



PUBLIC HEARING ~ 16 JUNE 2025

Opening Statement of Ms Justice Power

Sole Member of the Tribunal

Introduction

Good morning and welcome to this public sitting of the Defence Forces Tribunal.

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

Before proceeding further, I would ask Mr MacCriostail, Tribunal Registrar, to take attendances, please.

Purpose of Today's Hearing

The purpose for which this Tribunal was established is a matter of common knowledge.

Today's public hearing was scheduled in response to two specific matters that have arisen during the course of the private investigative phase of the Tribunal's inquiry.

The **first** concerns how the Tribunal should interpret certain provisions of its Terms of Reference.

The **second** was in response to a request for an extension of the time within which Discovery is to be made of documentation that is relevant to the Tribunal's investigation.

Format of Proceedings

The running order of today's proceedings has been published. Mr McGovern, SC, will address the first issue on the interpretation of terms and, later today, Mr Beirne, SC, will

set out the position in relation to the applications for an extension of time. Thereafter, those who have filed written submissions and who have notified the Tribunal of their wish to be heard with reference thereto, will be invited to address the Tribunal.

This hearing will focus only on the two matters mentioned above and, accordingly, that this is not an occasion upon which to make applications for representation or, indeed, for any other matter.

When addressing the Tribunal, please bear in mind that every submission *received* has been read by the Tribunal. There are several parties here who wish to be heard and, in these circumstances, you might please make your oral submissions as succinctly as possible.

After today's hearing the Tribunal will deliberate on all submissions received and will, in due course, deliver a Ruling on the matters that fall to be determined.

Update on the Work of the Tribunal

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

1. Call for Information

Within days of its establishment, the Tribunal held its first public sitting on 24 June 2024 during which I explained the task of the Tribunal, the various stages of its work and the limits of its jurisdiction in terms of what it may and may not do. On the same day, the Tribunal issued its first Call for Information. Anyone with knowledge or information that could assist the Tribunal with its inquiry was asked to come forward and to do so by 16 August 2024. Once the Tribunal had considered the information received it had intended to invite applications for legal representation.

2. Applications for Legal Representation

However, it soon emerged that individuals and groups who expressed an interest in assisting the Tribunal with its inquiry also expressed considerable concern about doing so in the absence of legal assistance, particularly, given the serious nature of the allegations of abuse which had triggered the deployment (or not) of the complaints processes within the Defence Forces. Whilst it was generally understood that the Tribunal cannot examine whether an allegation of abuse is well-founded, there were concerns that allegations of serious wrongdoing would be made in the context of the Tribunal's inquiry. Arising from such concerns, several bodies requested legal representation in advance of submitting statements to the Tribunal.

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

- The Chief of Staff of the Defence Forces;
- The Minister for Defence;
- Permanent Defence Forces Other Ranks Representative Association ('PDFORRA');
- Women of Honour;
- Defence Forces Justice Alliance;
- The 34th Platoon Army Apprentice School Justice Group;
- The Air Corps Chemical Abuse Survivors Group;
- The Defence Forces Whistle-Blowers' Protected Disclosure Justice Group;
- The Defence Forces Lariam Justice Group;
- The Jadotville Justice Community Group, and
- A group that styled itself as the Victims of the Complaints Processes Group.

3. Grants of Representation

On the 25 July 2024 the Tribunal delivered its Ruling.

With the exception of the Minister for Defence and the Defence Forces, the Tribunal was satisfied that *limited* representation should be granted to all but two of the groups listed above. Such representation was for the purpose of:

- a) assisting group members who have relevant information and who wished to submit statements to the Tribunal;
- b) attending upon any members of the group if called for interview; and
- c) making submissions on behalf of the group's membership.

Anyone granted *limited* representation was advised that applications could be renewed when the Tribunal begins the next phase of its work.

The Tribunal considered that the Defence Forces and the Minister for Defence were in a position that was different to all other parties. To a greater or lesser extent, those parties may be accused of operating and/or overseeing a complaints process that was unfair, of perpetrating a culture that deterred the making of complaints of abuse and of punishing those who did. For that reason, full representation was granted to the Defence Forces and to the Minister for Defence in circumstances where the Tribunal was satisfied that they required such representation.

Parties were reminded that a grant of representation does not confer an automatic entitlement to an order for costs at the completion of the Tribunal's inquiry.

The date for the receipt of statements was extended to the 30th day of September 2024. That date was further extended to 16 December 2024, the Tribunal having earlier issued its Final Call for Information.

The Tribunal's Calls for Information was published, periodically, across nine (9) national newspapers and seven (7) regional newspapers and it was also published on the Tribunal's website.

I should add that the Tribunal was satisfied to grant limited legal representation to several *individuals* who applied, in writing, for same.

4. Meetings with Relevant Stakeholders

The Tribunal's legal team conducted meetings with many interested groups. Arising from feedback received during those meetings, the Tribunal wrote to the Chief of Staff of the Defence Forces in August 2024, requesting that a specific Direction be issued and disseminated down through the chain of command. The requested Direction would

confirm that members of the Defence Forces who wished to engage with the Tribunal were encouraged to do so and that those who chose to engage would be supported and not be penalised by any superior officer for so doing. The Chief of Staff was also asked to disseminate, again through the chain of command, a comprehensive document which the Tribunal had prepared containing answers to frequently asked questions (or FAQs) about the Tribunal. This document was published on the Tribunal's website and circulated to every interested group.

The Chief of Staff responded, positively, and confirmed that the requested Direction and the FAQs had been issued through the chain of command.

5. Discovery

This Tribunal has been tasked with conducting a public inquiry that extends over a period of 41 years, a period during which volumes of documents and files relevant to the work of the Tribunal were, no doubt, created. Mindful of the fact that Orders for extensive discovery would be required, the Tribunal, on the date of its establishment, made Orders for the Preservation of Documents against the Chief of Staff of the Defence Forces and the Minister for Defence.

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

At an early stage, the Tribunal's legal team met with the Tribunal Liaison Officer for the Defence Forces with a view to ascertaining the approximate numbers of relevant complaints that had been filed under the various processes identified in the Terms of Reference and whether the Defence Forces had retained a system for the recording of such complaints. As the Tribunal must endeavour to complete its work within three years, it sought to gauge the volume of documentation relevant to its inquiry with a view to obtaining a plan for the delivery of all complaint files to the Tribunal.

This Tribunal is required to conduct its inquiry against the backdrop of extensive and enhanced data protection and privacy rights under national and EU law. Several

meetings between the Tribunal's legal team and the legal representatives of the Minister and the Defence Forces were held with a view to reconciling the Tribunal's requirements for extensive discovery with GDPR rights and obligations. GDPR considerations required the creation of Protocols designed to respect data protection and privacy rights and obligations whilst ensuring that the Tribunal could examine all relevant documentation necessary to allow it to report, comprehensively, on the urgent matters of public importance as set out in its Terms of Reference. These necessary and detailed Protocols took time to complete.

On the 28th of November 2024, the Tribunal issued Notifications of its Intention to make Orders for Discovery against the Chief of Staff of the Defence Forces and the Minister for Defence and it invited submissions from those who may be affected by the making of the Intended Orders. The terms of the Intended Orders and the relevant Protocols appended thereto were set in the aforesaid Notifications which were published in several national newspapers and on the Tribunal's website.

Having considered all detailed written submissions received, the Tribunal made Orders for Discovery against the Minister for Defence and the Chief of Staff of the Defence Forces on the 27th and the 28th of January 2025 respectively, and, simultaneously, delivered Rulings setting out its rationale in respect of the said Orders.

Since then, the Defence Forces and the Minister have been providing documentation to the Tribunal on an ongoing basis. It contains extensive redaction of personal data in accordance with the aforesaid Protocols.

6. Recruitment and Training of Documentary Counsel

Once Discovery Orders were made, the next challenge for the Tribunal was to recruit and train counsel who would assist it in analysing the large volumes of documentation anticipated by way of discovery.

Recruitment of counsel for this task commenced in 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 straight away and continues to analyse and report on the files under review.

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.

Every statement received 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 of these matters require to be identified and uploaded to the Tribunal's document management system. Follow up queries may have to be made and further lines of inquiry pursued. Matters arising from all statements and correspondence are discussed at weekly (and sometimes daily) team meetings.

8. Trauma Training

Having regard to the serious allegations raised concerning discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment and sexual misconduct within the Defence Forces, the Tribunal considered that it was necessary for the Tribunal and its team to receive some formal training on best practice when engaging with people who have experienced trauma. Workshops on the impact of trauma were scheduled and the Tribunal and its entire team benefitted from important training in this area.

9. Submissions Outside the Terms of Reference

Part of the Tribunal's work involves evaluating submissions that, on their face, are not relevant to its Terms of Reference. Statements submitted may *not* relate to complaints of abuse or complaints of hazardous chemicals, as those terms are defined. Even where abuse, as defined, is alleged, the facts and issues arising may fall outside the temporal and other jurisdictional constraints that are stipulated in the Terms of Reference.

In these circumstances, the Solicitor to the Tribunal writes to the person concerned and explains why the Tribunal has reached a provisional view that the matters in question do not fall within its Terms of Reference. Such persons are afforded an opportunity to provide additional information or to explain why they consider that their complaints do fall within the Tribunal's remit.

The Tribunal appreciates that for some, it may be very difficult and distressing to receive a letter stating the matters raised do not fall within the Tribunal's Terms of Reference. It may have taken great courage for a person to disclose a painful experience of past abuse and to share how he or she was, thereafter, treated. Understandably, such individuals may feel deeply hurt and let down when informed that their statements do not fall within the remit of the Tribunal.

I want to take a moment to acknowledge the pain and suffering which such a letter may cause. I have to reiterate that the Tribunal cannot act outside the law, and that, as a matter of law, it may inquire only into those matters that are specified in the Terms of Reference and that it must do so within the constraints that its provisions prescribe.

10. Interviews

Where a statement or information appears to fall within the Tribunal's Terms of Reference, contact is made with the person concerned. Further details may be required and, where possible, an interview with the person is scheduled, as promptly as possible.

For reasons of time management and to avoid duplication in the interview process, the Tribunal team does not proceed to interview any person who used the available complaints processes without first having sight of the complete complaint file that was created and retained in respect of such a person. To do otherwise would involve interviewing potential witnesses in the absence of complete information and having to recall them after their files are discovered. To expedite the process, however, such individuals have been asked to consent to their particular files being identified and "fast-tracked" to the Tribunal in accordance with the Protocols to the Orders for Discovery.

The Tribunal's legal team has, however, been scheduling interviews with those persons who allege that they were abused as members of the Defence Forces but who did *not*

make a complaint about the abuse at the relevant time. In such cases, a complaint file would not exist. The Tribunal wants to understand the reasons (and there may be many) as to why the available complaints processes for dealing with complaints of abuse were not pursued by such individuals at the relevant time.

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

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

Conclusion

In addition to the legal and investigative work outlined above, several practical and administrative matters have formed an essential part of the Tribunal's work. These include the creation and maintenance of the Tribunal's website, the installation and operation of its document management system and the construction of an E-platform for the Tribunal's review and analysis of all files received by way of Discovery.

The Tribunal is mindful that it has been given a very challenging target of endeavouring to complete its work within three years of the date of its establishment. This investigative phase constitutes a significant and time consuming part of the Tribunal's work and it will continue for some further time. The completion of that work is dependent upon the prompt cooperation of all parties before the Tribunal.

Dated the 16th day of June, 2025.