation relevant
5 to its inquiry with a view to obtaining a plan for the 10:44
6 delivery of all complaint files to the Tribunal.

7
8 This Tribunal is required to conduct its inquiry
9 against the background of extensive and enhanced data
10 protection and privacy rights under national and EU 10:44
11 law. Several meetings between the Tribunal's legal
12 team and the legal representatives of the Minister and
13 the Defence Forces were held with a view to reconciling
14 the Tribunal's requirement for extensive discovery with
15 GDPR rights and obligations. 10:44

16
17 GDPR considerations required the creation of protocols
18 designed to respect data protection and privacy rights
19 and obligations whilst ensuring that the Tribunal could
20 examine all relevant documentation necessary to allow 10:44
21 it to report comprehensively on the urgent matters of
22 public importance as set out in the Tribunal's Terms of
23 Reference. Those necessary and detailed protocols took
24 time to complete.

25 10:45
26 On the 28th day of November 2024, the Tribunal issued
27 notifications of its intention to make orders for
28 discovery against the Chief of Staff of the Defence
29 Forces and the Minister for Defence, and it invited

1 submissions from those who may be affected by the
2 making of the intended orders.

3
4 The terms of the intended orders and the relevant
5 protocols thereto were appended and set out in the 10:45
6 aforesaid notifications which were published in several
7 national newspapers and on the Tribunal's website.

8
9 Having considered all detailed written submissions
10 received, the Tribunal made orders for discovery 10:45
11 against the Minister for Defence and the Chief of Staff
12 of the Defence Forces on the 27th and 28th day of
13 January 2025, respectively, and simultaneously
14 delivered rulings setting out its rationale in respect
15 of the said orders. 10:45

16
17 Since then, the Defence Forces and the Minister have
18 been providing documentation to the Tribunal on an
19 ongoing basis. It contains extensive redaction of
20 personal data in accordance with the aforesaid 10:46
21 protocols.

22
23 6. Recruitment and Training of Documentary Counsel
24 Once discovery orders were made, the next challenge for
25 the Tribunal was to recruit and train counsel who would 10:46
26 assist it in analysing the large volume of
27 documentation anticipated by way of discovery.
28 Recruitment of counsel for this task commenced in
29 January 2025. Training on the relevant Complaints

Processes within the Defence Forces was provided and, once completed, the Tribunal's team of documentary counsel commenced work straightaway and continued to analyse and report on the files under review.

10:46

7. Examination of Information Received

Meanwhile, and consistently since establishment, a major part of the Tribunal's work involves the collation, analysis of and response to the large volume of materials received from individuals or complainants who wish to assist the Tribunal with its inquiry.

10:47

Every statement is read, acknowledged and recorded by the Tribunal. Every detail of each complaint is documented. The nature of the abuse alleged; the alleged perpetrator; the name and rank of the person to whom a complaint, if any, was made; the response, if any, thereto. All these matters require to be identified and uploaded to the Tribunal's document management system, follow-up queries may then have to be made and further lines of inquiry pursued.

10:47

10:47

Matters arising from all statements and correspondence are discussed at weekly and sometimes daily team meetings.

10:47

8. Trauma Training

Having regard to the serious allegations concerning discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment

1 and sexual misconduct within the Defence Forces, the
2 Tribunal considered that it was necessary for the
3 Tribunal and its team to receive some formal training
4 on best practice when engaging with people who have
5 experienced trauma. Workshops on the impact of trauma 10:48
6 were scheduled and the Tribunal and its entire team
7 benefitted from important training in this area.

8
9 9. Submissions of Statements outside of the Terms of
10 Reference 10:48

11 Part of the Tribunal's work involves evaluating
12 submissions that on their face are not relevant to the
13 Terms of Reference. Statements submitted may not
14 relate to complaints of abuse or complaints of
15 hazardous chemicals, as those terms are defined. Even 10:48
16 where abuse, as defined, is alleged, the facts and the
17 issues arising may fall outside the temporal and other
18 jurisdictional constraints that are stipulated in the
19 Terms of Reference.

20 10:49
21 In these circumstances, the Tribunal's solicitor writes
22 to the person concerned and explains why the Tribunal
23 has reached a provisional view that the matters in
24 question do not fall within the Terms of Reference.
25 Such persons are afforded an opportunity to provide 10:49
26 additional information or to explain why they consider
27 that their statements do fall within the Terms of
28 Reference.
29

1 The Tribunal appreciates that for some it may be very
2 difficult and distressing to receive a letter stating
3 that the matters raised do not fall within the
4 Tribunal's Terms of Reference. It may have taken great
5 courage for a person to disclose a painful experience 10:49
6 of past abuse and to share how he or she was thereafter
7 treated. Understandably, such individuals may feel
8 deeply hurt and let down when informed that their
9 statements do not fall within the remit of the
10 Tribunal. I want to take a moment to acknowledge the 10:49
11 pain and the suffering which such a letter may cause.
12

13 I have to reiterate that the Tribunal cannot act
14 outside the law and that as a matter of law it may
15 inquire only into those matters that are specified in 10:50
16 the Terms of Reference and that it must do so within
17 the constraints that its provisions prescribe.
18

19 10. Interviews

20 When a statement or information appears to fall within 10:50
21 the Tribunal's Terms of Reference, contact is made with
22 the person concerned. Further details may be required
23 and, where possible, an interview with the person is
24 scheduled as promptly as possible. For reasons of time
25 management, and to avoid duplication in the interview 10:50
26 process, the Tribunal team does not proceed to
27 interview any person who used the available Complaints
28 Processes without first having sight of the complete
29 complaint file that was created and retained in respect

1 of such a person. To do otherwise would involve
2 interviewing potential witnesses in the absence of
3 complete information and the Tribunal would have to
4 recall them after their files are discovered.

10:51

5
6 To expedite the process, however, such individuals have
7 been asked to consent to their particular files being
8 identified and fast tracked to the Tribunal in
9 accordance with the protocols to the orders for
10 discovery.

10:51

11
12 The Tribunal's team has, however, been scheduling
13 interviews with those persons who allege that they were
14 abused as members of the Defence Forces but who did not
15 make a complaint about the abuse at the relevant time.
16 In such cases a complaint file would not exist. The
17 Tribunal wants to understand the reasons - and there
18 may be many - as to why the available Complaints
19 Processes for dealing with complaints of abuse were not
20 pursued by such individuals at the relevant time.

10:51

10:51

21
22 The Tribunal team has concluded interviews with 55
23 individuals thus far. It is keen to interview more.
24 Further interviews have been scheduled, and as the
25 requisite information continues to come in from the
26 Minister and the Defence Forces concerning fast tracked
27 files, more interviews will be scheduled over the
28 coming weeks and months.

10:52

1 Apart from the above, the Tribunal expects to interview
2 several other people who may have a role to play, who
3 may have had a role to play, or who may have relevant
4 evidence to give in relation to how complaints of abuse
5 or hazardous chemicals were handled within the Defence 10:52
6 Forces.

7 8 Conclusion

9 In addition to the legal and administrative work
10 outlined above, several practical matters have formed 10:52
11 an essential part of the Tribunal's work. These
12 include the creation and maintenance of the Tribunal's
13 website, the installation and operation of its document
14 management system, and the construction of an
15 e-platform for the Tribunal's review and analysis of 10:52
16 all files received by way of discovery.

17
18 This Tribunal is mindful that it has been given a very
19 challenging target of endeavouring to complete its work
20 within three years of the date of its establishment. 10:52
21 This investigative phase constitutes a significant and
22 a time consuming part of the Tribunal's work and it
23 will continue for some further time. The completion of
24 that work is dependent upon the prompt cooperation of
25 all parties before the Tribunal. 10:53
26

27 With that update having been completed, I will now call
28 upon Mr. McGovern to commence today's proceedings.
29 Mr. McGovern.

1 MR. McGOVERN: Good morning, Judge Power. For the
2 record can I say that I appear with Mr. Michael Cush,
3 Mr. Niall Beirne SC, Ms. Lalita Morgan Pillay, Mr. Tim
4 O'Hanlon and Ms. Áine Smith, barristers at law, all
5 instructed by Mr. John Nolan, who is the solicitor to
6 the Tribunal. 10:53

7 SOLE MEMBER: Thank you, Mr. McGovern. I wonder do you
8 want to use your microphone or bring it closer to you
9 so that everybody here can - thank you.

10
11 SUBMISSIONS RE INTERPRETATION OF THE TERMS OF REFERENCE

12
13 SUBMISSION BY MR. McGOVERN:

14
15 MR. McGOVERN: As the Tribunal has set out in its 10:53
16 opening statement, today's public hearing was arranged
17 in response to two matters. It is my function to
18 address you on the first of those, namely how the
19 Tribunal should interpret each of the provisions in its
20 Terms of Reference, or certain provisions in its Terms 10:54
21 of Reference. My colleague, Mr. Beirne, will address
22 you later on an application for an extension of time
23 within which to make discovery.

24
25 After I address the Tribunal, each of the parties who 10:54
26 have furnished a submission will be invited to address
27 you. In ease of the process, the running order for
28 each party was published on the Tribunal's website and
29 a copy of that should be before the Tribunal.

1
2 By way of background, on 13th May 2025, the Tribunal
3 published a public notice of its intention to hold a
4 public hearing today. It invited interested parties to
5 make submissions and the Tribunal received submissions 10:54
6 from several parties. All relevant submissions were
7 published on the Tribunal's website on 16th June last.

8
9 With respect to the Tribunal's interpretation of its
10 Terms of Reference, parties were invited to address the 10:55
11 Tribunal with particular reference to three matters as
12 set out in the public notice. It is these three
13 matters that require to be addressed in a ruling by the
14 Tribunal.

15
16 The matters are: Firstly, the interpretation of the
17 types of abuse as that term is defined in the
18 Tribunal's Terms of Reference. That's to say
19 discrimination, bullying, harassment, etc.

20 10:55
21 Secondly, the request for the Tribunal to adopt what
22 has been described as a "broader interpretation" of the
23 term "abuse".

24
25 Thirdly, the provisions in paragraph 4 of the Terms of 10:55
26 Reference in relation to culture. In this regard, none
27 of the parties have made a submission that is contrary
28 to the interpretation set out by the Tribunal and as
29 such this matter will not trouble the Tribunal today.

1
2 The scope of the Tribunal's inquiries has necessarily
3 been defined and is limited by the Terms of Reference
4 conferred on it by the resolutions of each of the
5 Houses of the Oireachtas. The Tribunal's Terms of
6 Reference are set out in Statutory Instrument No.
7 304/2024. In accordance with its mandate, under the
8 Terms of Reference, the Tribunal's function is to make
9 such findings and recommendations as appear appropriate
10 and to report thereon.

10:56

10:56

11
12 In respect of Tribunals of Inquiry, Mr. Justice
13 Costello said in Goodman -v- Hamilton:

14
15 "Its functions are inquisitorial which means that the
16 Tribunal itself has to make inquiries relevant to its
17 Terms of Reference. The witnesses produced at its
18 hearing are the Tribunal witnesses and are not produced
19 by any party to whom representation has been granted.
20 All witnesses called are subject to be cross-examined
21 as permitted by the Tribunal."

10:56

10:57

22
23 Judge Costello's conclusions and the reasoning by which
24 he came to those conclusions was approved by the
25 Supreme Court.

10:57

26
27 Guidance to Tribunals of Inquiry regarding the
28 interpretation of its Terms of Reference is to be found
29 in the case of Haughey -v- Moriarty where the Supreme

1 Court quoted and adopted recommendation from the Salmon
2 report as a correct statement of the law and practice
3 applicable to tribunals in this jurisdiction:
4

5 "The Tribunal should take an early opportunity of 10:57
6 explaining in public its interpretation of its Terms of
7 Reference and the extent to which the inquiry is likely
8 to be pursued. As the inquiry proceeds, it may be
9 necessary for the Tribunal to explain any further
10 interpretations it may have placed on the Terms of 10:57
11 Reference in the light of the facts that have emerged."
12

13 As this inquiry proceeded, it did become necessary to
14 explain or set out further the Tribunal's
15 interpretation of certain terms within the Terms of 10:58
16 Reference and that's why we're here today.
17

18 On 20th June 2024, the Tribunal published on its
19 website a document entitled "Interpretation of the
20 Terms of Reference for the Tribunal". In this document 10:58
21 the Tribunal noted:
22

23 "The wording of the Terms of Reference, including the
24 definitions is, in the main, unambiguous and conveys
25 the meaning intended. It is clear that it is not the 10:58
26 function of the Tribunal to establish whether any
27 individual complaint is or was well founded."
28

29 The document also stated:

1
2 "The Tribunal's interpretation of the Terms of
3 Reference may be expanded or revised in the light of
4 other facts or circumstances which may emerge during
5 the course of its inquiry. "

10:59

6
7 In O'Brien -v- Moriarty (No. 2), the Supreme Court
8 confirmed that although a Tribunal of Inquiry must work
9 within its Terms of Reference, it should be afforded
10 significant discretion in its work.

10:59

11
12 Ms. Justice Denham said:

13
14 "Tribunals should be afforded a significant level of
15 discretion as to the manner in which they carry out the
16 important work which has been given to them by the
17 Houses of the Oireachtas. The courts should not
18 intervene save where the decision is irrational,
19 unreasonable or contrary to common law. "

10:59

20
21 The Tribunal's Terms of Reference mark the boundaries
22 of its jurisdiction.

23
24 The Tribunal has received requests for a
25 reinterpretation or expansion of the Terms of
26 Reference. The Tribunal must be alert to the clear
27 distinction between on the one hand interpreting and,
28 on the other, expanding the Tribunal's Terms of
29 Reference. The Tribunal has no power to expand its

10:59

1 Terms of Reference, this can only be done pursuant to
2 the procedures set out in Section 1A of the Tribunals
3 of Inquiry (Evidence) Act 1921-2011. This may involve
4 a request from the Sole Member which must then be
5 considered by the Attorney General on behalf of the
6 Minister and must then be followed by a resolution
7 passed by both Houses of the Oireachtas.
8

9 It is, of course, entirely a matter for the Sole Member
10 to determine whether such a request is appropriate or 11:00
11 warranted. However, today is not about expanding the
12 Tribunal's Terms of Reference, it is about the
13 interpretation of the Tribunal's Terms of Reference as
14 set out in Statutory Instrument 304/2024.

15 11:00
16 The Tribunal, although having all the powers of the
17 High Court, does not conduct adversarial proceedings.
18 It is fundamentally inquisitorial. Its purpose is to
19 enquire into definite matters and in light of the
20 evidence to make such findings and recommendations as 11:01
21 it sees fit in relation to those matters. The
22 Tribunal's Inquiry is not a trial of alleged wrongdoing
23 by any particular person or group of persons. There
24 are many matters outside the Tribunal's Terms of
25 Reference and the Tribunal must be vigilant to ensure 11:01
26 that it does not stray outside of its Terms of
27 Reference.
28

29 The first matter for the Tribunal to consider is the

1 interpretation of the categories of the term "abuse" in
2 the Tribunal's Terms of Reference. The definition of
3 the word "abuse" is fixed by the Tribunal's Terms of
4 Reference. The Terms of Reference state:

5
6 "' Abuse' means discrimination, bullying, harassment,
7 physical torture, physical assault, psychological harm,
8 sexual harassment and any form of sexual misconduct,
9 whether sexual assault, aggravated sexual assault and
10 rape."

11:02

11
12 It will be for the sole Member to determine what
13 significance attaches to the fact that "abuse" is
14 defined as "meaning" rather than "including" certain
15 matters.

11:02

16
17 whilst the Tribunal has published its interpretation of
18 the Terms of Reference and considered that the meanings
19 were clear and that no particular interpretation was
20 required, it became apparent during the course of the
21 investigative phase that the categories within which
22 the definition of "abuse", "discrimination",
23 "bullying", etc., required to be explained further for
24 the benefit of those who engage with the Tribunal.

11:02

25
26 The Tribunal is not entitled to investigate whether
27 claims of abuse are well founded. Nevertheless, it is
28 in the interests of the Tribunal that all parties have
29 a clear understanding of what each category in the

11:02

1 definition of "abuse" is interpreted by the Tribunal to
2 mean.

3
4 Schedule One of the Public Notice sets out the
5 Tribunal's interpretation of each of the categories of 11:03
6 abuse contained in the definition of that term in the
7 Terms of Reference.

8
9 The decision the Tribunal has to make is whether the
10 interpretation of each category within the definition 11:03
11 of "abuse" should remain as it is in Schedule 1 or
12 whether there are grounds for a different
13 interpretation. The only categories of abuse that have
14 been specifically addressed by the parties in their
15 submissions are (a) harassment and (b) psychological 11:03
16 harm.

17
18 (A) Harassment

19 In Schedule 1 of the Tribunal's Public Notice, the
20 Tribunal has set out its interpretation of harassment 11:03
21 as follows:

22
23 "The Tribunal adopts the definition of harassment as
24 provided for in Section 14A(7) of the Employment
25 Equality Acts 1998-2021 which provides - the inter alia 11:04
26 provides as follows:

27
28 "(a) in this section -

29 (i) references to harassment are to any form of

1 unwanted conduct related to any of the discriminatory
2 grounds and being conduct which has the purpose or
3 effect of violating a person's dignity and creating an
4 intimidating, hostile, degrading, humiliating or
5 offensive environment for that person.

11:04

6
7 (b) without prejudice to the generality of paragraph
8 (a), such unwanted conduct may consist of acts,
9 requests, spoken words, gestures or the production,
10 display or circulation of written words, pictures or
11 other material."

11:04

12
13 The Tribunal received one submission in relation to
14 this definition of harassment which argued that it
15 should be extended to include conduct that is not
16 linked to any one of the nine discriminatory grounds
17 that are set out in law. It's a short submission about
18 harassment, hierarchy and rank.

11:05

19
20 (B) Psychological Harm.

11:05

21 In Schedule One of the Tribunal's Public Notice, the
22 Tribunal has set out its interpretation of
23 psychological harm as follows:

24
25 "The mere occurrence of psychological harm, howsoever
26 caused, could not reasonably be said to be abuse. The
27 other categories of "abuse" as defined in the Terms of
28 Reference involve some action on the part of a
29 perpetrator. The linguistic context, therefore,

11:05

1 suggests that "psychological harm" should be
2 interpreted to mean:

3
4 "A wrongful act which caused a Complainant to suffer
5 harm to the mind resulting in a recognised
6 psychological injury. Recognised psychological
7 injuries comprise those identified in Diagnostic and
8 Statistical Manual of Mental Disorders (DSM-5-TR) -
9 'Classification: Trauma - and Stressor-Related
10 Disorders' - and include Post-Traumatic Stress
11 Disorder, Acute Stress Disorder, Adjustment Disorders,
12 Reactive Attachment Disorder, Disinhibited Social
13 Engagement Disorder, Other Specified Trauma and
14 Stressor-Related Disorder, and Unspecified Trauma and
15 Stressor-Related Disorder. "

11:05

16
17 A complaint of psychological harm is, therefore, an
18 allegation of a wrongful act which is said to have
19 caused a recognised psychological injury. "

20
21 I might address at this point the use of the word
22 "mere" within the definition.

23
24 The word is not used to suggest that there is something
25 insignificant about the occurrence of psychological
26 harm. The word in this context is used to convey the
27 presence alone of psychological harm, without any other
28 factor, cannot reasonably be said to be abuse as
29 defined.

11:07

1
2 There may be a concern that the Tribunal would require
3 evidence of a clinical diagnosis or seek medical
4 records to establish psychological harm. However, the
5 Tribunal's interpretation of psychological harm is an 11:07
6 allegation of a wrongful act which is said to have
7 caused a recognised psychiatric injury. The Tribunal
8 is not empowered to make findings as to whether the
9 abuse, be it psychological harm or any form of abuse,
10 actually occurred. Therefore, the Tribunal will not be 11:07
11 seeking medical evidence and it is unnecessary for a
12 person to produce medical records in relation to an
13 allegation of psychological harm.

14
15 The Tribunal received a submission arguing that in 11:08
16 referring to DSM-5-TR, the Tribunal's interpretation of
17 psychological harm is too narrow, as the interpretation
18 does not include repeated lower levels instances of
19 mistreatment. However, regard may be had to the fact
20 that some factors, when taken together, may constitute 11:08
21 a recognised psychological injury. Also, although the
22 Tribunal's interpretation of the term "psychological
23 harm" refers to a complaint, it follows that multiple
24 complaints of mistreatment may also come within the
25 definition. 11:08

26
27 Another submission received by the Tribunal appears to
28 suggest that psychological harm must be caused by a
29 wrongful act, which itself constitutes a form of abuse

1 as defined in the Terms of Reference. However, regard
2 must be had to the fact that abuse is defined as
3 meaning inter alia psychological harm separately
4 identified from other forms of abuse without any
5 apparent requirement that it be caused by other forms
6 of abuse. 11:09

7
8 The second matter for the Tribunal to consider is the
9 request for the Tribunal to adopt what has been
10 described in the submissions received as a "broader" or 11:09
11 "expanded" interpretation of the term abuse.

12
13 By way of background, in the course of the private
14 investigative phase of the Inquiry, the Tribunal
15 received correspondence requesting to adopt a broader 11:09
16 interpretation of "abuse" in order to encompass alleged
17 persistent violations of health and safety legislation
18 by the Defence Forces. The rationale provided to the
19 Tribunal for seeking this broader interpretation of the
20 term is based on an assertion that alleged systemic 11:09
21 failures in relation to health and safety, in
22 circumstances where the risks were known to the Defence
23 Forces, repeated by the Defence Forces, and were not
24 remedied by the Defence Forces, amount to mistreatment.

25 11:10
26 In this context the sole Member will be required to
27 consider what significance will be attached to the fact
28 that "abuse" is not defined as to include health and
29 safety breaches and the fact that it was not included

1 as a standalone Term of Reference, as is the case in
2 respect of the use of hazardous chemicals at Baldonnel.
3

4 Finally, a number of solicitors representing parties
5 who have been granted representation have made 11:10
6 submissions to the effect that evidence which their
7 clients wish to give support an expanded interpretation
8 of the term "abuse". In this regard the Tribunal may
9 have regard to the fact that while the term of
10 reference should be used to determine what evidence is 11:10
11 relevant and admissible to the Tribunal's work, the
12 evidence does not determine the Terms of Reference.
13

14 In summary, the two issues for the Tribunal today are:
15 Firstly, whether each category of the definition of 11:11
16 "abuse", as interpreted by the Tribunal, should remain
17 as defined in Schedule One. Or, whether there are
18 grounds for a different interpretation to the ones set
19 out in the schedule. In this regard the only
20 categories of abuse that the Tribunal will hear 11:11
21 submissions on today are (a) harassment and (b)
22 psychological harm.
23

24 Secondly, whether the Tribunal should adopt a broader
25 interpretation to the term "abuse" as per the 11:11
26 submissions. If the Tribunal decides to do so, then it
27 must decide what that interpretation should be.
28

29 At this stage, Sole Member, I'll hand over to the first

1 party in the running order who are represented by
2 Mr. Gordon.

3 SOLE MEMBER: Thank you. Thank you, Mr. McGovern.
4
5

6 SUBMISSION BY MR. GORDON:
7

8 MR. GORDON: Thank you, Judge. I appear, as you know,
9 with Mr. Alan Brady and Mr. Patrick Marron, instructed
10 by Coleman Legal. 11:12

11
12 You'll be aware that we have furnished submissions on
13 behalf of three distinct groups within our overall
14 number of people we represent, that's the Lariam Group,
15 the Toxic Chemicals Group, and the Search and Rescue 11:12
16 Group.

17
18 You've already read our submissions, I don't intend to
19 go through them with you today because I'm well aware
20 that you will read it in considerable detail and pay 11:12
21 all the attention that it deserves.

22
23 I will start by saying that there is no difference
24 between myself and Mr. McGovern as to what the legal
25 principles are. It's quite clear, Haughey -v- 11:12
26 Moriarty, etc. However, I would emphasise that what
27 we're looking at is an interpretation which isn't in
28 any way new, which doesn't in any way digress from the
29 Terms of Reference, or indeed even the definition of

1 "abuse" within the Terms of Reference of the Tribunal
2 itself.

3
4 what we're saying, and I'm quoting from paragraph 1 of
5 our submission in relation to Lariam:

11:13

6
7 "Specifically, we invite the Tribunal to include within
8 its interpretation persistent and systemic failures on
9 the part of the Defence Forces to comply with various
10 statutory obligations in the area of safety, health and
11 welfare at work, where such failures have caused or
12 contributed to psychological harm, physical risk and
13 have created an environment of fear, intimidation or
14 reprisal for raising concerns and have resulted in
15 incidences of penalisation upon raising such concerns."

16
17 Now, we believe that what you need - all we need really
18 is a clarification of the definition. I don't believe
19 that the Tribunal needs to add a further definition to
20 its Terms of Reference, because if we go back to the
21 origin of the investigation that we're involved in
22 itself, and in that context I would like to bring you
23 briefly to Statutory Instrument 304. And that, of
24 course, follows on the resolution of the Dáil. And if
25 I can -- sorry, Judge, I presume you have it available
26 in front of you?

11:14

11:14

27 SOLE MEMBER: Yes, I have.

28 MR. GORDON: Okay. Thank you. Okay. Because the
29 Dáil's resolution is the starting point of this entire

1 exercise, and it reads:

2
3 "That Dáil Éireann:

4
5 bearing in mind the serious allegations of
6 discrimination, bullying, harassment, sexual harassment
7 and sexual misconduct in the Defence Forces;

8
9 noting the decision of Government, in January 2022, to
10 establish an Independent Review Group (IRG) to examine
11 such issues and provide recommendations and guidance to
12 the Minister for Defence on measures and strategies
13 required to underpin a workplace based on dignity,
14 equality, mutual respect, and duty of care for every
15 member of the Defence Forces..."

16
17 So I emphasise the reference to "duty of care". So,
18 inherent in the remit of this Tribunal is to look at
19 the discharge of duty of care. And I say, when you
20 look at the term "abuse" you look at it in the context 11:15
21 of the reference of the Tribunal itself. The purpose
22 of the Tribunal. You don't take the definition of
23 "abuse" and put it to one side outside the overall
24 scheme of the Tribunal, you must look at it in the
25 context of the work of the Tribunal. And it includes 11:16
26 looking at the discharge of a duty of care.

27
28 what we say is that in looking at that, it is necessary
29 that the Tribunal shall look at the discharge by the

1 Defence Forces of its clear obligations under safety,
2 health and welfare legislation, where that has
3 contributed to psychological harm, physical risk, and
4 otherwise.

5
6 Indeed, that this is so is further reinforced when we
7 come to the next page of the Statutory Instrument,
8 because when it refers to the complaints processes it
9 includes, of course, the Safety, Health and welfare At
10 Work Acts. So it's anticipated that the manner in
11 which the Defence Forces discharged its obligations
12 under that legislation will be a matter for the
13 Tribunal to have reference to in the course of its
14 work.

15
16 If I look at the definition of Complaints Processes at
17 (G):

18
19 "In so far as (vii) below is concerned, the Safety,
20 Health and Welfare at Work Act 2005 (as amended) or
21 where applicable, the Safety, Health and Welfare At
22 Work Act 1989."

23
24 So it has been envisaged from the very beginning that
25 safety, health and welfare is part of this particular
26 investigation.

27
28 So, bearing that in mind, I would urge the Tribunal
29 that you have to employ a generous interpretation of

1 the definition of "abuse". I don't believe that the
2 definition was put in there to in some way cut down on
3 the areas of investigation. It's there to help. It's
4 not there to circumscribe. And if you have any doubt
5 about this, I would urge you to use Section 6 of the 11:18
6 Act and go to the Minister and say, 'We're concerned
7 that this may in some way circumscribe our ability to
8 report fully on the matters under investigation', and I
9 have no doubt that the Minister would not want this
10 Tribunal to find itself handicapped in some particular 11:18
11 way.

12
13 So, I don't believe that there's anything further I
14 need to add at this point. I think we've already said
15 the bulk of what we had to say in our written 11:19
16 documents, but I say it's clear that a narrow approach
17 would actually be defeating the object of what this
18 Tribunal has been set up for.

19 SOLE MEMBER: Thank you very much. Thank you,
20 Mr. Gordon. Now. 11:19

21 REGISTRAR: Could I just intervene, Judge, and remind
22 the parties that if they press the button outlined in
23 purple on their microphone as they are about to address
24 the Tribunal, it'll change to green indicating that it
25 is broadcasting. Thanks again, Judge. 11:19

26 SOLE MEMBER: Thank you. Now, I think the next party
27 on the list is the Chief State Solicitor's Office on
28 behalf of the Minister for Defence.
29

1
2 SUBMISSION BY MR. MCGUINNESS:
3

4 MR. MCGUINNESS: Judge, I should say that when I was
5 introducing my team I demoted Ms. McGrath! I'd like to 11:20
6 promote her again to the rank of Senior Counsel.

7 SOLE MEMBER: Thank you very much, Mr. McGuinness.

8 MR. MCGUINNESS: Judge, I should just say a word about
9 the position of the Minister, because obviously the
10 Minister and his predecessors were instrumental in 11:20
11 responding to the significant public concern in
12 relation to the information emerging about all of the
13 issues that you are concerned with, and obviously that
14 led to the foundation of the Review Group and its
15 report in that regard. It's a matter of fact, 11:21
16 obviously, that the Minister and the Government
17 accepted the recommendation to establish a statutory
18 form of inquiry, and there was obviously debate in
19 relation to that. Some of the submissions obviously
20 have taken issue with the way that was conducted or the 11:21
21 amount of information available. I don't intend to
22 address those controversies, Judge, because they're
23 outside, obviously, the scope of the issues here.
24 Whether I accept them or not is another matter.

25
26 The Government moved the resolutions in the Houses and
27 the Minister of the day, Minister for Defence, moved
28 those in the each of the Houses, and the Houses
29 resolved to pass the resolutions in the form in which

1 they were proposed and the amendments proposed thereto
2 were defeated as a matter of public record.

3
4 The Minister obviously at that point in time was
5 playing a leading role in it, and the Government then 11:22
6 took that decision, and I only draw that to the
7 attention of the Tribunal to say that the Minister,
8 whom I'm representing here today, is in a completely
9 different position. He's a party to the Tribunal.
10 He's no different and claims no ulterior entitlement or 11:22
11 otherwise in relation to any of the Tribunal's
12 proceedings, and on the contrary, his instructions at
13 all times are to facilitate the Tribunal, respect its
14 independence and its authority, and certainly from my
15 position here today, Judge, I just want to emphasise 11:22
16 that, that you have been appointed as an independent
17 judge with significant judicial experience to do this,
18 according to law, and no doubt -- and of course in
19 accordance fair procedures, and I think everyone
20 respects that position. 11:23

21
22 Now having said that, Judge, the Tribunal, in its
23 ruling on the interpretation issue, has to pay the
24 greatest weight and respect to the words chosen both in
25 the terms of the resolutions and in the Statutory 11:23
26 Instrument which is giving effect to those resolutions,
27 and obviously were "abuse" not defined, the Tribunal
28 would have the difficult task of interpreting what
29 abuse meant. But the Tribunal is in the position where

1 the Oireachtas decided in adopting the resolutions to
2 furnish you with your mandate, which includes the
3 definition of what abuse means, and that's the word
4 used in the resolution. The starting point, and
5 logically perhaps the finishing point, is the Tribunal 11:24
6 must ask itself can it give a different meaning to what
7 is set out in the Statutory Instrument and in the
8 resolutions? And in my submission, and I agree with
9 Mr. McGovern, of course, the Tribunal has to apply the
10 law and, Judge, as you stated in your introduction, 11:24
11 you're bound by the law, and it's not at this point in
12 time within your authority, or remit, or jurisdiction,
13 to change the basis upon which you have been given that
14 task. So, that's the primary submission in that
15 regard. 11:25

16
17 It is, of course, a legitimate issue to consider can an
18 interpretation be given to the terms which the parties
19 ask you to give here today? And the essence, in my
20 submission, of the work of the Tribunal, is to examine 11:25
21 the complaints process and how it operated in relation
22 to "abuse" as defined, and nothing further in that limb
23 of the Tribunal's work.

24
25 Obviously the other important parts of the remit are to 11:25
26 look at the issue of the culture of deterrence, and
27 then as a separate issue, the use of hazardous
28 chemicals and the response to complaints made about the
29 use of hazardous chemicals at Baldonnel, having regard

1 to the Health and Safety Acts, the two acts cited
2 there.

3
4 In my submission, the Terms of Reference clearly
5 mandate that health and safety lens under the 11:26
6 legislation to be applied to the hazardous chemicals at
7 Baldonnel, and it's a well known rule of construction
8 *expressio unius est exclusio alterius*. The Oireachtas,
9 had they chosen to do so, could have decided that we
10 need to go further in looking at the complaints process 11:26
11 as it relates to complaints of abuse and we need to
12 have, as it were, a health and safety audit as to
13 whether each and every statutory provision of the
14 Health and Safety Acts, as they applied at the various
15 times, was adhered to or not, and that a consequential 11:27
16 examination of complaints in relation to that. And, in
17 short, my submission in that regard is that that would
18 be a radical rewriting of the task that you have been
19 given to merge and add to your task in considering
20 complaints of abuse to extend it into a very large 11:27
21 significant other wing to the Tribunal's task, and I
22 mean the consequences in practical terms are another
23 issue, and obviously if the Tribunal is satisfied that
24 such an interpretation was applicable, it would have to
25 mandate, as it were, a restart of all of the Tribunal's 11:28
26 procedures and investigations, and on our side searches
27 and attempt to retrieve material on a completely
28 different basis than was heretofore being attempted.
29

1 But one significant factor in this, in my submission,
2 is the definition of "abuse" and "complaints of abuse",
3 and the Tribunal has identified and said that in the
4 context of psychological harm, for instance, that - and
5 has been criticised for the use of the word "mere
6 psychological harm."

11:29

7
8 It's clear, in my submission, that what Mr. McGovern
9 has adverted to in terms of all of the other types of
10 abuse, that that's conduct, it's a conduct-based
11 inquiry that the Tribunal has to consider, and how
12 complaints about that conduct, individuals behaving
13 improperly, grossly improperly in relation to other
14 individuals, and how the complaints process in relation
15 to those matters proceeded.

11:29

11:29

16
17 Now, Mr. Gordon has referred to the recital in the
18 Statutory Instrument there relating to a duty of care
19 and that's, in its context, a clear explanation as to
20 part of the basis upon which the Government decided to
21 accept the recommendation for a statutory inquiry. And
22 obviously in a perfect system regulating the Defence
23 Forces, the complaints process would provide a regime
24 of safety in relation to the conduct of members of the
25 Defence Forces towards one another in that regard. It
26 does not follow from that, that the Oireachtas have
27 implicitly or impliedly, sotto voce, as it were,
28 speaking through the resolutions, given a separate
29 mandate to seek to have the Tribunal exercise a power

11:30

11:30

1 of, as it were, a general audit under the health and
2 safety regime for everything from 1981 until 2024.
3 And, as I say, that's limited in the context of one
4 specific aspect that the resolutions are directed
5 towards and that's the issue of Baldonnel.

11:31

6
7 Now, I should just refer to the Terms of Reference,
8 obviously, and there's a number of important remarks to
9 make about the instrument and the resolutions in terms
10 of construing them.

11:31

11
12 In my submission, you should adopt the test laid down
13 by Mr. Justice Hamilton in the O'Brien case. The
14 document must be construed as whole in terms of its
15 objectives, the language that it uses, the context in
16 which the language is used, and bearing in mind a duty
17 to read and interpret it in a consistent manner as
18 possible.

11:31

19
20 Focusing on the definition of "abuse" and the
21 definition of "psychological harm" proposed, in my
22 submission is one part of the picture, because what the
23 essence of the Tribunal must do in relation to
24 complaints of abuse is, it notes that:

11:32

25
26 "' Complaints of abuse' means complaints made by:
27 - serving or former members of the Defence Forces to
28 the Defence Forces/Minister for Defence;
29 - current or former civilian employees to the Defence

1 Forces/Minister for Defence; and
2 - current or former Civil Servants to the Defence
3 Forces/Minister for Defence.
4

5 in respect of Abuse suffered by the complainant in the
6 course of his or her training, work and/or career with
7 the Defence Forces, or in the case of Civil Servants
8 and civilian employees, in respect of their
9 interactions with the Defence Forces..."
10

11 And that's the key dominant issue, it's in respect of
12 abuse suffered by the Complainant, and it's quite clear
13 that one can suffer abuse, one can suffer psychological
14 harm from abuse, but that's what's required, and the
15 definition of "psychological harm" is tethered to the 11:33
16 abuse by which that has been inflicted, whether by one
17 perpetrator or more. And, as it were, it's not in a
18 sense freestanding psychological harm that can be
19 enquired into. There has to be, in the Tribunal's
20 version, a wrongful act which causes it. 11:34
21

22 Now we're suggesting that consistent with the total
23 context here, a complaint of psychological harm is a
24 complaint of abuse, and it's a form of abuse, and it's
25 interesting to note that one of the submissions that 11:34
26 the Tribunal has received, it's from a family member,
27 and I'm not going to read the submission, but at
28 page 96, the bottom of page 95, it's from a family
29 member of a serving member, I don't need to go into the

1 other detail, but a difference of opinion is stated
2 there in the following terms:

3
4 "I also wish to submit that I do not agree with the
5 tribunal's comments upon Psychological Harm and the
6 definition of Psychological Harm, introduced by the
7 Tribunal. Psychological Harm is certainly abuse and
8 certainly does involve a perpetrator or numerous
9 perpetrators and career minded bystanders. I do not
10 agree with nor can I understand how introducing a
11 definition of Psychological Damage and representing it
12 as a definition of Psychological Harm is appropriate or
13 helpful in any way."

14
15 And that's a very useful, as I would submit, 11:35
16 understanding of what is within a complaint of abuse
17 insofar as it relates to psychological harm, because it
18 envisages that which the Oireachtas were clearly
19 intending that the Tribunal would deal with, members
20 and former members could come, and are coming, and have 11:36
21 come to your Tribunal to say that 'I have been abused',
22 and some of them are saying, and this is where the
23 difference in the definition of "abuse" becomes less
24 relevant, because the definition says:

25
26 "Discrimination, bullying, harassment, physical
27 torture, physical assault, psychological harm, sexual
28 harassment, any form of sexual misconduct including
29 sexual assault, aggravated sexual assault and rape."

1
2 But it speaks of those in two different ways on one
3 view. But the important matter, in my submission, for
4 the Tribunal to bear in mind is that it's concerned
5 with the complaints of abuse. So I as a soldier, or a 11:36
6 former soldier, whatever element of the force, can come
7 and say, 'I suffered abuse which caused me
8 psychological harm. These are the individuals who did
9 this abuse to me', or, 'I suffered discrimination', or
10 'I was raped', or 'I was tortured', and these are all 11:37
11 indicative of the limits and constraint of what is
12 within the remit of the Tribunal, and for these reasons
13 I say that there is no discordance between the apparent
14 different and definitions within the term "abuse"
15 itself when one reads it in the context of complaints 11:37
16 of abuse. You can make a complaint about any of those
17 matters and that is a complaint of abuse.

18
19 Now, we did, in our submissions, say that it could be
20 tethered, as it were, to one of the other forms of 11:37
21 abuse, and to explain how that is, I mean, I would have
22 thought that it's relatively easy to imagine that a
23 complaint of rape also could carry with it a complaint
24 of psychological harm, and indeed assaults and torture.
25 So, all of the elements, other elements of abuse could 11:38
26 also have caused the psychological harm if committed in
27 that way, and with those results alleged to be.

28
29 So it's not -- psychological harm isn't a freestanding

1 form of abuse, it's related to either another form of
2 abuse or the abuse that has caused that psychological
3 harm, if that's the only cause of it.
4

5 Now, I also said it's not freestanding psychological 11:38
6 harm in the sense that one can envisage most unhappy
7 circumstances where members of the Defence Forces, on
8 their duty somewhere, they could be doing their duties
9 and they're presented with some terrible incident where
10 they're perhaps on patrol in a foreign country even and 11:39
11 they come across -- they go around the corner and find
12 a body of mutilated people who they were to be
13 protecting. Undoubtedly that sort of event can cause
14 psychological harm I would think, but it would be a
15 complete misnomer to say that it suffered as a result 11:39
16 of abuse, because there's nothing done by any other
17 member of the Defence Forces, it's not an act committed
18 by a perpetrator who is within the purview of the
19 Defence Forces.

20 11:39
21 So, certainly from the Minister's point of view, on
22 this question of psychological harm, we would differ
23 from the Tribunal in this respect that it has to be
24 more than just a wrongful act, because a wrongful act
25 would give rise to a lot of dispute as to whether or 11:40
26 what a wrongful act is. It has to be an abusive act,
27 an abusive conduct of an individual that causes the
28 psychological harm, if that's caused on its own, as it
29 were.

1
2 The other submission, obviously, in relation to the
3 issue of abuse is that the totality of the text I think
4 allows the Court to employ either one or two of another
5 Latin maxims, it's all ejusdem generis, it's dealing 11:40
6 with the same subject matter, abuse directed to and
7 committed by members of the Defence Forces in relation
8 to one and other or numbers of them, and it doesn't
9 extend to what's been referred to as institutional
10 abuse, systemic violations of health and safety 11:41
11 regulations, or a lack of care, which would make the
12 work of the Tribunal a completely different test
13 indeed.

14
15 Obviously the other Latin maxim noscitur a sociis, 11:41
16 which was referred to in Mr. Justice Hamilton's
17 judgment also, you should know it by its companions,
18 that the subject matter in the definition is all of
19 a piece and the only issue is how was it caused, who
20 caused it, and were the individual's complaints in 11:41
21 relation to it, were they properly addressed under the
22 complaints process? And if not, why not?

23
24 Now, I do just want to refer to one other issue touched
25 on by one of the family members' submissions, and 11:42
26 there's concern obviously at the exclusion or the
27 feared exclusion of families from the work of the
28 Tribunal, and I should say two things which I hope are
29 not contradictory.

1
2 The complaints process was, and is, only open to
3 members of the Force. It can't be invoked by families
4 within the realm of the Defence Act and the Defence
5 Force Regulations. So if a complaint has been made 11:42
6 within it, and it has been dealt with, and there's an
7 admissible complaint before the Tribunal, the Tribunal
8 has to enquire into that. It's a matter then for the
9 Tribunal whether any of the family members have
10 relevant evidence or not. And I'm not excluding, on 11:42
11 behalf of the Minister, here, any possibility that
12 family members could have evidence relevant to an
13 admissible complaint that the Tribunal is inquiring
14 into it. It would be wrong of me to take the position
15 that the Tribunal should ask or decide any issue of 11:43
16 relevance of witnesses at a stage where it hasn't got
17 to that point in time. So I'm not saying any
18 particular evidence is relevant or irrelevant, but it's
19 an important matter for the Tribunal to consider at the
20 appropriate point in time, and it's got, in my 11:43
21 submission, nothing to do with extending the Terms of
22 Reference one way or the other. If it's relevant to
23 something you're examining, you can hear it, and you
24 may have a duty to hear it in the circumstances.

25 11:44
26 Insofar as the definition of "harassment" is concerned,
27 there's nothing improper or irrational in the Tribunal
28 adopting or following the statutory basis for the
29 definition of "harassment". And it does note, just in

1 terms of issues relating to the extension of the
2 Tribunal insofar as ranks and grades are concerned, the
3 Tribunal have said here that -- this is a submission
4 which was made by the parties representing Mr. Lane.
5 It relates to hierarchical relationships. The Tribunal 11:44
6 should, in my submission, only be guided by, not
7 whether a person has a certain grade or not, or there's
8 a hierarchy, but whether it falls within bullying or
9 discrimination, and if it does, it does. If it
10 doesn't, it doesn't. So it's either in or out whether 11:45
11 it represents one or other of those. The grade or the
12 rank may be an issue in whether it did so occur in the
13 circumstances, but it's possible that it could come
14 within that and, again, it's a matter for the Tribunal
15 to assess all of that at the relevant time. 11:45

16
17 Thank you, Judge.

18 SOLE MEMBER: Thank you very much, Mr. McGuinness.
19 Now, the next party on the list is JV Geary Solicitors.

20
21 SUBMISSION BY MR. GEARY:

22
23 MR. GEARY: Yes, Judge. Thank you. If I can be
24 excused from standing, if that's okay?

25 SOLE MEMBER: Of course.

26 MR. GEARY: I represent approximately 50 persons who
27 have made submissions to the Tribunal, many of whom, a
28 significant number, are part of the Defence Forces
29 Justice Alliance.

1 SOLE MEMBER: Can I just ask you, Mr. Geary, to bring
2 the microphone a little bit closer to you and to make
3 sure it's turned on. Thank you.

4 MR. GEARY: Thank you, Judge. I understand that the
5 Tribunal have, and the Judge has received the
6 submissions and will give them all due consideration
7 that is needed, but I do wish to emphasise some salient
8 points from my submissions, and I'll be as brief as
9 possible.

11:46

10 SOLE MEMBER: Thank you.

11:46

11 MR. GEARY: The Defence Forces Justice Alliance are
12 concerned, given the Terms of Reference, along with the
13 definitions set out in the Statutory Instrument
14 304/2024, that there's a divergence from what was in
15 the Defence Forces' complaints system, and this
16 disconnection arises from the introduction of
17 definitions of "abuse" and "complaints of abuse" from
18 the actual Defence Forces' complaints system. And, in
19 particular, I point the Tribunal to the Independent
20 Review Group Defence Forces Recommendations, which
21 included the complaint systems, interpersonal issues,
22 transparency and accountability.

11:46

11:47

23
24 The definitions of "abuse" and "complaints of abuse"
25 complicate matters because they firstly did not exist
26 within the complaints system or processes in the
27 Defence Forces, and secondly, it appears that for a
28 complaint to gain access to the Tribunal's proceedings,
29 the complainants must demonstrate that their

11:47

1 interpersonal issue of complaint falls within the
2 category of abuse or complaints of abuse, and I wish to
3 point out that very few of the members of the Defence
4 Forces Justice Alliance submitted complaints of abuse,
5 they submitted redresses of wrongs, complaints of 11:48
6 inappropriate behaviour and complaint grievances.
7 Those members of the Defence Forces Justice Alliance
8 who did submit complaints view these unique definitions
9 to be unnecessary and a potential vehicle for
10 unjustified exclusion from the Tribunal's proceedings. 11:48

11
12 Bringing to the attention of the Tribunal the relevant
13 paragraphs of that Independent Review Group, paragraphs
14 4.1 and 3.3.10 recommending a statutory inquiry, the
15 term "abuse" does not appear and instead the report 11:48
16 refers to "interpersonal issues".

17 SOLE MEMBER: Mr. Geary, could I just stop you there
18 for a moment. When you say a whole cohort of clients
19 may be excluded because they didn't report abuse, if
20 they used the procedure, say the Chapter 1 or the 11:49
21 Chapter 2 procedure, but the subject matter of what
22 they complained about in using those procedures
23 constituted "abuse" as defined in the Terms of
24 Reference, why would they be excluded?

25 MR. GEARY: well that very well may be the case, Judge. 11:49
26 These are the concerns that my clients are bringing to
27 the attention of the Tribunal and I wish to note it for
28 the record. I do appreciate what you're saying, Judge,
29 but it's important that I do address these with you.

1 SOLE MEMBER: Your clients may feel excluded because of
2 the definition of "abuse"?

3 MR. GEARY: Correct. And I do believe some of them
4 will fall outside the Terms of Reference. So if I may
5 continue?

11:49

6 SOLE MEMBER: Yes, Mr. Geary.

7 MR. GEARY: The term "interpersonal issues" was chosen
8 by the Independent Review Group because it accurately
9 and inclusively encompasses the full range of complaint
10 processes within the Defence Force complaints system.

11:50

11 In contrast, the terminology of "abuse" and "complaints
12 of abuse" as introduced by the Minister and the
13 Department is significantly narrower in scope, the full
14 range of complaint processes within the Defence Force
15 complaints system, and consequently the concern is that
16 it is inherently exclusionary, and that's the concern.

11:50

17
18 The Defence Forces Justice Alliance urges the Tribunal
19 to interpret its Terms of Reference in a way that
20 prevents any such exclusion from taking effect and
21 ensures that the full breadth of complaints within the
22 Defence Force complaints system availed of by the
23 Defence Forces Justice Alliance members qualify for
24 inclusion before the Tribunal. The definition of
25 "abuse" should be expanded to incorporate the terms
26 "interpersonal issues", as used by the Independent
27 Review Group's recommendation for a statutory
28 fact-finding process.

11:50

11:50

1 To move on to the interpretation of the Terms of
2 Reference and, in particular, "psychological harm",
3 which is set out in the Schedule One of the Notice, the
4 Defence Forces Justice Alliance take issue in relation
5 to its definition and, in particular, the use of the 11:51
6 word "mere" in this context. My clients feel there's a
7 troubling degree of insensitivity in this word, and I
8 know my Friend has addressed that earlier this morning,
9 and it suggests a misunderstanding of the subject
10 matter, and my clients raise a legitimate concern about 11:51
11 fairness and impartiality in that regard. In
12 particular, any reasonable observer would find such
13 phrasing to be dismissive, unreasonable, and it does
14 cause alarm to my clients as a group.

15
16 The Defence Forces Justice Alliance further notes its
17 concern regarding the sentence:

18
19 "The other categories of 'abuse' as defined in the
20 Terms of Reference involve some action on the part of a 11:52
21 perpetrator."

22
23 This statement is not only confusing but it also
24 appears to suggest, by implication, that psychological
25 harm does not involve any action by a perpetrator. 11:52
26

27 Such a position is incomprehensible, especially when
28 abuse of power and rank, followed by a systematic
29 failure to properly address complaints and a subsequent

1 cover-up, clearly involves not just one, but multiple
2 perpetrators of psychological harm.

3
4 The Defence Forces Justice Alliance put on record that
5 the initial words of the proposed definition of
6 psychological harm, "A wrongful act which caused a
7 Complainant to suffer harm to the mind..." are
8 inconsistent with earlier suggestions that
9 psychological harm can occur without the involvement of
10 a perpetrator.

11:52

11
12 There are some other matters relevant to the Terms of
13 Reference that I'm instructed to bring to the attention
14 of the Tribunal, and that is that the definitions
15 outlined in the Statutory Instrument 304/2024 are
16 disconnected from the Defence Forces' complaint system,
17 and by that I addressed earlier the phrases and
18 definitions of "abuse". This disconnection stems from
19 the use of the definition of "abuse" that did not exist
20 at any point between 1983 and 2004.

11:53

11:53

21
22 There's also a difficulty to comprehend for my clients
23 how this disconnection from the Independent Review
24 Group's stated objectives for a statutory fact-finding
25 process is -- it's a concern that there is a disconnect
26 there, and my clients request the Tribunal to provide
27 an interpretation, if possible, as to how the Terms of
28 Reference and definitions contained in SI No. 304/2024
29 can be understood in a manner consistent with the

11:54

1 Independent Review Group's objectives for the statutory
2 fact-finding process as set out in the paragraphs
3 identified in the submission.

4
5 The Defence Forces Justice Alliance are deeply 11:54
6 concerned and troubled that the Terms of Reference
7 outlined in the Statutory Instrument were developed in
8 such a manner to exclude the following category of
9 persons from the investigatory process, including the
10 making of submissions, rather than facilitating their 11:55
11 inclusion.

12
13 And notwithstanding what my Friend from the Chief State
14 Solicitor's Office has said, these include serving
15 members of the Defence Forces, retired members of the 11:55
16 Defence Forces, and in particular, referring to what my
17 Friend said earlier, affected family members of serving
18 Defence Force members, affected family members of
19 retired members of the Defence Forces, and affected
20 family members of deceased members of the Defence 11:55
21 Forces, and affected families of deceased civilian
22 employees of the Defence Forces.

23
24 The Defence Forces Justice Alliance are troubled and
25 concerned that the Terms of Reference were developed in 11:55
26 such a manner that they are and will continue to cause
27 further psychological harm and trauma to victims of
28 abuse and that they were developed inappropriately that
29 they reflect a complete disregard for whether the

1 interpersonal issues contained in submitted complaints
2 are credible or substantiated and/or developed in a way
3 that they are fundamentally flawed.

4
5 The SI 391 sets out the complaint processes as the 11:56
6 overarching definition. The Defence Forces Justice
7 Alliance wish to point out to the Tribunal, as I'm sure
8 it is well aware, that the Independent Review Group
9 explicitly recommended the establishment of a statutory
10 fact-finding process to identify systematic failures, 11:56
11 if any, in the complaints systems within the Defence
12 Forces.

13
14 This highlights a significant distinction between an
15 investigation of processes and an investigation of a 11:56
16 system. While "processes" refer to the specific tasks,
17 steps, and procedures within a workflow, a "system"
18 encompasses these processes along with the broader
19 structure, interactions and governance that work
20 together to achieve overarching objectives. 11:57

21
22 The Defence Forces Justice Alliance requests the
23 Tribunal to provide an interpretation, if possible, of
24 complaints processes which is broadened to include the
25 ordinary and natural meaning of the words "complaints 11:57
26 system".

27
28 The Statutory Instrument refers to "Complaints
29 Processes", as I've said, but it also extends wording

1 which sets out "includes but is not limited to" and
2 this sets out a situation where there may be unlisted
3 complaints systems or processes that can be considered
4 as part of this list, and the Defence Forces Justice
5 Alliance would welcome a clarification in relation to 11:57
6 what this may extend to.

7
8 In conclusion, Judge, the Defence Forces Justice
9 Alliance is disappointed that despite decades of
10 tireless efforts to expose systematic institutional 11:58
11 wrongdoing within the Department of Defence and the
12 Defence Forces, that the Terms of Reference are not
13 covering the full extent of where they would like them
14 to be and where they ought to be. Given the
15 restrictive and exclusionary nature of the Terms of 11:58
16 Reference, which I understand, Judge, the Tribunal is
17 very limited in, in fact its hands are tethered to a
18 large extent, and that has been touched upon by the
19 Senior Counsel for the Tribunal earlier, but my clients
20 fear that the Tribunal may ultimately fall short, and 11:58
21 I'm certainly not trying to prejudge what might happen
22 in the Tribunal, but this is a concern that I've been
23 asked to relay to the Tribunal in relation to the
24 pursuit of the degree of truth that they deem is
25 necessary, and I know that is a goal of the Tribunal. 11:59
26

27 As a result, there is a serious risk by a large number
28 of my clients that the Tribunal will not sufficiently
29 serve the public interest and may instead represent a

1 further misuse of public resources and funds unless
2 certain changes in the interpretations are accommodated
3 and included.

4
5 And I'll close the submission with a quotation from the 11:59
6 current Taoiseach, who signed SI 304, following the
7 publication of the Farrelly Commission recently, as
8 April 2025, Micheál Martin, Taoiseach stated:

9
10 "The State needs to fundamentally reflect on the costly 12:00
11 and lengthy commissions of inquiry which come up with
12 deeply unsatisfactory findings."

13
14 That concludes the submission, Judge, in relation to
15 the Defence Forces Justice Alliance Group. 12:00

16 SOLE MEMBER: Thank you very much, Mr. Geary. The next
17 person on the list is Mr. Bradley before Malcomson Law.
18 Before you begin, Mr. Bradley, can I just say I'm not
19 ignoring the fact that your hand is raised, but we have
20 to have order in the proceedings.

21 MR. O'BRIEN: I just have a response for the Minister
22 in response to that chap there, because I was on the
23 ground.

24 SOLE MEMBER: Yes. We're going to follow -- we have to
25 have some order in the proceedings and we're going to 12:00
26 follow the format as notified to all parties, okay.

27 Thank you. Mr. Bradley.

28 MR. GEARY: Sorry, Judge, I need to come in there. I
29 have two further groups that they're actually listed on

1 the agenda, and that is -- the next group that I
2 represent is the Whistleblowers Protected Disclosure
3 Group.

4 SOLE MEMBER: I'm sorry, Mr. Geary.

5 MR. GEARY: You'll be pleased, Judge, that this 12:01
6 submission is rather short and it will only take up a
7 few moments of the Tribunal's time, but it deals
8 largely with the interpretation of "abuse", and the
9 Whistleblowers Group believe that the use of the word
10 "abuse" as defined in the Terms of Reference is 12:01
11 unsuitable and unhelpful for the Tribunal's search for
12 the truth.

13
14 It is submitted that the inappropriate definition of
15 the term "abuse" is a hindrance to the Tribunal, and 12:01
16 that is following on from what I had said earlier with
17 the other group, that nowhere in the complaints
18 processes in the Defence Forces is the word "abuse" or
19 "complaints of abuse" part of the listed complaints
20 process. 12:01

21
22 The use of the word "abuse" is a misdirection, that may
23 unfortunately be deliberate, and the Tribunal is urged
24 to reconsider the narrow definition set out in the
25 terms of its reference. 12:02

26
27 In relation to paragraph 6 of the Tribunal's Terms of
28 Reference, it states:
29

1 "The Tribunal's interpretation of the Terms of
2 Reference may be expanded or revised in the light of
3 other facts or circumstances which may emerge during
4 the course of its inquiry."
5

6 And the Tribunal is well aware of this role that it can
7 play in terms of expanding or revising.
8

9 The whistleblowers Group respectfully requests the
10 Tribunal to expand and/or revise the Tribunal's
11 interpretation of its Terms of Reference in light of
12 the facts, circumstances and complaints that members of
13 the whistleblowers Group are trying to bring to the
14 State's attention and more especially this Tribunal's
15 attention.

12:02

16
17 The public deserve to know whistleblower Group members'
18 complaints and that natural justice and fair procedures
19 apply and not in any restricted way.
20

21 The group are concerned about Part 2 of the Protected
22 Disclosures Act 2014, which sets out what relevant
23 wrongdoings amount to. There's a list of eight
24 subcategories in the Act, and it's comprehensive, and
25 allows for the reporting of wrongdoings in a broad
26 range of matters. However, abuse is not listed as part
27 of the relevant wrongdoings in the Protected
28 Disclosures Act 2014, and the Group that I represent
29 are concerned in relation to this particular point.

12:03

1
2 This raises the question where did the use of the word
3 "abuse" come from? It is submitted that the Terms of
4 Reference for the Tribunal in their present form should
5 be seen as "relevant wrongdoings for the purpose of the 12:03
6 Act", and that's something that the group would like
7 the Tribunal to take on board.

8
9 It is submitted that members of the whistleblowers
10 Group's right to fair procedures do not exist in this 12:04
11 Tribunal at present because of these unfit and unfair
12 Terms of Reference that this Group believe is in
13 existence.

14
15 That concludes the submission in relation to the 12:04
16 Protected Disclosures Justice Group.

17
18 Finally, there is a relatively short submission on
19 behalf of a cohort of my clients who are the 34th
20 Platoon Army Apprentice School Justice Group, and I 12:04
21 wish to express their concerns regarding the definition
22 of "psychological harm" as outlined in the Tribunal's
23 Notice of Public Sitting scheduled for today, 16th June
24 2025.

25 12:04
26 The definition which appears is not a definition of
27 "psychological harm" but is in fact a definition of
28 "psychological damage". Specifically, it is submitted
29 that the current definition is unjust, incorrect and

1 unfair for the following reasons:

2
3 1. It's a restrictive interpretation and the
4 Tribunal's current definition of "psychological harm"
5 is overly restrictive, limiting recognition of harm to 12:05
6 diagnosable psychological injuries as classified in the
7 Diagnostic and Statistical Manual of Mental Disorders
8 (DMS-5-TR).

9
10 This narrow scope unjustly excludes individuals who may 12:05
11 have endured significant distress, anxiety, or other
12 psychological effects that do not meet the stringent
13 criteria for a diagnosable disorder.

14
15 A second point the Group wish to raise and ask the 12:05
16 Tribunal to consider, is that the -- there is an
17 exclusion of systemic and cumulative harm, and the
18 Tribunal's definition does not account for systemic or
19 cumulative harm wherein repeated lower level instances
20 of mistreatment, intimidation, or harassment may 12:06
21 collectively result in significant psychological harm.

22
23 The Group are particularly concerned at the oversight
24 here that it's particularly relevant in a military
25 context where power dynamics and hierarchical 12:06
26 structures can exacerbate the psychological impact of
27 sustained exposure to toxic conditions.

28
29 By focusing solely on clinically diagnosed conditions,

1 the Tribunal could fail to address the broader, more
2 persuasive effects of persistent mistreatment that may
3 not meet DMS-5-TR criteria, but nonetheless have had a
4 devastating impact on an individual's psychological
5 wellbeing.

12:06

6
7 The third point the Group wish to emphasise to the
8 Tribunal is that there is an unfair burden of
9 diagnostic criteria. I accept what my Friend has said
10 earlier in relation to individuals not having to
11 provide reports on their situation from a mental health
12 perspective, but requiring a DSM-5-TR diagnosis as the
13 threshold for recognition of psychological harm places
14 an unreasonable burden on complainants, particularly
15 those who may not have access to mental health services
16 or those who may have suffered in silence for years
17 without formal diagnosis. This approach
18 disproportionately disadvantages those who have not
19 obtained a clinical diagnosis but have nevertheless
20 endured profound psychological harm.

12:07

12:07

12:07

21
22 In relation to international standards and best
23 practices, the Group wish to bring to the Tribunal's
24 attention not only the categories that are set out in
25 the DSM-5-TR as mental disorders, but that should not
26 be the primary diagnostic standard, where International
27 Classification of Diseases, and reference the 11th
28 Revision (ICD-11) is more commonly applied in clinical
29 practice, and that it would be a more equitable

12:08

1 approach to consider both codes as part of its
2 diagnostic criteria. That can be demonstrated through
3 credible evidence such as witness testimony or
4 behavioural changes.

12:08

6 Two more brief points before concluding, Judge. There
7 is a concern by this Group about the restriction on
8 eligibility to give evidence. This relates to the
9 narrowing the scope of who is considered eligible to
10 give evidence. The Tribunal, they fear, risks
11 perpetrating the same failures that allowed wrongdoing
12 to go unaddressed for decades if this occurs.

12:09

14 Limiting the recognition of psychological harm to those
15 with formal diagnoses not only excludes many who
16 suffered in silence, but also silences voices that
17 deserve to be heard.

12:09

19 Many former members who experienced abuse within the
20 Defence Forces have long been denied justice and
21 recognition. Denying them the opportunity to formally
22 document their experiences now - due to an overly rigid
23 definition and eligibility criteria - continues the
24 disservice and betrayal by the very systems that should
25 protect them.

12:09

27 These individuals are concerned about once again being
28 let down by institutional processes that, historically,
29 enabled abuse to be concealed or ignored.

1
2 In conclusion, and in light of the above issues
3 outlined, it is submitted that a revised definition of
4 "psychological harm" that includes not only clinically
5 recognised disorders but also significant distress or 12:10
6 psychological impact resulting from systemic or
7 cumulative mistreatment ought to be considered by the
8 Tribunal and included.

9
10 This revision aligns with principles of fairness and 12:10
11 inclusivity and ensure that the Tribunal adequately
12 addresses all forms of psychological harm experienced
13 by Defence Forces personnel, irrespective of diagnostic
14 labels.

15 12:10
16 The Tribunal is respectfully urged to reconsider and
17 reinterpret its definition of "psychological harm" and
18 adopt a definition commonly used in this State - one
19 that better reflects the realities of psychological
20 distress and trauma within military environments. 12:10

21
22 Such a definition should ensure that all past and
23 present members of the Defence Forces who suffered
24 psychological harm can gain unrestricted and equitable
25 access to the Tribunal. 12:11

26
27 The 34th Platoon Justice Group wish to formally place
28 on record their belief that the current Terms of
29 Reference fall short to ensure a proper investigation

1 into this psychological harm that they have suffered as
2 a group. As presently framed, the definition prevents
3 a full and truthful account of the psychological harm
4 experienced by the Defence Forces personnel from
5 emerging in these proceedings.

12:11

6
7 And that concludes that submission and all of the
8 submissions on behalf of my clients, Judge. Thank you.
9 SOLE MEMBER: Thank you very much, Mr. Geary. Thank
10 you. Now, Mr. Bradley.

12:11

11
12 SUBMISSION BY MR. BRADLEY:

13
14 MR. BRADLEY: Thank you, Chairperson. May I be excused
15 from standing as well?

12:11

16 SOLE MEMBER: Of course.

17 MR. BRADLEY: Chairperson, I appear on behalf of women
18 of Honour who have been very much instrumental in terms
19 of the issues that resulted in the establishment of
20 this Tribunal.

12:12

21
22 I have listened carefully to the submissions this
23 morning and also perused the contents of the written
24 submissions, and what's very clear is that there is a
25 cacophony of competing obligations that are before you
26 to disentangle in the context of the issues that have
27 been disclosed. And that in itself is regrettable,
28 because all of us, in terms of an inquisitorial
29 process, have an obligation to work to achieve an

12:12

1 investigation report that ascertains the facts that
2 have occurred and makes recommendations for the future.

3
4 And listening to what was said this morning, and
5 particularly Mr. Geary a few moments ago, there appears 12:12
6 to be a degree of disharmony that exists in terms of
7 the extent of the Terms of Reference that have been
8 provided to you. And in the context of that situation
9 I should put on the record that my clients, women of
10 Honour, did not adopt those Terms of Reference and 12:13
11 indeed sought more extensive Terms of Reference, and
12 possibly if those Terms of Reference had been granted
13 by the Oireachtas, some of the difficulties that are
14 here before you today would not be ventilated.

15 12:13
16 Yet, I accept that in terms of the interpretation of
17 the Terms of Reference, we are very much confined
18 within those Terms of Reference. And although the
19 parties who appear before this Tribunal are ad idem in
20 terms of the case law, there appears to be a very 12:13
21 different interpretation in relation to the Terms of
22 Reference themselves. And we're at that point, the
23 early part of a Tribunal process that has been referred
24 to in the decision of Haughey -v- Moriarty, where it
25 may be necessary for a Tribunal to explain any further 12:14
26 interpretation in the light of the facts that have
27 emerged. It's clear from the individual legal
28 representatives here on behalf of complainants that
29 facts that are additional potentially to the Terms of

1 Reference have emerged. That gives a number of
2 possible situations that could occur.

3
4 1. That the Terms of Reference are interpreted in a
5 manner that includes those particular issues;

12:14

6
7 2. The opposite; the Terms of Reference exclude those
8 particular issues.

9 SOLE MEMBER: Could you speak up, Mr. Bradley? Could
10 you maybe move your microphone a little bit closer?

12:14

11 MR. BRADLEY: Sorry, apologies, Chairperson.

12
13 2. That the Terms of Reference exclude those
14 particular issues;

15
16 3. That in the event of (2) occurring, that you have a
17 right under Section 1A(1) of the Tribunals of Inquiry
18 (Evidence) Amendment Act 1998, to seek an amendment to
19 the Terms of Reference.

12:14

20
21 Now, that latter issue is an issue for another day, but
22 I am canvassing the issue on the basis of what is the
23 previous instructions of my clients, Women of Honour.

12:15

24
25 Now confining myself to the issues 1 and 2, and
26 expanding on the already delivered written submissions
27 and refining them to some extent, a number of issues
28 are apparent, which are as follows:

12:15

1 1. In terms of interpretation, if the wording in the
2 Terms of Reference is clear and unambiguous and conveys
3 the meaning intended, then the issues upon which you
4 have requested submissions are covered. If not, then
5 there's a difficulty that materialises in the context
6 of what complainants expect.

12:16

7
8 Abuse is extensively defined within the Terms of
9 Reference and, also, the Tribunal itself has helpfully
10 further assisted in setting out a further
11 interpretation this month, and applying the legal
12 principles, which are well established from various
13 other Tribunals of Inquiry such as Redmond -V- Flood,
14 Desmond -v- Moriarty, O'Brien -v- Moriarty (No. 1 and
15 2), everyone here knows very clearly what are the
16 obligations.

12:16

17
18 If one looks at the Terms of Reference in terms of
19 health and safety related issues, I would submit that
20 many of the issues that are the concern of complainants
21 can be covered within those Terms of Reference. But,
22 unfortunately, it requires an individual analysis
23 associated with each and every individual circumstance
24 which will create a further burden and obligation upon
25 the Tribunal itself.

12:16

12:17

26
27 The Tribunal is concerned with how the Defence Forces
28 responded to complaints of abuse and to investigate
29 whether such complaints were actively deterred. If one

1 looks as an example of a health and safety-type
2 situation, the Lariam scenario. It's clear that Lariam
3 was taken in circumstances where it was provided both
4 within this jurisdiction and abroad when Defence Force
5 personnel were on active service. In some of the 12:17
6 submissions it was indicated that there were certain
7 defences available to the Defence Force - forgive the
8 pun - in the context of statutory obligations imposed.
9 I would say that that's -- the emphasis placed on those
10 defences is incorrect, because those exclusions apply 12:18
11 solely in relation to an adversarial process, not in
12 relation to an inquisitorial process. Your sole remit
13 is to determine as to whether the circumstances that
14 occurred in terms of the prescription and utilisation
15 of Lariam come within the definition of "abuse", and 12:18
16 when one turns to the extensive manner in which you
17 have interpreted the different definitions, one can, in
18 the context of Lariam, say, you have indicated,
19 Chairperson:

20
21 "...violating a person's dignity and creating an
22 intimidating, hostile, degrading, humiliating or
23 offensive environment for the person."

24
25 - adopting the definition in Section 14A(7) of the 12:18
26 Employment Equality Acts.

27
28 And then in paragraph (b):
29

1 "Without prejudice to the generality of paragraph (a),
2 such unwanted conduct may consist of acts..."

3
4 An act is the taking of Lariam. It is the prescription
5 of Lariam preceding the taking of Lariam. And, 12:19
6 accordingly, in the context of the interpretation of
7 the definition of harassment, it is submitted that that
8 health and safety-related issue comes within your Terms
9 of Reference.

10
11 I hate to indicate to you that that type of approach
12 will be required in relation to many health and
13 safety-related issues if you accept that your Terms of
14 Reference have that particular capacity to be
15 interpreted in that manner. 12:19

16
17 And although you haven't heard from the Defence Forces
18 yet, and they're following me, in terms of their
19 submission, I noted that in their written submissions
20 they have referred to the extension sought by the 12:19
21 various groupings as being somewhat irrational. And
22 that worries -- that is of concern, because that
23 particular terminology is unfortunate in the context of
24 the requirements of this Tribunal in terms of getting
25 to the truth and making recommendations for the future. 12:20

26
27 I'm also conscious that the Defence Forces have
28 indicated that what is being sought is an amendment of
29 your Terms of Reference. I'm saying quite the

1 contrary, I'm saying it is an interpretation of your
2 Terms of Reference to permit certain health and
3 safety-related consequences to be investigated.
4

5 In addition, the Defence Forces have referenced 12:20
6 prejudice. Now, prejudice, it would appear on the
7 basis of the submission, is a requirement to reconsider
8 4,000 files. I would submit that that isn't a
9 prejudice, that is a task. That is a task that has
10 materialised arising out of circumstances surrounding 12:21
11 the discovery of information as part of the
12 investigative process that results in a necessity to
13 investigate those matters.
14

15 I'm fortified in terms of the Minister's position, 12:21
16 because the Minister indicates, very clearly, that he
17 is willing to facilitate this Tribunal. I would hope,
18 if my interpretation or submissions in terms of the
19 extent of the Terms of Reference are in any way flawed,
20 that if you require an extension of your Terms of 12:21
21 Reference that that would be equally facilitated by the
22 Minister in terms of the issues at play.
23

24 In conclusion, it is open to the Tribunal to interpret
25 its Terms of Reference to address health and 12:21
26 safety-related concerns. If, for any reason that my
27 submissions are in any way deficient, it is equally
28 open to this Tribunal under Section 1A(1) of the
29 Tribunals of Inquiry (Evidence) Act 1921 to seek an

1 extension in terms of issues which I would term to be
2 of crucial public importance that require to be
3 addressed as part of this Tribunal's investigation,
4 most especially as Mr. Gordon indicated in the content
5 of his submission where the Oireachtas at the outset in 12:22
6 terms of the preamble to your Terms of Reference
7 referenced a duty of care.

8
9 Thank you very much, Chairperson.

10 SOLE MEMBER: Thank you very much, Mr. Bradley. 12:22

11
12 Now, the Chief State Solicitor's Office on behalf of
13 the Defence Forces.

14
15 SUBMISSION BY MR. LEHANE:

16
17 MR. LEHANE: Yes, Judge. As Mr. McCann indicated, my
18 name is Darren Lehane and I'm going to be addressing
19 this issue and Mr. McCann is going to be addressing the
20 second issue or module later on. 12:22

21
22 So, Chair, I want to make ten points, if I may. The
23 first point is just to indicate how the Defence Forces
24 has approached the Terms of Reference issue, and it's
25 just to point out that the manner in which the Defence 12:23
26 Forces has approached the issue is informed by the
27 assurance that was given by the Chief of Staff in full
28 cooperation with the Tribunal and, therefore, when it
29 comes to this issue, the interpretation issue, even

1 though obviously the Defence Forces has been granted
2 representation, full representation on the basis that
3 it is in effect a party before this Tribunal, my
4 submission is somewhat of a neutral submission which is
5 to designed to assist the Tribunal in a hopefully
6 objective way. So that's the first thing I wanted to
7 say.

12:23

8
9 The second point I wanted to make, Chair, was just to
10 reiterate the point that you made at the outset of the
11 hearing this morning, that the Tribunal cannot act
12 outside the law and must operate within the Terms of
13 Reference. And that's a useful lone star that has to
14 be - regard has to be given to at all points during
15 this process, I would say.

12:23

12:24

16
17 The third point I want to make, Chair, and it flows on
18 from some of the submissions that have been made this
19 morning -- sorry, it;s not often I'm accused of not
20 being heard, but in any case, the third point, Chair, I
21 want to make, and it flows on from some of the
22 submissions that have been made this morning, which are
23 very, very interesting in terms of their content on
24 Terms of Reference, but I think it needs to be
25 remembered that there was a dialogue that took place
26 leading up to the establishment of the Inquiry and the
27 adoption of the Terms of Reference by the people's
28 representatives in Dáil and Seanad Éireann and given
29 effect to by the then Minister for Defence in the

12:24

12:24

1 Statutory Instrument, and I think a useful summary of
2 that, Chair, is provided by a comparative study that
3 was carried out by the Attorney General's Office into
4 Parliamentary Inquiries and Tribunals of Inquiry, and
5 it summarises just quickly the phases of consideration 12:25
6 that are undertaken in relation to Draft Terms of
7 Reference. And I'll quote from it, Judge, and you'll
8 appreciate this isn't in the submissions because I'm
9 trying to respond to points that have been made rather
10 than rehashing material that you're well capable of 12:25
11 reading and having regard to yourself, and in fact it's
12 clear that you have had regard to given the nature of
13 the opening statements. The Attorney General's Office
14 said:

15
16 "The procedure adopted by which Terms of Reference are
17 formulated in this jurisdiction..."

18
19 - in at least the five tribunals that were established
20 as of the date they wrote it, are as follows: 12:25

21
22 "1. The initial draft or Heads of Draft Terms of
23 Reference are prepared by the sponsoring government
24 department.

25
26 2. An examination of the proposed Terms of Reference
27 or Heads of Terms of Reference by the Office of the
28 Attorney General.

1 3. Further consideration by the sponsoring department
2 and the office of the Attorney General.

3
4 4. There is consideration of the Terms of Reference by
5 the chief whips.

12:26

6
7 5. In certain cases consultation about the Terms of
8 Reference is undertaken with interested groups that are
9 involved in the issue of public concern which is
10 leading to consideration of the establishment of the
11 inquiry.

12:26

12
13 6. There is further consideration by the sponsoring
14 department and legal clearance by the office of the
15 Attorney General.

12:26

16
17 7. There is a Government decision on the Terms of
18 Reference.

19
20 8. Resolutions containing the Terms of Reference are
21 put to both Houses of the Oireachtas where they may be
22 subject to amendment during the course of debate; and
23

12:26

24 9. Passing of the resolutions containing the Terms of
25 Reference by both Houses of the Oireachtas."

12:27

26
27 So, Chair, I think that's just useful to remind us all
28 that the Terms of Reference which we're operating
29 within today underwent careful consideration across the

1 legal and political, and what I might call public
2 interest sectors, leading to the establishment of this
3 very important Tribunal.

4
5 The fourth point I want to make, Chair, is that it's 12:27
6 well established that a technical or legalistic
7 approach to the interpretation of Terms of Reference
8 could give rise to a view that an inquiry hadn't been
9 made into all relevant matters. And I know that you,
10 like your predecessors in other inquiries, be they 12:27
11 Tribunals of Inquiries or Commissions of Investigation,
12 bear that in mind when formulating or interpreting your
13 Terms of Reference; you operate on the basis that you
14 want to include rather than exclude, and that has been
15 the practice of inquiries to date, and in a sense 12:28
16 that's why we're here a year into the process, because
17 you want to give everybody the opportunity to comment
18 on the submission that has been made to you a year into
19 the process that a further interpretation is required.

20 12:28
21 The fifth point I want to make to you, Chair, is that
22 we're all agreed on what the legal test is, and it's
23 set out in the case law which is summarised in our
24 submissions, and appears in everybody's submissions,
25 which is always heartening to see that you haven't 12:28
26 missed anything.

27
28 The sixth point, and it flows on from the submission
29 that has just been made to you on behalf of the women

1 of Honour Group, flows from the criticism of the use of
2 the word "rationality". Now, I know, Chair, you know
3 that rationality and reasonableness have a particular
4 meaning in the context of administrative law and in the
5 context of inquiries as a whole. But I think it's 12:29
6 important, because this is a public sitting of the
7 Inquiry, to point out that when parties make reference
8 to the rationality or the reasonableness of decisions
9 or actions, that has a particular legal meaning,
10 whereby a court, or somebody advising what a court 12:29
11 might do, will assess the reasonableness or rationality
12 of the decision having regard to a whole swathe of case
13 law. So nobody who is in this room, or listening, or
14 reading, or in the other room, or who will come to read
15 this transcript when it is posted online, should read 12:29
16 anything negative into the use of that word by the
17 Defence Forces or, indeed, I suspect, any other party.
18 Rationality has a particular meaning.

19
20 The next point I want to make is just in terms of the 12:30
21 actual definitions that you're proposing, Judge. The
22 Defence Forces, in the spirit of cooperation, approach
23 it from the point of view that you're an inquisitorial
24 body, not an adversarial body, you're not sitting up
25 there listening to a very interesting discussion 12:30
26 between two different sides in relation to what a
27 particular word might mean and deciding upon it, you
28 and your team have been working very hard over some
29 considerable time on the basis of a certain

1 interpretation, and now you're asking people who have
2 asked you to give further detail what they think about
3 your proposal for further detail. And I have to say to
4 you, Judge, that's why the Defence Forces, when it's
5 looking at it, looks at it and says, 'well, of the 12:30
6 range of potential meanings that could be given to
7 something, does this one fall outside what we regarded
8 as rational or reasonable?' And, again,
9 unsurprisingly, we have formed the view, as set out in
10 our submissions, that they do not. 12:31

11
12 The next point I want to make, and I think it's point
13 8, Judge, is just in terms of the impact of a change at
14 this point.

15
16 Now Mr. Bradley, in his submission, has referred to our
17 comment in the submissions as to prejudice, what we
18 might call. And, again, just for the benefit of those
19 who are listening, or who come to read the transcript,
20 again that has a particular legal meaning and it refers 12:31
21 to what's involved in responding to it.

22
23 Now he says it's a task, and it is a task, but it's a
24 task that would arise at a very late stage in the
25 preliminary investigative stage of the Tribunal, and it 12:31
26 would be remiss of the Defence Forces if we were not to
27 point out some of the practical implications that this
28 change might have. And I think it's important to do it
29 at that point.

1
2 The next point I want to make, Judge, just goes in
3 terms of the mechanism for changing the Terms of
4 Reference. Again, as you said at the outset, you have
5 to operate within the law and you have to operate 12:32
6 within the Terms of Reference. This isn't Humpty
7 Dumpty words mean with whatever you say they mean, the
8 courts have set out, clearly, that they have huge
9 deference that they will afford to a Public Inquiry
10 when it comes to interpret its Terms of Reference, and 12:32
11 they will not lightly interfere with those Terms of
12 Reference. And the reason they do so is that they
13 understand that should the Inquiry be faced with a
14 request to do something that is outside its Terms of
15 Reference, it could be faced with legal challenge. 12:32
16 Many of the cases which the parties have referred to in
17 the submissions, which are helpfully placed online,
18 arise out of disputes about precisely that; whether or
19 not a particular transaction, for example, can be
20 inquired into, having regard to a particular Tribunal's 12:33
21 Terms of Reference.

22
23 So, again, in terms of the Tribunal, if somebody wants
24 to change it, there is a mechanism to do it, and it has
25 been outlined in our written submissions. Reference 12:33
26 has been made to it by Mr. McGuinness on behalf of the
27 Minister, and I don't propose to do it now, but you
28 can't seek to shoehorn an amendment through an
29 interpretation of the Terms of Reference.

1
2 So I suppose, Judge, just to conclude -- or, sorry,
3 Chair, just to conclude, we adopt our written
4 submissions, we welcome the opportunity to comment on
5 the proposed submissions given by other parties, and in 12:33
6 summary our position is: (1) in terms of the proposed
7 definition of the individual terms of abuse, we think
8 you're fully entitled to do that; (2) in terms of the
9 broadening out of the Terms of Reference, again I'm
10 conscious because this isn't a court or an adversarial 12:34
11 process, it's not that you want you to do it, rather
12 it's a suggestion is being made to you that you might
13 consider doing it, and in relation to that our
14 submission would be that to do that would be to effect
15 an amendment to the Terms of Reference via a manner 12:34
16 that is not contemplated by the legislation which
17 provides such a mechanism and shouldn't be done.

18
19 Okay. So, thank you very much, Chair.

20 SOLE MEMBER: Thank you very much, indeed. Thank you. 12:34
21 Now, I'm conscious of time, but I think that we will
22 have time for Mr. Cullen. I think you're next on the
23 list. Do you think you might be in a position to make
24 your submissions.

25 MR. CULLEN: Yes, Judge, and perhaps hopefully 12:34
26 succinctly.

27 SOLE MEMBER: Thank you very much.

28 MR. CULLEN: And I'll try and be as succinct as I can.
29 I don't believe I shall trespass more than perhaps ten

1 minutes on the time of the Tribunal.

2
3 SUBMISSION BY MR. CULLEN:

4
5 MR. CULLEN: Basically I won't repeat what is contained 12:35
6 in the written submissions which are published and
7 which are more or less concerned with what falls
8 outside the Terms of Reference and what maybe not
9 captured by it's sort of theoretical, the theoretical
10 framework proposed. 12:35

11
12 I'd suggest that "abuse" seems to be defined perhaps in
13 terms of some other discrete thing or object, but that
14 it perhaps might be more reasonably, if I might use the
15 Defence Forces' term for a moment borrowed, on analogy 12:35
16 with a variable in a mathematical function, and I say
17 that in that regard the forms of abuse are defined as
18 functions of various acts, such as the Offences Against
19 the Persons Act, the Employment Equality Act, and so
20 forth. 12:36

21
22 But I want to draw attention to perhaps the consequence
23 of an overarching and perhaps more consequential Act
24 which doesn't seem to figure in any of the discourse so
25 far, and that is basically the European Convention of 12:36
26 Human Rights Act, and I say that it amounts to, if you
27 like, a sort of function of a function in this case,
28 and it is of a superior force and it has an ascendancy,
29 I would respect, vis-à-vis the other forms of

1 legislation. And I say that, for example, we know
2 Section 3 of the European Convention of Human Rights
3 Act obliges a body, such as the Tribunal, to act, and
4 thus I would suggest to rule and interpret the term
5 "abuse" in ways which are compatible with Article, for 12:37
6 example, 3, 6 and 13.

7
8 Article 3, as we know, prohibits degrading and
9 humiliating treatment. It prohibits attacks and
10 assaults upon dignity. 12:37

11
12 Article 6, of course, requires fair procedures. That
13 includes a number of characteristics, as we know. For
14 example, equality of arms, an independent adjudicator,
15 and sufficient reasons. 12:37

16
17 And of course then, Article 13 of the European
18 Convention of Human Rights guarantees a right to an
19 effective remedy to complainants and soldiers who
20 invoke the complaints process. 12:37

21
22 So I say that that has an overarching and extremely
23 consequential effect on the working of this Tribunal,
24 and I won't go into the difference between
25 "interpretation" and "action", I think that one could 12:38
26 say that obviously the Tribunal isn't a court, but
27 nonetheless its action is effectively that of ruling
28 and interpreting and so forth. And that it is mandated
29 to comply with those particular rights of complainants

1 in this case. And I say that moreover where an organ
2 of the State, and I know the Defence Forces have
3 referred to perhaps the obligation or the tendency of
4 the courts not to interfere with interpretations of the
5 Tribunal, nonetheless the convention, the Act, the 2003 12:38
6 Act, allows an application to be made to the High Court
7 to declare a non-convention interpretation or Act to be
8 incompatibility with the convention, and I say that
9 that is, of course, open perhaps to any of the
10 complainants here. 12:39

11
12 Now, I say that in relation to the eight persons whom I
13 represent, that they have been -- that they've suffered
14 abuse in different ways, but one of the compounding and
15 exacerbating forms of abuse has been their experience 12:39
16 and subjection to an effective remedy in breach of
17 Article 3, 6 and 13 rights, and that has considerably
18 compounded the sense of injury and the sense of damage
19 and disorientation and so forth, which they have
20 suffered. 12:39

21
22 In respect of their invocation of the complaints
23 process, and I know there's a formal method of --
24 obviously formal means of lodging a complaint, but
25 soldiers, and most of them, about five of the eight 12:40
26 persons seem to have invoked this informal process,
27 which was basically via the personnel support service,
28 which was effectively set up to help individuals who
29 were experiencing considerable trauma, and what was

1 described to me by a person from the personnel support
2 service as "torture" by a particular officer, and I
3 have to say that in the case seven of these persons
4 that they all suffered at the hands of the same
5 officer.

12:40

6
7 Now I say that in the -- where, for example, these
8 persons made complaints, and I know there has been
9 dispute that complaints were made in early Freedom of
10 Information Requests, they claim not to have any record 12:41
11 of the complaints submitted through the complaints
12 system, the personnel support service at all, and then
13 they changed their story a little bit and said; 'well,
14 we have them but we're not handing them over', or there
15 are some sort of other reasons -- actually I don't know 12:41
16 what the reason is that they won't hand them, but we'll
17 come to that later, those complaints, those Freedom of
18 Information and data protection requests are still in
19 train.

12:41

20
21 In addition to that, two of them, for example, when
22 they made complaints, they were subjected to text
23 messages, disturbing telephone text messages, ordering
24 them to withdraw their complaints against the officer.

25
26 So this is something that effectively occurs outside of
27 the complaints system and, therefore, when there's
28 reference to the fact that the discovery, which seems
29 to be a sort of trigger in respect of the investigation

1 of matters, when that is limited to formal complaints
2 that are open and maintained by the Defence Forces, I
3 suggest that these sorts of matters will not feature,
4 they will not be captured by the sort of programme of
5 investigation that appears to be envisaged. And I'm 12:42
6 open to persuasion, and indeed my clients are open to
7 persuasion on that. But the text and calls, the
8 threatening and menacing text and calls, they claimed
9 to emanate from members of the Kinahan gang. Such
10 threats were never transparently investigated by the 12:43
11 Military Police and/or the Defence Forces, so that the
12 complainants were left, and are left, living in fear.

13
14 Another manner in which complaints were forwarded, if
15 you like, or notified to the Defence Forces, was by 12:43
16 means of work-related stress medical certificates given
17 to the Army, and these medical certificates notifying
18 the Army of work-related stress were from their
19 civilian doctors. These doctor's reports --

20 SOLE MEMBER: Mr. Cullen, could I just stop you there. 12:43

21 MR. CULLEN: Yes.

22 SOLE MEMBER: when the Tribunal organised today's
23 hearing it did ask for written submissions and then
24 asked those who wished to speak to those submissions to
25 notify the Tribunal of their intention. 12:44

26 MR. CULLEN: Yes.

27 SOLE MEMBER: I would ask you to confine yourself to
28 the submissions.

29 MR. CULLEN: Yes, I will, but I -- I think I've dealt

1 with that. I'm talking about things that fall inside
2 and outside the Terms of Reference and I'm saying --
3 and I'll bear that in mind, but I will say that the
4 certificates were ignored, they were cancelled, and the
5 complainants were simply marched back in front of the 12:44
6 officer for further reprisal and retaliation.

7
8 Now that's one of the matters that I have raised is the
9 issue of detriment which occurs within the Protected
10 Disclosures Act and doesn't seem to occur as a form of 12:44
11 abuse, but it is a very obvious feature in many
12 instances of what occurs.

13
14 The last matter, apart from the -- I say that when
15 complainants, these complainants were not discouraged 12:45
16 by such sort of what has been called I think a culture
17 of deterrence by such embarrassments as an
18 unsympathetic doctor --

19 SOLE MEMBER: Mr. Cullen, sorry, this is not an
20 occasion upon which to deal with evidence as such -- 12:45

21 MR. CULLEN: I'm coming -- no, with respect, I'm not
22 dealing with evidence.

23 SOLE MEMBER: Please confine yourself to the written
24 submissions.

25 MR. CULLEN: Yes, I'm doing that, and I'm now going to 12:45
26 proceed to deal with -- I'm just pointing out where
27 these matters fall outside the -- apparently outside
28 the Terms of Reference, and I've no notion as to
29 whether in fact the Tribunal will proceed to actually

1 refer and consider those matters in due course. But
2 for the moment it appears that they may and that -- and
3 then we come to the formal complaints, and I say where
4 the formal --

5 MR. LEHANE: Sorry, Chair, I know you ruled, and I 12:45
6 don't need to stand up, but based on what was said
7 there, the speaker is getting into detail on the
8 subject matter of individual complaints. I think we
9 were happy to sit here when we thought we would all
10 ultimately come out and we'd be given a chance to 12:46
11 comment --

12 SOLE MEMBER: I've already raised the matter with
13 Mr. Cullen.

14 MR. CULLEN: Yes. Well, what I can tell you --

15 SOLE MEMBER: I must underscore that you must speak to 12:46
16 your submissions and not --

17 MR. CULLEN: Yes. Yes. Absolutely. Absolutely. And,
18 therefore, I come to a very, very general part of my
19 submissions, which is basically compliance,
20 non-compliance with Article 3, 6 and 13 requirements in 12:46
21 the determination of formal complaints, and I say that
22 there's a lack of any independent adjudicator in those
23 decisions, there's a lack of sufficient adequate
24 reasons, there is a lack of equality of arms, and that
25 the discourse and the kind of explanation is chaotic or 12:46
26 I might say inchoate. So I say that that remains a
27 very considerable matter that not only is abuse
28 suffered but then that they receive this rather facile
29 determination of their complaint where they have not

1 been dissuaded up to that point by the kind of forces
2 that I have described in very schematic form.

3 SOLE MEMBER: You have covered everything.

4 MR. CULLEN: No, I think just finally, I'm just coming
5 to one final point, and that is in relation to 12:47
6 discovery, and it is of assistance to the Tribunal. I
7 say that there is one -- for example, I know you
8 received an undertaking that the individual -- that
9 there would be no detriment applied to any individual,
10 and in the case of six of my clients they've all 12:47
11 retired from the Army because of that pressure. There
12 is, however, one person standing, and he has received
13 notification to turn up today to be --

14 SOLE MEMBER: Mr. Cullen, I really must stop you at
15 this point. We are not going to take submissions in 12:48
16 relation to the evidence of any individual.

17 MR. CULLEN: Yeah. But I would -- I'm sorry, Judge.

18 SOLE MEMBER: I'm asking you to speak to your
19 submissions --

20 MR. CULLEN: I am doing that, Judge. 12:48

21 SOLE MEMBER: I have read your submissions and I --

22 MR. CULLEN: well, no, no, no, Judge, I want to make
23 one --

24 SOLE MEMBER: Please don't speak over me, Mr. Cullen.

25 MR. CULLEN: Oh, sorry. Yes, Judge.

26 SOLE MEMBER: I have read your submissions.

27 MR. CULLEN: Yes.

28 SOLE MEMBER: I don't think there's anything there that
29 you've left out so far in what you have said.

1 MR. CULLEN: There is.

2 SOLE MEMBER: So I've asked you to speak to your
3 submissions and I will not hear your evidence in
4 relation to any particular client.

5 MR. CULLEN: No, it is not --

6 SOLE MEMBER: This is not the occasion upon which to do
7 that.

8 MR. CULLEN: It's not the...

9 SOLE MEMBER: You're always free to write into the
10 Tribunal's solicitor if you wish to elaborate upon a 12:48
11 submission or --

12 MR. CULLEN: Oh, yes, yes. Well, I --

13 SOLE MEMBER: But today is not the opportunity for
14 doing so.

15 MR. CULLEN: Well, I was just hoping -- 12:48

16 SOLE MEMBER: And please bear in mind that there are
17 other people who are waiting to be heard.

18 MR. CULLEN: Yes. I was just hoping that we might get
19 an undertaking that no reprisal would be visited upon
20 this individual. But leave that aside, and I'm 12:48
21 finishing on two points.

22 SOLE MEMBER: Please do. Please do.

23 MR. CULLEN: And that is that in relation to discovery,
24 we respectfully submit that the documents agreed to be
25 discovered by the Defence Forces about complaints, that 12:49
26 where they don't meet those ECHR standards of
27 effectiveness and fair procedures, the Defence Forces
28 should simply, in ease of the Tribunal, put their hands
29 up and admit that they have no documents that are

1 either relevant or material to this Inquiry, and we
2 respectfully submit there's no need for, you know, a
3 large lorry load of papers which are neither here nor
4 there.

5
6 In relation to the second point, at that stage when we
7 have considered whether these characteristics, these
8 necessary characteristics of fair procedures and an
9 effective remedy are exhibited in whatever documents
10 they produce, then we can look at whether in fact abuse 12:49
11 can be established either historically or in a
12 contemporary fashion, notwithstanding the
13 disapplication of the convention rights in their
14 particular cases. So that's the sort of methodological
15 approach that I would suggest. 12:50

16
17 I'm sorry if I have had to disagree with you here and
18 there, Judge, and I'm grateful for your attention.

19 SOLE MEMBER: Thank you very much, Mr. Cullen. Thank
20 you. 12:50

21
22 The next party on the list is Setanta Solicitors.

23 MR. LANDERS: Yes, Chair. If I could just briefly - if
24 I might be the Chair's indulgence to --

25 SOLE MEMBER: Do you think you'll have sufficient time 12:50
26 before one o'clock?

27 MR. LANDERS: I have two very, very brisk points.

28 SOLE MEMBER: Thank you very much.

29 MR. LANDERS: And we will -- I guarantee you we'll all

1 be done.

2 SOLE MEMBER: Thank you.

3
4
5
6 SUBMISSION BY MR. LANDERS:

7
8 MR. LANDERS: Just to assist the Chair in relation to
9 the definition of "abuse", I'm very conscious of what
10 was said this morning and I'm very conscious of the, I 12:50
11 suppose the wrangling that has gone on around the
12 definition, and respectfully I suggest that we're
13 looking at this from a downward view instead of an
14 upward view, and when one reverse engineers the
15 function of the Tribunal and starts at the bottom of 12:51
16 the Statutory Instrument, it requires the Tribunal to
17 report to the Taoiseach and make such findings and
18 recommendations. It's then -- before that it
19 establishes whether the Complaints Processes in the
20 Defence Forces were appropriate, whether they were 12:51
21 followed, to consider outcomes that were made and to
22 examine whether they were actually deterred culturally.
23 So to speak to my Friend's concern that persons who did
24 not have formal complaints would fall outside the
25 ambit, I think that they would be captured by the 12:51
26 deterred culturally point.

27
28 The Tribunal is to investigate instances of
29 retaliation, intimidation and penalisation. Again, I

1 would say they're not required to have activated any
2 formal process.

3
4 In relation to the definition of the complains
5 processes itself, they refer to the military 12:51
6 administration investigations, Sections 114 of the
7 Defence Forces which covers officers and enlisted, it
8 refers to complaints to the Ombudsman, it refers to
9 protected disclosures, it refers to safety and health
10 at work legislation, and in that context, when one sort 12:52
11 of looks from the bottom up and examines the function
12 of the Tribunal, the definition of "abuse" then is very
13 straightforward, because it encapsulates all of those
14 steps, i.e. complaints that have been made formally or
15 informally, and "abuse", the definition of "abuse" is 12:52
16 already drafted extraordinarily wide in that it
17 concerns complaints of harassment. You know, it does
18 not require the other ingredients of the definition to
19 go forward as a complaint, respectfully. That's the
20 first point I would make in relation to assisting the 12:52
21 Chair on the interpretation of "abuse".

22
23 The second point is, this Tribunal is scheduled for
24 three years, and I know that we've had discussions
25 about the prejudice that's been suffered to the 12:53
26 Department by the burden of discovery, but I would -- I
27 want to highlight for the benefit of the Tribunal the
28 delay that is prejudicial for the active serving
29 members and retired serving members. My client is an

1 active serving member. Three years is a long time to
2 wait for this report where, in particular, people have
3 had very serious allegations made against their career
4 and their person. And I think that the, you know, the
5 interpretation of the definition of "abuse" is a matter 12:53
6 for the Chair, and we ought not send it back to the
7 political arena for it to be dissected and criticised.
8 I think if one sits down and examines the Statutory
9 Instrument and the definition that we're working
10 backwards, then the definition as drafted is wide 12:53
11 enough to encapsulate all applicants. Thank you, Chair
12 SOLE MEMBER: Thank you very much indeed. Thank you.
13 Now, we have one more party on the list, but I'm going
14 to pause proceedings now for lunch and we will resume
15 at two o'clock. We'll complete the first module of 12:54
16 today's hearing on the interpretation of the terms and
17 we'll then move on to the second, which is the
18 application for an extension of time. Thank you very
19 much.

20
21 LUNCHEON ADJOURNMENT
22
23
24
25
26
27
28
29

1 THE HEARING RESUMED AFTER THE LUNCHEON ADJOURNMENT AS
2 FOLLOWS:

3
4 SOLE MEMBER: Now, good afternoon everybody. We will
5 resume the first module for today's hearing, and I
6 think the next person on our list is Seán Costello &
7 Company Solicitors. Mr. McGarry.

14:01

8
9 SUBMISSION BY MR. MCGARRY:

10
11 MR. MCGARRY: Thank you, Judge. Judge, I'll be very
12 brief. We have made a submission on behalf of
13 Mr. Lane.

14:01

14 SOLE MEMBER: Could I ask you to speak into the
15 microphone? Sorry, there are people in the overflow
16 room.

14:01

17 MR. MCGARRY: Yes, I appreciate that. Thank you,
18 Judge. We've put in some submissions on behalf of
19 Mr. Lane, and obviously to the extent that anybody is
20 suggesting that the Tribunal can somehow enlarge or
21 expand upon the Terms of Reference, they're just wrong
22 in that regard. The Terms of Reference are set out and
23 the definition of them is set out in the instrument
24 establishing the Tribunal.

14:01

25
26 Obviously the Tribunal is hearing submissions about
27 whether or not its interpretation of some of those
28 individual terms can be somewhat enlarged upon. I
29 think, and as I said I'm not going to repeat what we

1 say in our submissions, we've made some submissions in
2 relation to the definition or the concept of "abuse"
3 and the concept of "harassment".
4

5 The only other additional point I'd like to make is, 14:02
6 and it seems to have been overlooked by some of the
7 submissions that have been made, is the obligation on
8 the Tribunal in (ii) to report as expeditiously as
9 possible, and I just caution that if the Tribunal is to
10 go down the road of looking into further expansions of 14:02
11 the concept of "abuse" along the lines that have been
12 suggested, one is left to wonder as to whether or not
13 that obligation can properly ultimately be complied
14 with to the extent it was intended.
15

16 So those are the submissions that I want to make and
17 we're in the Tribunal's hands in regard to the other
18 matters.

19 SOLE MEMBER: Thank you very much, Mr. McGarry.
20

21 Okay, I think that takes us to the end of today's
22 proceedings in relation to the interpretation of terms.
23 Mr. Gordon.

24 MR. GORDON: Sorry, Judge. With your permission I just
25 want to add one rider to what Mr. McGuinness has said 14:03
26 by way of a very brief response. It's just two
27 minutes, and it's not a criticism of Mr. McGuinness, he
28 needn't worry about that. He's looking at me rather
29 sternly.

1 SOLE MEMBER: Thank you.

2
3 SUBMISSION BY MR. GORDON:

4
5 MR. GORDON: In any event, Mr. McGuinness, in the 14:03
6 course of his fairly robust submissions, indicated that
7 as far as the State is concerned, or rather his client
8 is concerned, the Tribunal shouldn't involve itself in
9 the conducting of a health and safety audit. On that
10 proposition, I agree with him entirely, but I believe 14:03
11 that in saying that, he misses the point. And the
12 point is that within its Terms of Reference, there was
13 no doubt but that the Tribunal can, and must, from time
14 to time, have regard to the provisions of the Health
15 and Safety Acts. Of course it's referred to 14:04
16 specifically in the context of hazardous chemicals, but
17 that's not in the Statutory Instrument. To exclude it
18 from application in relation to the other work of the
19 Tribunal, on the contrary. And, so, what we're saying
20 is that it is for this Tribunal to clarify its Terms of 14:04
21 Reference. We're not proposing new wording, we're not
22 proposing any violation of the language, but we believe
23 that clarification is appropriate, and it's
24 particularly appropriate in the context of the health
25 and safety authorities. 14:04

26
27 we referred you in the course of our submissions, but
28 I'll just refer to it again now, to section 27 of the
29 Health and Safety Act of 2005, and this is in relation

1 to protection against dismissal and penalisation. And
2 it's a given now, I think, that the Health and Safety
3 Acts do apply to members of the Defence Forces:
4

5 "In this section "penalisation" includes any act or
6 omission by an employer or a person acting on behalf of
7 an employer that affects, to his or her detriment, an
8 employee with respect to any term or condition of his
9 or her employment."
10

11 So, any penalisation. So, for instance, to be told,
12 'You won't get to go to wherever on a tour unless you
13 take Lariam', that's an example of penalisation. And
14 in much of the abuse complaints they can be
15 characterised as a form of penalisation, an inability
16 to get promotion, an inability to get transfers. All
17 kinds of things which are ultimately penalties. So
18 abuse frequently, if not nearly always, involves some
19 kind of penalty.
20

21 "Without prejudice to the generality of subsection (1),
22 penalisation includes -
23

- 24 (a) suspension, lay-off or dismissal (including a
25 dismissal within the meaning of the Unfair Dismissals
26 Acts 1977 to 2001), or the threat of suspension,
27 lay-off or dismissal,
28 (b) demotion or loss of opportunity for promotion,
29 (c) transfer of duties, change of location of place of
work, reduction in wages or change in working hours,

14:05

1 (d) imposition of any discipline, reprimand or other
2 penalty (including a financial penalty), and
3 (e) coercion or intimidation. "
4

5 This language is embedded in this Health and Safety 14:06
6 Act. It applies absolutely to everything that happens
7 within the Defence Forces, and clearly it is part of
8 the structure against which this Tribunal must conduct
9 its inquiry. Thank you.

10 SOLE MEMBER: Thank you, Mr. Gordon. 14:07
11

12 Now, I see one gentleman raising his hand. Could you
13 just identify yourself, please, because I don't want to
14 ignore you, you've been raising your hand, but I must
15 tell you that unless you've notified the Tribunal of 14:07
16 your intention to make a submission on foot of written
17 submissions you lodged, it's not an opportunity today.

18 MR. O'BRIEN: I did. When I got the e-mail from the
19 Tribunal's solicitor I said --

20 SOLE MEMBER: You must turn on your microphone if you 14:07
21 wish to speak, but I would ask you to speak.

22 MR. O'BRIEN: When I got the e-mail from the solicitor
23 --

24 SOLE MEMBER: I don't think your microphone is on.

25 MR. O'BRIEN: Oh, hold on. Now, it's on now. When I 14:07
26 got the e-mail from the Tribunal's solicitors - see I
27 was the whistleblower on sexual abuse in the Defence
28 Forces and I did say -- look I'll only stand up and
29 about two minutes to talk. But there's something

1 that's key that everyone has said here have not
2 mentioned --

3 SOLE MEMBER: Excuse me, can you please give me your
4 name?

5 MR. O' BRIEN: Pardon?

6 SOLE MEMBER: Could you please give me your name?

7 MR. O' BRIEN: Anthony O'Brien is my name.

8 SOLE MEMBER: Mr. O'Brien, thank you. Mr. O'Brien, I
9 think you have to respect the fact that these
10 proceedings today are related to two specific matters. 14:07
11 Please contact the Tribunal's solicitor who will be
12 open to whatever correspondence you wish to and we will
13 come back to you.

14 MR. O' BRIEN: I did. I did say it to him.

15 SOLE MEMBER: But unless you have notified the Tribunal 14:08
16 it is not fair to other parties who didn't notify the
17 Tribunal and may wish to speak.

18 MR. O' BRIEN: well all I can say --

19 SOLE MEMBER: I'm afraid I'm not in a position to allow
20 you to address the Tribunal 14:08

21 MR. O' BRIEN: I'll only be saying one sentence.

22 SOLE MEMBER: One sentence. If it's -- no, I'm sorry.
23 Please write in to the Tribunal's solicitor.

24 MR. O' BRIEN: I did say it to the solicitor when we
25 there and he said he'd call me up for an interview. 14:08

26 SOLE MEMBER: That's it now, I've said it. Thank you,
27 Mr. O'Brien. Okay. Thank you very much.

28 MR. O' BRIEN: Yeah. All right. Okay.

29 SOLE MEMBER: Are there any other points to raise?

1 okay. At this stage then we will come to the end of
2 the first module of interpretation that forms part of
3 today's proceedings, and without any waste of time
4 we'll move straight on to the second, and in this
5 regard Mr. Beirne SC for the Tribunal will introduce
6 the matters. Thank you.

14:08

7
8 SUBMISSIONS RE EXTENSION OF TIME

9
10 SUBMISSION BY MR. BEIRNE:

11
12 MR. BEIRNE: Good afternoon. As the Tribunal has set
13 out in its opening statement, the public hearing was
14 scheduled in response to two matters. I'll now address
15 you in relation to the second matter, which is the
16 extension of time within which discovery is to be made.

14:09

17
18 After I address the Tribunal, each of parties that has
19 furnished a submission on this matter and has notified
20 the Tribunal of their intention to address the Tribunal
21 today, they'll be invited to address the Tribunal
22 should they so wish.

14:09

23 SOLE MEMBER: I'm sorry, Mr. Beirne, is your microphone
24 on?

25 MR. BEIRNE: It is, yes. Yeah.

26 SOLE MEMBER: It is. Good. It's just the people next
27 door aren't picking up.

28 MR. BEIRNE: Okay. Now in ease of the process, the
29 running order for hearing of each party was published

1 on the Tribunal's website on 13th June and a copy of
2 that should be before the Tribunal. I'll be followed
3 today by Ms. McGrath for the Minister, Mr. McCann for
4 the Defence Forces, and Mr. Bradley for the Women of
5 Honour.

14:09

6
7 The Tribunal has received submissions from these
8 parties in relation to the matters set forth in the
9 Tribunal's notice and all relevant submissions were
10 published on the Tribunal's website on 6th June.

14:10

11
12 Applications together with submissions were received on
13 behalf of the Defence Forces and on behalf of the
14 Minister seeking extensions of time within which to
15 comply with the respective orders for discovery, and a
16 submission was received from Malcomson Law LLP on
17 behalf of the Women of Honour opposing any applications
18 seeking an extension of time in respect of the
19 Tribunal's orders for discovery.

14:10

20
21 The legal principles applicable to discovery have
22 developed through the case law and are well settled and
23 these are relevance, necessity, and proportionality,
24 and they come from a variety of cases over the years
25 stretching back to the Peruvian Guano case in 1882
26 right up to Ryanair -v- Aer Rianta case, and more
27 recently Tobin -v- Minister for Defence in 2020.

14:10

28
29 The legal principles applicable to an extension of time

1 within which to comply with the terms of an Order for
2 Discovery were set out by Mr. Justice Clarke in the
3 Thema International case back in 2011, and they can be
4 summarised as follows:

14:11

5
6 Firstly, a party who is subject to an Order for
7 Discovery has a basic obligation to comply to the best
8 of its ability with any Order for Discovery made
9 against it.

10
11 Secondly, where the scale of discovery is significant
12 and thus likely to be lengthy and costly, there is an
13 obligation on a party to consider how best it can meet
14 any likely obligation to make discovery in a way which
15 does not unduly delay the trial of the proceedings and 14:11
16 which does not add unnecessarily to the costs likely to
17 be incurred.

18
19 Thirdly, in considering the appropriate length of time
20 which a party should be given to comply with a 14:11
21 discovery obligation, a court should have regard to the
22 need for the case to come to trial with reasonable
23 expedition and to the costs that might have to be
24 incurred by greater expedition and the courts should
25 then strike an appropriate or a proportionate balance 14:11
26 between these factors.

27
28 Now, in striking that balance you might consider that
29 unlike in litigation where there is rarely a specific

1 time requirement put on a court to complete a case, the
2 Terms of Reference have put an express obligation on
3 the Tribunal to endeavour it to complete its work no
4 later than three years from the date of its
5 establishment, and to report to the Taoiseach and make 14:12
6 such findings and recommendations as it sees fit as
7 expeditiously as possible. So time is of the essence
8 for the Tribunal, more so than perhaps for a court.

9
10 Fourthly, where a party unreasonably fails to progress 14:12
11 matters in advance, a court is less likely to be
12 sympathetic to a plea on the part of the party
13 concerned that it would be difficult, unfair,
14 unreasonable or unduly expensive to require that party
15 to comply with its discovery obligations in a very 14:12
16 short period of time.

17
18 The Tribunal determined that in order for it to conduct
19 a rigorous and robust investigation into the complaints
20 processes within the Defence Forces, it is necessary 14:12
21 for it to examine every complaint file that has been
22 created arising from every complaint of abuse or use of
23 hazardous chemicals over the 41-year period of its
24 inquiry.

25 14:13
26 Further, to preserve and protect the data subject
27 rights of those referred to in the complaint files, a
28 robust Redaction Protocol was devised and has been
29 applied by the Defence Forces and by the Minister in

1 delivering discovery to the Tribunal.

2
3 Considering the subject matter of the Tribunal on
4 matters of urgent public importance, the Tribunal
5 considers that the documents falling within the scope 14:13
6 of the Order for Discovery as against the Chief of
7 Staff of the Defence Forces dated 28th January, and
8 within the scope of the order as against the Minister
9 dated 27th January, are relevant, necessary and
10 proportionate in the light of the significant public 14:13
11 importance of the Inquiry.

12
13 I turn now firstly to the application by the Minister
14 for Defence. The Tribunal made an order on 27th
15 January directing the Minister for Defence to make 14:13
16 discovery within 20 weeks on or before today's date,
17 16th June 2025.

18
19 By letter of 22nd May the Chief State Solicitor,
20 Ms. Browne, give notice of the Minister's intention to 14:14
21 seek an extension of time and the time sought is 22
22 weeks from today's date, 16th June, until 17th
23 November.

24
25 To date, the Minister has furnished 16 volumes of 154 14:14
26 complaint files to the Tribunal, which comprises a
27 total of over 162,000 pages. Some files are very bulky
28 and they contain a substantial number of pages.

1 of those 154 complaints files received to date, 21 of
2 those files relate to 16 complainants who provided
3 their consent to the Tribunal to their identity being
4 disclosed to the Tribunal.

14:14

5
6 To date, the Minister for Defence has confirmed that of
7 the consent forms it has received, he does not hold any
8 relevant documents in respect of 36 of those persons
9 and he's furnished the Tribunal with the names of such
10 persons. And that's very welcome.

14:15

11
12 The Minister submits that the following factors
13 necessitate the making of an application seeking an
14 extension of time to make discovery for the Tribunal.

14:15

15
16 Firstly, he says the scale of the task. Secondly, the
17 complexity and breadth of the search and the retrieval
18 process and, finally, the GDPR issues and the redaction
19 of discovery material.

14:15

20
21 The Minister outlines in his submission that the
22 Tribunal is tasked with investigating multiple
23 complaints processes in the Defence Forces that span
24 over four decades, which he submits is a significant
25 period. Further, he submits by way of comparison that
26 the remit of other Tribunals of Inquiries established
27 in the State since the 1980s have focused on specific
28 incidents or more limited timeframes. The Minister
29 submits that only one prior Tribunal of Inquiry has

14:15

1 focused on a period of investigation in respect of a
2 30-year period.

3
4 The Minister submits that the antiquity of the filing
5 and the storage systems used by the Department of
6 Defence in the earlier part of the relevant period of
7 the Inquiry predates the use of electronic technology
8 and together with the loss of corporate knowledge over
9 the years it has provided a significant challenge to
10 the discovery process and has contributed to the time
11 taken in respect of the search and retrieval process.
12

14:16

13 The Minister in his submissions submits that his legal
14 team have carefully deliberated the scale of the task
15 involved in respect of the Order for Discovery and it
16 has assessed that a further period of 22 weeks from the
17 16th June is necessary to complete the delivery of the
18 discovery material.
19

14:16

20 In his submission he provides a table of the proposed
21 delivery of documents, which we have seen, that the
22 Minister would deliver over the period within which the
23 extension of time is being requested.
24

14:16

25 In particular, the proposed timeline for delivery for
26 the remainder of documents anticipates that all files
27 where a Complainant has provided their consent to the
28 Tribunal, would be received by the Tribunal by week 32,
29 that is by 8th September 2025.

14:16

1
2 Again, that clarification is welcome.

3
4 I now turn to the application made by the Defence
5 Forces. The Tribunal made an order on 28th January 14:17
6 2025, directing the Chief of Staff to make discovery
7 within 22 weeks or on or before 2nd July 2025.

8
9 On 9th May, the Chief State Solicitor gave notice of
10 the Defence Forces' intention to seek an extension of 14:17
11 time and in its submission the Defence Forces seeks an
12 extension also of 22 weeks to expire on 30th November.

13
14 The Defence Forces to date have furnished 450 complaint
15 files to the Tribunal, comprising over 20,000 pages, 14:17
16 including blank pages which we estimate are
17 approximately 20% of that number, perhaps 4,000 blank
18 pages. This constitutes 61% of the 742 complaint files
19 in relation to Section 114 of the Defence Act and A7
20 Chapter 1 and A7 Chapter 2 complaints to be discovered 14:17
21 by the Defence Forces. However, it constitutes 23% of
22 the 1,963 total estimated files which would include
23 military police and court martial files.

24
25 Further, the Defence Forces has confirmed it does not 14:18
26 hold any complaint files in respect of complaints made
27 pursuant to Section 114 of the Defence Act 1954, A7
28 Chapter 1 and A7 Chapter 2 in relation to 100 of those
29 persons who provided their consent to the Tribunal to

1 their files being identified.

2
3 The Defence Forces has recently furnished to the
4 Tribunal the names of such 100 persons and this is very
5 helpful to the Tribunal. 14:18

6
7 The Defence Forces in its submission requests an
8 extension of time to 30th November within which to
9 comply with the Tribunal's Order for Discovery dated
10 28th January. However, the submission has failed to 14:18
11 confirm that complete discovery would be made to the
12 Tribunal by that date, but rather it contemplates that
13 a further extension might be sought.

14
15 It appears that all searches in respect of all of the 14:19
16 categories of documents comprised in the Order for
17 Discovery have not yet been carried out and completed
18 and in this regard it seems that a search of Military
19 Police and court martial records remain to be
20 finalised. 14:19

21 22 The Proposed Timeline

23 The Defence Forces has proposed on a without prejudice
24 basis that from the week beginning 16th June until 30th
25 November 2025, it will furnish to the Tribunal 1,620 14:19
26 additional files, an average of approximately 73 files
27 per week.

28
29 Now, in the 18 weeks since 28th January, the date of

1 the order against the Defence Forces, to 3rd June, a
2 total of 320 files were furnished to the Tribunal at an
3 average rate of 17 files per week. Now following a
4 request from the Tribunal to fast track priority files,
5 the Defence Forces has notably increased the rate of 14:19
6 production by furnishing 130 files to the Tribunal
7 since the week beginning the 9th June. That's 130
8 files in the last week.

9
10 It is to be hoped that this increase in rate of 14:20
11 production is as a result of the Defence Forces'
12 additional resources and not due to the proximity of
13 today's hearing.

14
15 The Tribunal will require persuasion that the Defence 14:20
16 Forces will have the sustained ability, commitment and
17 resources to furnish their quantity of files equivalent
18 to 73 per week, should the extension be granted.

19
20 The Tribunal might also ask why, if 130 could be filed 14:20
21 in the last week, could that number be increased --
22 could that number be achievable of 130 a week from now
23 on?

24
25 Helpfully, the Defence Forces has confirmed that it has 14:20
26 provided to date all relevant priority files in those
27 complaint files in respect of complaints made pursuant
28 to Section 114 of the Defence Act, A7 Chapter 1 and
29 Chapter 2, and this should enable the Tribunal to call

1 those complainants for interview.

2
3 I now turn to the submission received from Malcomson
4 Law LLP.

5
6 A submission was received from Malcomson Law LLP on
7 behalf of the women of Honour proposing any application
8 seeking an extension of time within which to comply
9 with the Orders for Discovery made by the Tribunal
10 against the Chief of Staff of the Defence Forces and as 14:21
11 against the Minister. The submission outlined that an
12 extension of time for compliance with the Orders for
13 Discovery could have a significant impact on the
14 Tribunal's ability to complete its work within the
15 three-year period within which it must endeavour to 14:21
16 complete its work.

17
18 Further, women of Honour highlighted that the
19 Tribunal's work during its private investigative phase
20 is heavily dependent on timely discovery of documents 14:21
21 from the Defence Forces and from the Minister.

22
23 The submission outlined that any extension beyond the
24 dates prescribed in the orders could delay interviews
25 with witnesses during the private investigative phase, 14:21
26 which would result in the postponement of public
27 hearings and would therefore compress the remaining
28 timeframe within which the Tribunal is required to
29 complete its work by June of 2027.

1
2 The Women of Honour request that if any extension is
3 granted in respect of the timeframe within which
4 discovery must be complied that there would be a report
5 on the extension of the timeframe within which the 14:22
6 Tribunal must complete its work to reflect any
7 extension of time that may be granted to the Chief of
8 Staff or to the Minister to complete discovery.

9
10 The Women of Honour further submit that the Tribunal 14:22
11 has agreed to accept statements from members of Women
12 of Honour in draft form until such persons have had an
13 opportunity to review documents received through
14 discovery.

15
16 Now, the Tribunal doesn't accept that this is the
17 position. The Tribunal has received statements from
18 Women of Honour in draft form and those statements may
19 be updated as required during the private investigative
20 phase. However, it is not accurate to state, as has 14:22
21 been stated by Women of Honour, that the Tribunal has
22 allowed the Women of Honour's statements to remain in
23 draft form until the complainants have had an
24 opportunity to review the documents subject to
25 discovery provided that the Tribunal's consent form has 14:22
26 been completed by the persons concerned.

27
28 The Women of Honour submit that if any extension of
29 time is granted in respect of the delivery of discovery

1 it will likely have a directly delaying effect on the
2 finalisation of draft witness statements. Any delay in
3 discovery may create a bottleneck in the Tribunal's
4 investigative phase, which in turn may create a
5 knock-on effect in respect of the Tribunal's timeframe 14:23
6 for completion of its work by 20th June 2027.

7
8 The concerns raised by women of Honour are valid. The
9 Tribunal does have a relatively short time to complete
10 its work and the Tribunal is determined to complete its 14:23
11 work within the mandated three-year period.

12
13 On the basis that the Defence Forces and the Minister
14 provide to the Tribunal all priority files by no later
15 than 8th September 2025, as proposed by the Minister, 14:23
16 it appears to us that the extension of time would not
17 have an negative impact on the Tribunal's scheduled
18 progress to the public hearing phase.

19
20 The remainder of the discovery files will be used for 14:23
21 statistical purposes and documentary junior counsel
22 retained by the Tribunal can continue to process and
23 review those files during the public hearing phase of
24 the Inquiry.

25
26 At this stage now I'll hand over to the first party in
27 the running order, Ms. McGrath, who appears on behalf
28 of the Minister for Defence.

29 SOLE MEMBER: Thank you, Mr. Beirne. Ms. McGrath. 14:24

1
2 SUBMISSION BY MS. McGRATH:

3
4 MS. McGRATH: Thank you, Judge. Thank you, Mr. Beirne.

5
6 As Mr. Beirne has outlined, the Minister is
7 respectfully applying for an extension of time of 22
8 weeks, which would take our discovery process up to
9 17th November, and I very much welcome the statement on
10 behalf of the Tribunal that the Tribunal understands 14:24
11 that this may not have a negative impact unduly on the
12 investigative process, but, however, we don't take the
13 application lightly, and I would like to take the
14 opportunity to outline just very, very briefly and
15 speak to the submissions in relation to why we need it 14:24
16 and the bona fide basis upon which this application is
17 made.

18
19 Now, my Friend mentioned the Thema case and the
20 judgment of Mr. Justice Clarke, and in that particular 14:24
21 judgment he took some time to look at the pre-discovery
22 order phase, then what was happening in the Discovery
23 Order phase and then the additional period as required,
24 and I just thought maybe I would divide my submissions
25 into those three types of sections. 14:25
26

27 As the Tribunal knows, and I think the Tribunal is very
28 aware that from the date of establishment in June 2024,
29 there was immediate engagement by the Minister's team

1 in respect of the location of material, if we call it
2 that. And it is our submission that it reflects an
3 immediate and early commitment by the Minister to the
4 assistance of the Tribunal with regard to locating the
5 material it needs to do its task. And this search and 14:25
6 retrieval process was huge. It required significant
7 additional staffing in Newbridge and that happened
8 immediately in June of 2024. And as the Tribunal will
9 know, and we've said in our submissions, this involved
10 a very complex process of going to storage facilities 14:26
11 looking for files over a period of 41 years. Many of
12 these files in cold, hard copy boxes in various states
13 of repair or disrepair, and that continued throughout
14 the summer of 2024. And by October, as we've said in
15 our submissions, hundreds of these files, in fact 14:26
16 thousands of pages of documents were provided to the
17 counsel team for the Minister in Dublin and we started
18 assessing that material, and at that time there were
19 two documentary counsel in fact briefed or engaged by
20 the Minister and that increased around that time, we 14:26
21 briefed four additional counsel. So during that
22 pre-discovery period there were six documentaries
23 working on the material. And, again, as the Tribunal
24 knows, the Minister commenced a process of securing a
25 new discovery platform, a software process that would 14:26
26 in fact make everything easier for everybody and make
27 the material more intelligible and the process more
28 efficient. As you alluded to yourself this morning,
29 Judge, when you were opening the matter, you referenced

1 the extensive engagement on the redaction protocols and
2 that there are two extensive redaction protocols put in
3 place. So all of this was happening in a very robust
4 and clear engagement by the Minister's team on this
5 whole process before the order was made.

14:27

6
7 Now, as you know and as we've said in our submissions,
8 once the order was made, at this stage not only was the
9 searching in old storage facilities ongoing, but at
10 this stage an extensive branch network search had
11 started within the Department of the Defence and again
12 that was a significant exercise by the officials in the
13 Department. The Minister showed a continued commitment
14 in the sense that there were more documentary counsel
15 and we now have 11 in total that came into play early
16 in 2025. I think what is important also and what's
17 emphasised in the judgment of Mr. Justice Clarke, we
18 engaged very early and undertook to participate in a
19 rolling discovery process. It was never -- the
20 Minister was always very clear that it was not a case
21 of holding on to the material until 16th June, that
22 once it was ready to go, that it would go and, again,
23 this was all with a view to assisting the Tribunal in
24 progressing its investigative phase.

14:27

14:27

14:28

25
26 Now, during the period from 27th January to today, my
27 Friend has outlined the discovery that has been
28 conducted by the Minister and as you said at the
29 outset, Judge, it's a significant volume of document

14:28

1 with extensive redactions. I suppose I just want to
2 emphasise that in particular in these sense of the work
3 with regard to redacting personal data has been very
4 challenging, very complex and it plays a major role in
5 relation to what has happened over the last number of
6 months.

14:29

7
8 One of the things I'd like to emphasise, we've
9 emphasised it in our submissions also, is our approach
10 that was immediately taken to what we've been calling
11 the consent files, where persons have provided their
12 name to the Tribunal and are happy for us to give those
13 files. These were immediately prioritised and
14 extensive searches took place in relation of them. And
15 as my Friend has said, 21 of those files, there are
16 more files but I'm saying 21 individuals on that list
17 have had material provided and we also have notified
18 that at the moment 36 of the 139 have no relevant
19 records for the purposes of discovery. And we hope
20 that in the coming weeks this is most certainly
21 speeding up as searches are coming to a close on our
22 end and we hope to be in a position to again, refresh
23 all of these figures for the Tribunal on an ongoing
24 basis, and assuring the Tribunal that this is priority
25 work as far as the Minister's team is concerned.

14:29

14:29

14:29

14:30

26
27 However, notwithstanding everything that has already
28 happened, we are in a position today where, as I said,
29 we are respectfully asking for an additional period of

1 22 weeks. The Minister does not make this application
2 lightly, I should tell the Tribunal, it is something
3 that has been taken very seriously, because he's
4 extremely conscious of the obligations on the Tribunal
5 to endeavour to complete its process in the three-year 14:30
6 period and the requirement to act expeditiously. And
7 also, the Minister is extremely sensitive to the
8 position of the Complainants who are anxious for the
9 investigative process to progress as quickly as
10 possible, and very sensitive to the concerns raised by 14:30
11 the women of Honour. And as my Friend said, and we
12 very much agree, the concerns are valid. And the
13 Minister does not diverge from that position. But the
14 Minister is anxious, at all times, to ensure - and this
15 is in the interest of both the Tribunal, the Minister 14:31
16 and the Complainants - that the Tribunal has all the
17 material that it needs to do its job. When you opened
18 this morning you said that you needed to see every
19 single complaint file over the period of 41 years.
20 That is - and again I'm quoting from the Tribunal's 14:31
21 opening statement - a formidable task. The Minister
22 is, as I say, there's a bona fide engagement with that
23 task. Now, I know in particular there's been some
24 emphasis on the consent material and that in our
25 working schedule, which has been published, we 14:31
26 undertake that that material would be with the Tribunal
27 by the close of the 32nd week, which is 8th September.
28 Now, we fully anticipate that the Tribunal may be
29 anxious to get it in advance of that date and, again,

1 we can assure the Tribunal if it is ready that is
2 certainly the case. We will work to get it done by
3 that date and before if at all possible. And we will
4 certainly keep engaging on a rolling basis with the
5 Tribunal in relation to that.

14:32

6
7 So, it is a way of assurance both to the Tribunal and
8 both to the Complainants and people who have filed
9 submissions that we're focused on the task at hand and
10 that whilst it is unfortunate that additional time is
11 required, in one way it is not surprising given the
12 scale of the task involved, not just locating,
13 uploading, interrogating, redacting, and having a
14 finished product for the Tribunal. And my Friend,
15 again going back to Mr. Justice Clarke's case, whether
16 our ask is proportionate or reasonable, we respectfully
17 submit to the Tribunal that it is so. Thank you.

14:32

18 SOLE MEMBER: Ms. McGrath, just before you sit down,
19 can I ask you; is your client in a position to give the
20 Tribunal some guidance as to the total number of files
21 you anticipate that you will have. 144 I think have
22 been delivered to date, or 145.

14:33

23 MR. BEIRNE: 154.

24 SOLE MEMBER: 154. Are you in a position to say out of
25 how many, approximately?

14:33

26 MS. McGRATH: I would caveat we anticipate that it
27 could be, that figure could represent 30 to 40% of the
28 work that will have to be done ultimately, but I would
29 caveat that heavily with an extensive review for

1 relevancy that it is ongoing and we don't know, I can't
2 definitively say to you to what extent files will fall
3 away in due course over the next couple of months but
4 we would anticipate that it is in or around that
5 representative percentage of the work that needs to be 14:33
6 done.

7 SOLE MEMBER: Thank you, Ms. McGrath. Mr. McCann.

8
9 SUBMISSION BY MR. McCANN:

10 14:34
11 MR. McCANN: I'm told that you can hear me better and I
12 can be heard better by I sitting down, but I'm happy to
13 stand if you'd prefer, Chair.

14 SOLE MEMBER: whatever suits you best, Mr. McCann.

15 MR. McCANN: Chair, first of all, I might say I'm very 14:34
16 grateful for the pragmatic approach of Tribunal Counsel
17 to this application. I just want to acknowledge that.
18 Of course, Chair, I also want to acknowledge that of
19 course it's not welcome for counsel on behalf of the
20 Defence Forces or for the Defence Forces to be having 14:34
21 to make an application for an extension of time. So
22 this is not a happy place for the Defence Forces to
23 find themselves in, in the circumstances.

24
25 So, Chair, we're all agreed that the Tribunal has the 14:34
26 power to make a discovery order. I think that was put
27 beyond doubt in many of the cases which we've heard
28 today and it has, by analogy, it obviously has the
29 power to extend the time within which to make

1 discovery. So this is a jurisdiction you have.

2
3 Mr. Beirne, Tribunal Counsel, raised the case of Thema
4 International Fund -v- HSBC and he outlined a number of
5 the factors which Mr. Justice Clarke in that case 14:35
6 indicated should be taken into account, or might be
7 taken into account, in relation to extensive discovery,
8 over a long period of time. I mean in a commercial
9 case there, but this is similar to a commercial case
10 just given the extent of the work that's going on. And 14:35
11 addressing the factors which Mr. Beirne has outlined,
12 the Tribunal might note that the Defence Forces, as
13 authorised by the relevant Government Departments,
14 sought and obtained such resources as it was advised to
15 obtain, so costs have not been a factor in terms of 14:35
16 resourcing the Defence Forces.

17
18 Secondly, Chair, the Defence Forces, as you know,
19 started conducting searches, I think even before the
20 Tribunal was established, and redaction counsel started 14:36
21 its redaction work, at least on a test basis, in
22 advance of the Notice of Intended Discovery and indeed
23 and clearly in advance of the Discovery Order itself.

24
25 And again, Chair, as regards work being done early and 14:36
26 in advance, redaction counsel were retained and
27 trained, special premises were secured for same
28 redaction counsel. Access was enabled to the Defence
29 Forces' IT system, and all that took place before the

1 Discovery Order was made.

2
3 Chair, I'd just like to address the challenges arising
4 from the Redaction Protocol.

5 14:36
6 Chair, the Redaction Protocol gives rise to a very
7 complicated process, and as we know it must be applied
8 to Categories 1 to 10 and it's not just a question of,
9 as it might be in other redaction processes it's not
10 just a question of blacking out, for example, we saw in 14:37
11 the submissions documents today in relation to the
12 Terms of Reference, we saw there were some blanked out,
13 redacted passages. But, of course, what the Defence
14 Forces must do here is not just simply redact the
15 matter but you must put in a code C or R 14:37
16 (Complainant/Respondent), but then you have to devise
17 and allocate a specific code for the investigating
18 officers, for the mediators, and for the locations. So
19 the counsel carrying out the work have to do that and
20 also that work is dynamic in the sense that if a new 14:37
21 name crops up about a new investigating officer, say in
22 Complaint File 400, well then that has to be noted, it
23 has to join the database of terms and has to be used
24 going forward. And of course you've got to check that,
25 you know, that it's the same person or is it a new 14:38
26 person or is it the same person maybe with their name
27 used differently or with a different and later rank?

28
29 So in my submission, the application of the Redaction

1 Protocol is time consuming, labour intensive and it
2 requires a high level of skill and training, and the
3 redaction counsel have that high level of skill and
4 training.

5
6 Again, I think in our written submissions we set out
7 what the resources that have been put behind this
8 matter by the Chief of Staff, a liaison and
9 coordination office was established, they've employed
10 resources locating, searching, locating, delivering
11 documents, providing physical infrastructure for
12 set-up. And, Chair, the position is that there's some
13 40 members of the Defence Forces working on this on a
14 full-time basis.

15
16 Just to assist then the Chair to better understand the
17 work and the methodology of the Defence Forces, the
18 process has been to carry out physical searches first,
19 that's physical searches of the complaint documents,
20 and then conscious that some complaint documents are
21 missing parts that should be there, there were then
22 carried out e-mail searches and now, I think in respect
23 of just taking the Complaint Files, Chair, there's 189
24 markers missing from the Complaint Files which have
25 been analysed and they are now going to be searched
26 looking by the creation of a universe of documents,
27 which takes every single, as I understand it, every
28 single document on the IT network of the Defence
29 Forces. Every single document that was created and

1 saved at some point is somewhere on the IT network and
2 there's going to be a universe of documents, may be
3 72 million is a figure I have here in front of me,
4 72 million documents or pages and they're going to be
5 searched for the additional markers, Chair. So that 14:40
6 Mr. Beirne is almost entirely right in respect of the
7 extent of the complaint searches, they are complete
8 subject to that additional marker search in the
9 servers. Again, I think we wrote to you, Chair,
10 explaining that there'd been a software hiccup in that 14:40
11 respect, but hopefully that's resolved, and those
12 searches are beginning, in fact today, Judge. And it's
13 expected they will be available and completed and
14 analysed within the next two or three weeks.
15 SOLE MEMBER: Just to interrupt you, you will be in a 14:40
16 position to give a definitive statement to the Tribunal
17 that all searches have been completed? Because, as you
18 said yourself, you started conducting searches even
19 before the Tribunal started.
20 MR. McCANN: Yes. 14:41
21 SOLE MEMBER: We're now a year on and we're still
22 waiting for that definitive --
23 MR. McCANN: Yes.
24 SOLE MEMBER: -- and I appreciate the care and the
25 attention that you're giving it but you say in two to 14:41
26 three weeks you'll be able to say, that's it, searches
27 concluded. Yes?
28 MR. McCANN: That's my understanding, Chair.
29 SOLE MEMBER: Thank you.

1 MR. McCANN: But again it's subject to the IT problem.
2 There has been an IT problem. We believe it's been
3 resolved but I can't make promises -- I don't want to
4 make promises I can't keep.

5 SOLE MEMBER: I appreciate that. 14:41

6 MR. McCANN: I don't want to say something to you I
7 can't stand over. So I'm explaining to you, Chair, as
8 best I can, there's an IT risk, I'm told it's resolved
9 but until I see the product...

10 SOLE MEMBER: Very good. 14:41

11 MR. McCANN: Chair, then, just to complete then what I
12 was saying about the Defence Forces team and the
13 redaction team, it now comprises 32 redaction counsel.
14 So very significant resources have been made available
15 through the good offices of the Department of Defence 14:42
16 and the Department of Public Expenditure. And those
17 redaction counsel - and I'm happy to put this on the
18 record - they work with diligence, thoroughness, many
19 of them working, because I see the WhatsApp messages
20 they exchange, many of them working weekends, including 14:42
21 weekends during breaks. And then just, Chair, to note
22 that of course when you take on redaction counsel,
23 unfortunately it's not like just pressing a switch, the
24 redaction counsel have to be -- first of all you have
25 to ask them will they work the hours that are there to 14:42
26 be worked, you've got to get their agreement to it.
27 You've got to make sure they're not having second
28 thoughts and again some people have second thoughts.
29 So we've had to go round, you know, I think to retain

1 the last set of 16 redaction counsel I think maybe up
2 to 30 counsel were asked whether or not they were
3 willing to take the work. So that's time consuming.
4 The terms of the retainer are time consuming. And then
5 the redaction counsel have to be trained. Trained and 14:43
6 they have to go through quality control.

7
8 Chair, we set out in a letter dated 22nd June 2025, we
9 set out a without prejudice estimate of the number of
10 redacted Complaint Files which will be delivered over a 14:43
11 period of time and we said this back in January, we had
12 450 files and we completed that as promised, Chair.

13 SOLE MEMBER: I would like to ask you a question about
14 that. I don't know whether you would like to continue
15 in your stride or whether I can raise that question 14:43
16 now?

17 MR. McCANN: whatever you like.

18 SOLE MEMBER: I am a little bit concerned to hear that
19 you will give these things on a without prejudice
20 basis. 14:44

21 MR. McCANN: Yes.

22 SOLE MEMBER: will you please explain to the Tribunal
23 what you mean by without prejudice? We heard
24 Ms. McGrath give what she said was effectively an
25 undertaking that the work would be done by the date 14:44
26 requested. If any client knows the importance of
27 complying with an order it must be your client.

28 MR. McCANN: Yes.

29 SOLE MEMBER: So could you please explain what you mean

1 by you'll have these documents on a without prejudice
2 basis?

3 MR. McCANN: Chair, the position is that the redaction
4 counsel are available to the Defence Forces until the
5 end of August 2025. So, at the moment - and given the 14:44
6 state of the correspondence and the terms on which
7 redaction counsel were made available to the Defence
8 Forces - there will have to be a further set of
9 correspondence asking for further resources so that the
10 redaction counsel can work until the end of November. 14:44

11 SOLE MEMBER: That couldn't take very long to write
12 that letter.

13 MR. McCANN: No, that's true.

14 SOLE MEMBER: So...

15 MR. McCANN: But, Chair, just to finish out that point. 14:45
16 I mean, the letter doesn't take long to write but the
17 process of securing the resources, or not, takes a
18 number of weeks.

19 SOLE MEMBER: But an order must be obeyed.

20 MR. McCANN: Yes. Yes. 14:45

21 SOLE MEMBER: And I think your client understands that.

22 MR. McCANN: Absolutely. And that's why, well in
23 advance, well in advance of the expiry of the time,
24 I've come looking for an extension because the Defence
25 Forces want to meet the order. 14:45

26 SOLE MEMBER: The Defence Forces?

27 MR. McCANN: The Defence Forces want to comply with the
28 order. That's why I've come looking for an extension.

29 SOLE MEMBER: The Defence Forces must comply with the

1 order.

2 MR. McCANN: Yes. Chair, I say that estimate of 450
3 redacted files was given and it's been complied with.

4
5 Similarly, the Tribunal sought priority files and you 14:46
6 designated a time period for their -- you designated a
7 time period... [Short pause] So, again, there was a
8 time period specified.

9 SOLE MEMBER: Up to 11th June.

10 MR. McCANN: I think it was 11th June 2025 and the 14:46
11 Defence Forces have met that deadline. I only say
12 these things, Chair, to say that we've been careful to
13 indicate what can be done and try to be reasonably
14 careful to do the same now today.

15 14:46
16 So, Chair, we expect that we'll be able to deliver
17 60 files per week in June and July; it will dip down a
18 little bit during the vacation period, we're saying 50
19 files per week; and it will increase to 70 to 90 files
20 per week in October/November 2025. 14:47

21 SOLE MEMBER: Just on that point, Mr. McCann, in the
22 last week we heard, in the last week alone your client
23 managed to produce 130 files. If it can produce
24 130 files the week before this application is heard,
25 why are we now back to just 70 files or 73 files? 14:47

26 MR. McCANN: well, I think while the resources were
27 entirely devoted to priority files, there had been some
28 backlog so we were just clearing that accumulated
29 backlog.

1 SOLE MEMBER: could you explain what you mean, I don't
2 know what you mean?

3 MR. McCANN: So, there was work ongoing on Complaint
4 Files. So some had gone through a redaction process
5 but it hadn't been completed. So they were parked. 14:47
6 And then during May, almost all of the resources of the
7 redaction counsel were devoted to meeting the priority
8 files deadline and so when that was met there was
9 something of an accumulation of the Complaint Files
10 that's why you got it. 14:48

11 SOLE MEMBER: If all your resources are focused you can
12 deliver 130 files per week?

13 MR. McCANN: No.

14 SOLE MEMBER: I'm just failing to understand how you
15 can do it in the last week but that the same resources, 14:48
16 when applied, couldn't produce 130, or something in the
17 region of 130 files a week.

18 MR. McCANN: But in fact the production of 130 was
19 probably over a number of weeks probably back in April
20 paused and then became available in June when the 14:48
21 priority files were delivered. Because there was
22 essentially no work being done on other files other
23 than the priority files.

24 SOLE MEMBER: But tremendous work was done on being
25 able to produce 130 files a week, if that's the kind 14:49
26 of --

27 MR. McCANN: Yes, but it wasn't just in that week, it
28 was over a period of time, Chair, is what I'm trying to
29 say.

1 SOLE MEMBER: Sure.

2 MR. McCANN: So, Chair, I mean we do hope that there
3 would be an increase in the output and the reason why
4 we believe that the increase in the output is
5 reasonable, is because no time will be spent on

14:49

6 retaining or training -- sorry, no time will be spent
7 on the training of redaction counsel; no further
8 redaction counsel will be sought; of the minimum and
9 maximum hours for redaction counsel have been

10 increased; the internal quality control within the

14:49

11 redaction counsel team will decrease over time as

12 documentary counsel become more experienced. Military

13 police and court martial files do not require to be

14 scanned because they're delivered electronically - the

15 Complaint Files had to be, in large part, scanned - so

14:50

16 that's also some time that is taken out of it.

17
18 Then the position is that the redaction counsel are now

19 in the main experienced and their individual and

20 collective input for redacted files will increase. The

14:50

21 Defence Forces' quality control input into the

22 production of redacted files will also be streamlined.

23 A new software is being made available to the redaction

24 team. Again, there was some concern about Complaint

25 Files being outside of the Terms of Reference and we

14:50

26 hope to apply more rigor to that.

27
28 So, Chair, the position in relation to the three weeks

29 and the completion of the searches, that -- the

1 completion of the server searches will be completed in
2 three weeks. I did have the correct period but of
3 course it's subject to the software function.

4
5 So, Chair, I do expect that the Defence Forces will be 14:51
6 able substantially to meet the deadline. There's a
7 difficulty with the military police files in that I
8 think we expected them to be something like 500 but
9 there might be somewhere near 1,000 police files.
10 That's an unexpected development. 14:51

11
12 And then the big risk, Chair, is that we don't get an
13 extension for the redaction counsel. That's a big
14 risk. I don't have control over that. I mean I, the
15 Defence Forces the don't have control over that. 14:52

16
17 So, Chair, I think there's been, you know, very good,
18 it may not be everything which the Defence Forces had
19 hoped for and it may not be everything that the
20 Tribunal has hoped for, but I think there's been good 14:52
21 progress made in relation to the delivery of files and,
22 in particular, Complaint Files to the Tribunal. I set
23 out a reasonable basis for the Defence Forces' belief
24 that the work output can, and will, increase, and I've
25 indicated some of the concerns and the caveats that 14:52
26 there are, Chair, and in the circumstances, I say that
27 the extension being sought is a reasonable one, Chair.
28 SOLE MEMBER: I didn't hear the last point.
29 MR. McCANN: I said in the circumstances, I'm saying

1 that the extension being sought is a reasonable one,
2 Chair.

3 SOLE MEMBER: If you are to be given an extension of 22
4 weeks, Mr. McCann, with the 22 weeks you've already had
5 that would be 44 weeks, that's just shy of a year,
6 that's eight weeks shy of a year --

14:53

7 MR. McCANN: Yes.

8 SOLE MEMBER: -- and the Tribunal has three years
9 within which to complete its work.

10 MR. McCANN: Yes.

11 SOLE MEMBER: So I'm sure your client understands the
12 urgency that attaches to this.

13 MR. McCANN: Yeah.

14 SOLE MEMBER: And it cannot be a case of, you know, you
15 might have done. That's almost one-third of the time,
16 of course the Tribunal can continue with other work
17 whilst discovery is being received but it really is a
18 matter of public importance and it's an urgent matter.

14:53

19 MR. McCANN: And I completely agree, Chair. I
20 completely agree, Chair.

14:53

21 SOLE MEMBER: And you're finish your submissions?

22 MR. McCANN: And I'm finished my submissions. Thank
23 you very much.

24 SOLE MEMBER: Thank you very much. Mr. Bradley.

14:53

25
26 SUBMISSION BY MR. BRADLEY:

27
28 MR. BRADLEY: Chairperson, Mr. Beirne has carefully
29 synopsised my submission and I don't intend to revisit

1 that particular issue. Yet, I just emphasise that my
2 clients, Women of Honour, oppose the application for an
3 extension on the basis that then hadn't any perception
4 as to what was occurring, and, unfortunately, in
5 relation to the last submission, the perception
6 delivered, I suspect, won't allay their concerns, if
7 anything it will exacerbate those concerns.

14:54

8
9 I would be remiss if I did not remind you as the
10 Tribunal that you are charged by the Oireachtas to
11 undertake an expeditious inquiry, and it's in relation
12 to issues that the Oireachtas have deemed to be of
13 crucial public importance.

14:54

14
15 The submission that you received a few moments ago is
16 lacking in the definity that you ought to have expected
17 in the context of adherence to your order. You made an
18 Order for Discovery, you made an Order for Discovery
19 against a State body and you were told, a number of
20 moments ago, that there will be 60 files available for
21 June and July, but that will rise to 90 files
22 thereafter, yet you were also informed that the
23 necessary funding and resources to be put in place by
24 the State have not been put in place to enable the same
25 to occur in relation to redaction. That is an
26 inconsistent submission delivered on the part of the
27 Defence Forces. It is unacceptable that Complainants
28 are waiting for this matter to be sorted between the
29 State parties to allow you to undertake your work

14:55

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14:55

1 obligations.

2
3 I would further say that it is not just 44 weeks,
4 Chairperson. The Minister has known by the Terms of
5 Reference long before they were enacted by the 14:56
6 Oireachtas because it took a period of time to get on
7 the schedule of business of the Oireachtas. The
8 Minister was part of the process in terms of
9 negotiation and discussion associated with those
10 particular Terms of Reference as set out eloquently by 14:56
11 Mr. Lehane earlier this morning in relation to the
12 other interpretation issue. There is an issue as to
13 whether departments that are subject of investigation
14 should have any role at all in the context of Terms of
15 Reference but that's a separate issue and in other 14:57
16 jurisdictions that wouldn't be permissible, but that's
17 the system that applies in this jurisdiction.

18
19 The situation that presently exists is in accordance
20 with the Thema International decision. But in Thema, 14:57
21 if a party has failed to undertake the two initial
22 steps in terms of discovery - being retrieval,
23 uploading and deduplication - before the Court Order is
24 made, knowing that such an order is required, then when
25 an application is advanced of the nature so advanced in 14:57
26 relation to an extension for discovery, that failure
27 must be taken into account in the context of whether
28 such an extension is so granted, or indeed the terms
29 upon which it is so granted.

1
2 I believe that there are three issues that you need to
3 consider in the context of this application:
4

5 1. Should an extension be granted? Pragmatism in the 14:58
6 context of the unfortunate situation in which we find
7 ourselves may necessitate you adhering to that request;
8

9 2. The duration that should be afforded to both State
10 parties in the context of their performance to date in 14:58
11 terms of delivery of discovery. My clients don't have
12 any visibility on that performance and, indeed, we
13 cannot contribute to indicating what is the appropriate
14 time period; and
15

16 3. The conditions that ought to apply in the context
17 of any extension so granted. I would submit that in
18 the context of the uncertainty that exists in terms of
19 the Defence Forces' capacity to provide discovery in
20 accordance with your order that until that particular 14:58
21 issue is clarified, that it would be deemed by women of
22 Honour to be unfortunate that additional time would be
23 granted as it is inappropriate with such uncertainty
24 does exist.
25

26 Also, there has been huge effort and time undoubtedly
27 undertaken in the context of discovery to date and that
28 is acknowledged, and that is valuable work that will
29 assist the Tribunal in terms of its obligations in

1 relation to its investigation. But the detail that has
2 been provided to you in the submissions is not
3 generally in conformity to what one would expect in
4 relation to a discovery matter. If this was a matter,
5 as you know, before the courts you would have a 14:59
6 grounding affidavit and you would have submissions, and
7 indeed the data that would be provided in the grounding
8 affidavit would be different in format. It wouldn't be
9 files and it would be an indication of how many pages
10 or how many lever arch files, or indeed, how many bytes 15:00
11 of that data. What you have been offered by, in
12 particular, the Defence Forces is a reliable estimate.
13 They hope to have substantially completed the discovery
14 process by 30th November. You haven't been offered a
15 definitive date. When it comes to looking at the 15:00
16 detail in the Minister's submission, you will see for
17 week 21 you're given 15 to 20 consent files, you're not
18 told how many pages, you're not told how long it will
19 take to process it, you're not told how many bytes,
20 you're not told any of the data that ought to have been 15:00
21 made available to you in the context of making a
22 decision as to what time period is appropriate in
23 relation to this application.

24
25 There is an urgency but there is a requirement to 15:00
26 balance that urgency with the effectiveness of your
27 investigation, and for that to occur, the detail must
28 be provided pursuant to your Order for Discovery.
29

1 I can't emphasise any more than what is in the content
2 of the submissions in written format as to the reasons
3 why there's an urgency but I am extremely disappointed
4 and indeed women of Honour will be disappointed, in the
5 context of the manner in which there is a lack of 15:01
6 clarity in the degree of exactitude that should be
7 provided to you in relation to an application for an
8 extension. Thank you very much, Chairperson
9 SOLE MEMBER: Thank you, Mr. Bradley.

10
11 I think that brings our proceedings to an end, the
12 proceedings for today. I want to thank all of the
13 persons present who have made submissions and, indeed,
14 those who have chosen not to address the Tribunal but
15 have filed written submissions on the important matters 15:01
16 of the interpretation of the Tribunal's Terms of
17 Reference and to applications for an extension of time
18 within which to make discovery.

19
20 My thanks to the many people behind the scenes who 15:02
21 contributed to the submissions made and whose efforts
22 enabled the Tribunal to progress today's proceedings
23 with due expedition and efficiency.

24
25 Finally, I want to thank the Tribunal registrar, the 15:02
26 stenographer in attendance and all those who provided
27 administrative, security and IT support to the Tribunal
28 today. All submissions, written and oral, will be
29 considered carefully by the Tribunal and a ruling on

1 these matters will be delivered as promptly as possible
2 and published on the Tribunal website. Thank you very
3 much.

4
5 THE HEARING THEN CONCLUDED

15:02

<p>'abuse' [2] - 29:6, 57:19</p> <p>'Classification' [1] - 32:9</p> <p>'complaints' [1] - 46:26</p> <p>'we're' [1] - 40:6</p> <p>'well' [2] - 83:5, 89:13</p> <p>'you' [1] - 102:12</p> <p>1 [17] - 30:11, 30:19, 37:4, 55:20, 66:3, 72:4, 72:25, 73:1, 73:14, 79:22, 85:6, 102:21, 112:20, 112:28, 114:28, 126:8, 139:5</p> <p>1,000 [1] - 135:9</p> <p>1,620 [1] - 113:25</p> <p>1,963 [1] - 112:22</p> <p>10 [2] - 20:19, 126:8</p> <p>100 [2] - 112:28, 113:4</p> <p>101 [1] - 5:17</p> <p>105 [1] - 5:20</p> <p>11 [1] - 120:15</p> <p>114 [4] - 97:6, 112:19, 112:27, 114:28</p> <p>118 [1] - 5:21</p> <p>11th [3] - 67:27, 132:9, 132:10</p> <p>124 [1] - 5:22</p> <p>13 [4] - 87:6, 87:17, 88:17, 92:20</p> <p>130 [11] - 114:6, 114:7, 114:20, 114:22, 132:23, 132:24, 133:12, 133:16, 133:17, 133:18, 133:25</p> <p>136 [1] - 5:23</p> <p>139 [1] - 121:18</p> <p>13th [2] - 24:2, 106:1</p> <p>144 [1] - 123:21</p> <p>145 [1] - 123:22</p> <p>14A(7) [2] - 30:24, 74:25</p> <p>15 [1] - 140:17</p> <p>154 [4] - 109:25, 110:1, 123:23, 123:24</p> <p>16 [3] - 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