



RULING OF THE TRIBUNAL ON APPLICATIONS FOR AN EXTENSION OF TIME IN RESPECT OF ORDERS FOR DISCOVERY MADE BY THE TRIBUNAL

Introduction

1. On 13 May 2025, the Tribunal published a Notice of its intention to hold a public hearing on 16 June 2025 ('the Notice'). It invited interested parties to make submissions and, by reference thereto, to address the Tribunal at the hearing, should they wish to do so, in relation to the matters set out in Parts I and II of the Notice.
2. This Ruling is in relation to the matters set out in Part II of the Notice. It concerns applications for an extension of the time within which to comply with the Tribunal's Orders for Discovery made in respect of the Minister for Defence on 27 January 2025, and in respect of the Chief of Staff of the Defence Forces on 28 January 2025.
3. By letter dated 9 May 2025, the Chief State Solicitor, on behalf of the Chief of Staff of the Defence Forces, confirmed that an application seeking an extension of time within which to make discovery, pursuant to the terms of the Tribunal's Order for Discovery dated 28 January 2025, was anticipated by her client.
4. By letter dated 22 May 2025, the Chief State Solicitor, on behalf of the Minister for Defence, wrote to the Solicitor for the Tribunal confirming that it was the intention of the

Minister to seek an extension of time within which to make discovery pursuant to the terms of the Tribunal's Order for Discovery dated 27 January 2025.

5. Under the terms of the Notice, persons who wished to address the Tribunal in respect of the matters set out therein, or any other matter relevant to its Terms of Reference, were invited to do so, in writing, on or before 3 June 2025.

6. On 16 June 2025, the Tribunal held a public hearing ('the public hearing'), and parties were afforded the opportunity to be heard in respect of the applications seeking an extension of time within which to comply with the Tribunal's Orders for Discovery.

Submissions

7. The Tribunal received submissions from three parties in relation to the matters set out in Part II of the Notice. All relevant submissions were published on the Tribunal's website on 6 June 2025 and were considered by the Tribunal. A synopsis of the submissions received, both written and oral, is set out below.

Submission on behalf of the Minister for Defence

8. The period within which the Minister was obliged to comply with the Tribunal's Order for Discovery expired on 16 June 2025, the date of the public hearing. On that date, the Minister sought a further period of twenty-two (22) weeks, that is, until 17 November 2025, to comply with the Tribunal's Order.

9. The Minister submitted that the following factors necessitated the application for an extension:

- (i) the scale of the task;
- (ii) the complexity and breadth of the file search and retrieval process involved;
and
- (iii) GDPR issues and the redaction of discovery material.

10. The Minister submitted that the Tribunal is tasked with investigating multiple complaints processes in the Defence Forces that span over four (4) decades, which, it was said, is a significant period. The point was made that only one previous Tribunal of Inquiry established in the State had focused on a period of investigation in respect of a thirty (30) year period. It was said that the antiquity of the filing and storage systems used by the Department of Defence ('the Department') in the earlier part of the relevant period of the Tribunal's inquiry, predated the use of electronic technology. This, coupled with the natural loss of corporate knowledge over the years, had proved a significant challenge to the discovery process, thus contributing to the time taken in respect of search and retrieval stages.

11. The Minister submitted that his legal team had deliberated, carefully, on the scale of the task involved in complying with the Order for Discovery and had assessed that a further twenty-two (22) weeks from the date of the expiry of the Order would be required in order to complete the delivery of all discovery material. The Minister provided a proposed timeline that would be followed for delivery of documents over that 22-week period, if the extension sought were granted. In particular, the proposed timeline for delivery of the remainder of the relevant documents within the Minister's possession

envisages that all files where complainants had provided their consent to their file being identified, would be furnished to the Tribunal by 8 September 2025.

12. Ms McGrath, SC, on behalf of the Minister, informed the Tribunal that the Minister did not make the application lightly and she outlined the *bona fide* basis for doing so. In her view, the efforts taken by the Minister in the period prior to the Tribunal's Order were consistent with the guidance provided by Mr Justice Clarke in *Thema International Fund PLC v HSBC Institutional Trust Services (Ireland) & Others* [2011] IEHC 496 in terms of the steps that should be taken by a party in the pre-discovery phase. She pointed out that since the establishment of the Tribunal on 20 June 2024, there had been an immediate commitment and engagement by the Minister and his team in locating material that would be necessary for the Tribunal to complete its task. The search and retrieval stages undertaken by the Minister and his team had been a '*huge*' exercise and required significant additional staffing. As of June 2024, the Minister had secured additional staffing in Newbridge and a very complex process of searching through files over a forty-one (41) year period was undertaken.

13. Ms McGrath went on to outline the practical steps involved in the searches carried out on behalf of the Minister. Many files were in cold hard copy boxes kept in storage facilities in varying states of disrepair. By October 2024, hundreds of these files involving thousands of pages of documents had been provided to the Minister's counsel for review and redaction.

14. The Tribunal was informed that, initially, two (2) documentary junior counsel had been retained by the Minister to assist with the discovery process. This number increased to six (6) during the pre-discovery period. As of early 2025, the Minister had retained a total of eleven (11) documentary junior counsel to assist with the discovery

and redaction process. Moreover, he had procured a specialised Discovery platform with a view to facilitating the discovery process.

15. Ms McGrath submitted that the Discovery Protocol ('the Protocol') applicable to the Order for Discovery was challenging and very complex. The implementation of the Protocol had played a major role in the work carried out over the past several months.

16. Ms McGrath emphasised that, in response to the Tribunal, the Minister had prioritised, promptly, the complaint files of those individuals who had provided their consent to their identity being disclosed on files discovered ('priority files'). Extensive searches had been undertaken to source all such files. Ms McGrath submitted that of the one hundred and thirty-nine (139) individuals whose files had been identified by the Tribunal as 'priority files', the files of twenty-one (21) of those individuals had already been delivered to the Tribunal as of the date of the hearing. Additionally, the Tribunal had been informed that the Minister has no records to discover in respect of some thirty-six (36) of the one hundred and thirty-nine (139) individuals whose files were to be prioritised. Ms McGrath assured the Tribunal that searches for such files would speed up and, indeed, that they were coming close to an end.

17. The Tribunal was assured that the Minister is extremely conscious of the Tribunal's obligations to endeavour to complete its work within a three-year period and of its requirement to act, expeditiously. Further, she submitted that the Minister is also sensitive to the position of complainants, including, Women of Honour, who are anxious for the investigative phase of the inquiry to progress as quickly as possible. On behalf of the Minister, she undertook to furnish all relevant priority files to the Tribunal by 8 September 2025. She also confirmed that the Minister would furnish priority documents

in advance of that date, if possible, and that he would continue to provide discovery to the Tribunal on '*a rolling basis*'.

18. The Tribunal inquired as to whether Ms McGrath could confirm the total number of files relevant to the Order for Discovery that are in the Minister's possession. She indicated that the complaint files already provided to the Tribunal represent, approximately, some 30-40% of the total number of relevant complaint files held by the Minister. This was subject to the caveat that a review of documents for their relevance to the Order is ongoing and that, as such, it was not possible to give a definitive number of all relevant complaint files that are held by the Minister at this time.

Submission on behalf of the Chief of Staff of the Defence Forces

19. The period within which the Chief of Staff of the Defence Forces ('the Defence Forces') was obliged to comply with the Tribunal's Order for Discovery is due to expire on 2 July 2025. At the public hearing, the Defence Forces sought an extension of time, from that date, of twenty-two (22) weeks to comply with the Tribunal's Order for Discovery. It anticipates, as '*a reliable estimate*', that it will have '*substantially completed*' the discovery process by 30 November 2025.

20. The submission confirmed that the Chief of Staff of the Defence Forces is fully cognisant of the need for the Tribunal to complete its task as expeditiously as possible and that he has expressed his commitment to assisting the Tribunal in this regard. The Defence Forces Liaison and Co-Ordination Office ('LCO') had engaged, proactively, with the Tribunal in relation to the discovery process in advance of the establishment of the

Tribunal. It had *'devised a plan'*, and had *'sourced a team to search, locate, recover and collate complaint files that fell within the Terms of Reference'*.

21. The Defence Forces submitted that the challenge imposed by the task of making discovery included, the temporal extent of the Terms of Reference, the re-organisation undergone by the Defence Forces over that period and the fact that complaint files were located in different places throughout the State.

22. GDPR obligations, it was said, placed a real burden on the work of the Defence Forces as the rights of current and former members have to be vindicated. The application of the redaction Protocol to complaint files made it necessary to seek and retain additional counsel to carry out the redaction work ('redaction counsel').

23. It was submitted that in mid-November 2024, it became apparent to the Defence Forces that the number of relevant complaint files would be substantially greater than had been initially estimated. Sanction for additional redaction counsel was sought and the total number now retained by the Defence Forces stands at thirty-two (32).

24. Reference was made to the Tribunal's requests for priority to be given to the files of certain individuals who had consented to their identity being disclosed to the Tribunal. Complying with this request, it was said, had absorbed the resources of the LCO and the redaction counsel in devising and effecting new systems of work. It was also said that various personnel training and retention issues had impacted the work-rate of the Defence Forces. For different reasons, it was said, there had been *'some attrition'* in the numbers of redaction counsel with the consequence that some time has been lost in training replacement counsel. IT issues and the functionality of IT resources, including,

the installation of specialist search software, had delayed, from time to time, the work of redaction counsel.

25. In oral submission, Mr McCann, SC, confirmed that work on discovery had started early and that searches for relevant files commenced prior to the establishment of the Tribunal. Redaction counsel were also recruited and trained. Special premises had been secured for the work and, in advance of the Tribunal publishing its Notice of Intended Order for Discovery, redaction counsel had been given access to the Defence Forces IT system.

26. The Tribunal was informed that the redaction Protocol applicable to the Order for Discovery had posed challenges for the redaction counsel. It was said to be '*a complicated process*' applying to documents falling within categories 1 to 10 of the Tribunal's Order. Mr McCann explained that the process involves not only the redaction of personal data but also the insertion of codes for certain persons and locations that are referenced on a complaint file. He submitted that applying the redaction Protocol is time consuming, labour intensive and requires a high level of skill and training.

27. On behalf of his client, Mr McCann also described the work and methodology of the processes carried out by the Defence Forces in the search and retrieval stages of the exercise. A '*universe of documents*' comprising, approximately, 72 million pages had been or will be searched, electronically. The IT difficulties that had been encountered were now resolved but the possibility of further IT problems occurring made it difficult for the Defence Forces to give an unequivocal commitment on the completion of searches.

28. As of the date of the public hearing, the Defence Forces had furnished 450 complaint files to the Tribunal out of an estimated total of some 2,070 files that are

relevant to the Order for Discovery and that are in the possession of the Defence Forces. In terms of priority files, searches concerning section 114 of the Defence Act 1954 files, Administrative Instruction A7 – Chapter 1 files, and Administrative Instruction A7 – Chapter 2 files had been completed, but this was subject to an additional '*marker search*' still having to be carried out on the Defence Forces servers which, Mr McCann expected would be completed '*within the next two to three weeks*'.

29. Reference was made to correspondence in which the Defence Forces had provided what it described as a '*without prejudice*' estimate of the number of complaint files that it intends to furnish to the Tribunal over the extended period of time for compliance with the Order for Discovery, if such extension were granted. The Tribunal inquired as to what the Defence Forces meant by '*a without prejudice*' estimate. Mr McCann replied that the provision of figures on a '*without prejudice*' basis was due to the fact that the figures provided were contingent on the Defence Forces receiving sanction for further funding for redaction counsel beyond August 2025, when such funding is due to expire.

30. Concluding the submission on behalf of his client, Mr McCann indicated that the Defence Forces expects to be able to deliver sixty (60) files per week in June and July 2025. This would dip to fifty (50) files per week during the vacation period and would increase to seventy (70) to ninety (90) files per week during the months of October and November 2025. It was expected that the Defence Forces will '*substantially meet the deadline*' of 30 November 2025 should the Tribunal be minded to grant the extension of time requested. In Mr McCann's submission, the extension of time sought by the Defence Forces was a reasonable one, in all the circumstances.

31. The Tribunal received a submission from Malcomson Law Solicitors, on behalf of Women of Honour, opposing any application seeking an extension of time within which to comply with the Orders for Discovery. The submission contended that an extension of time could have a significant impact on the Tribunal's ability to complete its work within the three-year period. Women of Honour submitted that the Tribunal's work during its private investigative phase was heavily dependent on the timely discovery of documents from the Defence Forces and the Minister for Defence. Any extension beyond the dates prescribed in the Orders for Discovery could delay the interviewing of witnesses during the private investigative phase. This, in turn, would result in the postponement of public hearings and would, therefore, compress the remaining timeframe within which the Tribunal is required to complete its work. Accordingly, if an extension of time for compliance with the Tribunal's Orders for Discovery were granted, then Women of Honour submitted that a proportionate extension of the Tribunal's own time frame for the completion of its work should apply.

32. It was said in the submission received on behalf of Women of Honour that the Tribunal had effectively agreed to accept '*draft statements*' from its members pending an opportunity to review documents received through the discovery process.

33. Women of Honour's written submission concluded that if an extension of time were granted for discovery, it would be likely to delay, directly, the finalisation of draft witness statements. Such delay may create a '*bottleneck*' in the Tribunal's investigative phase which may, in turn, have a knock-on effect in respect of the timeframe for completion of the Tribunal's work.

34. At the public hearing, Mr Bradley, SC, confirmed that his clients were opposing the applications for an extension of time. Women of Honour, it was said, had no insight into the status of discovery and what has been occurring in this regard.

35. Mr Bradley contended that the submission made on behalf of the Defence Forces in support of its application for an extension of time lacked the definitiveness that ought to be expected in respect of such an application. It was unacceptable, in his view, that complainants are waiting for the '*State parties*' to address their resourcing issues which impacts upon the Tribunal in carrying out its work.

36. As to the Minister's submission, Mr Bradley submitted that if granted an extension of time, the Minister's team would have been afforded more than 44-weeks to comply with the Order made. The Minister, he said, has been aware of the scope of the Terms of Reference since prior to the establishment of the Tribunal.

37. Referring to *Thema*, Mr Bradley submitted that if a party has failed to undertake the two initial steps in the pre-discovery phase, namely, the retrieval and uploading/deduplication stages, in the knowledge that such steps would be required, then such a failure may be taken into account when considering whether an extension should be granted to that party or in deciding the terms upon which it might be granted.

38. There were three issues, in Mr Bradley's view, that the Tribunal needs to consider in terms of the applications presented. These are (i) whether an extension should be granted; (ii) the duration of any such extension in the context of the State parties' performance, to date; and (iii) the conditions that ought to apply to any extension of time granted.

39. Mr Bradley conceded that pragmatism may necessitate the granting of an extension of time. He acknowledged that there have been significant efforts undertaken and time spent on discovery furnished, to date, noting that this was valuable work that would assist the Tribunal with its obligations in relation to its investigation. However, he submitted that the detail provided in the submissions made by the applicant parties was not in conformity with what the Tribunal is entitled to expect. The Defence Forces, he said, had offered a '*reliable estimate*' and a '*hope*' to have substantially completed the discovery process by 30 November 2025 but that it had not provided a definitive date for the completion of the discovery process.

40. Mr Bradley submitted that there is an urgency to the discovery but that it must be balanced with the effectiveness of the investigation and for that to occur, the detail must be provided pursuant to the Order for Discovery.

Decision

41. Whilst the foregoing is but a summary of the submissions made by the parties concerned, I have considered, carefully, all points made on behalf of the Minister, the Defence Forces, and Women of Honour in relation to the applications that now fall to be determined.

42. The legal principles applicable to Orders for Discovery have been developed through several notable cases and are well settled. In making an Order for Discovery, three important factors are to be borne in mind, namely, relevance, necessity and proportionality. (See *Compagnie Financière du Pacifique v Peruvian Guano Co.* (1882) 11 QBD 55; *Ryanair p.l.c. v Aer Rianta c.p.t.* [2003] 4 IR 264; *Framus Limited & Ors. v CRH plc.*

& Ors. [2004] 2 IR 20; and *Tobin v The Minister for Defence, Ireland and the Attorney General* [2020] 1 IR 211).

43. The jurisprudence on applications for an extension of time within which to comply with the terms of any Order for Discovery, is somewhat less prolific. Helpful guidance is to be found in the judgment of Clarke J. (as he then was) in *Thema International Fund PLC v HSBC Institutional Trust Services (Ireland) & Ors.* [2012] 3 IR 528; [2011] IEHC 496 (*'Thema'*).

The Four Stages of the Discovery Process

44. In *Thema*, Clarke J. identified four (4) basic stages that are common to any discovery process in *inter partes* litigation. They are, equally, applicable to the discovery process before a Tribunal of Inquiry. These four stages are:

- Retrieving
- Uploading/Deduplication
- Searching
- Reviewing

45. The first stage, retrieval, involves the identification of the '*universe of documents*' which might, conceivably, have some relevance to the litigation in question, or, in this case, the inquiry underway.

46. The second stage of the process involves the uploading, in electronic format, of relevant information so that it can be searched, electronically, and, for hard copy documents, the scanning and uploading, where possible, of such documents—with a view to removing duplicates of documentation.

47. The third stage—the search—involves using key words and the like to enable searches to be carried out through the materials that have been assembled with a view to attempting to narrow down the range of documents that are to be subjected to physical review by trained lawyers.

48. The fourth and final stage of the process involves a review, by trained lawyers, of the documents selected as a result of the search conducted at stage three. The review by lawyers is conducted for the purpose of (i) determining whether those documents identified by the search fall within any of the relevant categories of discovery, (ii) labelling the documents by reference to the category so arising, and (iii) forming some view as to whether there might be a basis for claiming privilege or the like over certain documentation.

The Relevant Factors for Consideration

49. In *Thema*, Mr Justice Clarke identified certain matters which a Court should take into account when considering applications for an extension of time within which to comply with Orders for Discovery.

50. In applying those principles to the instant applications, the starting point is, of course, that both the Minister for Defence and the Chief of Staff of the Defence Forces have

a basic obligation to comply, to the best of their ability, with the Orders for Discovery that have been made by the Tribunal. A Tribunal of Inquiry has all the powers attendant upon the High Court and when it has made an Order, the fundamental principle is that parties who are subject to it, must comply with its terms.

51. Second, where the scale of discovery is significant and likely to be lengthy and costly, there is an obligation on a party to consider how best it can meet its likely obligation in a way that does not delay, unduly, the trial of the proceedings and which does not add, unnecessarily, to the costs likely to be incurred. The requirement to meet the obligation in a way that does not delay the proceedings, may carry an even greater weight when it comes to the Tribunal proceedings, bearing in mind the urgent nature of a public inquiry.

52. Third, in considering the appropriate length of time which a party should be given to comply with its discovery obligation, Clarke, J. indicated that regard should be had to (i) the need for the case to come to trial with reasonable expedition, and (ii) the costs that might be incurred by greater expedition. Bearing both factors in mind, a court should then strike the appropriate or proportionate balance. In striking this balance, the Tribunal observes that, rarely in litigation is there a specific time requirement imposed on a court for completing a case. This Tribunal, on the other hand, has an express obligation to endeavour to complete its work no later than three years from the date of its establishment.

53. Fourth, where a party fails, unreasonably, to progress matters in advance, it may be less likely to find a sympathetic response to a plea that it would be difficult, unfair, unreasonable or unduly expensive to require it to comply with its discovery obligations in a very short period of time.

54. Before turning to the applications before me, it is necessary to underscore the obvious distinctions between adversarial *inter partes* litigation and the investigative functions of a Tribunal of Inquiry whose work is, essentially, inquisitorial. Whereas courts resolve disputes between individual parties and are obliged to do so within a reasonable time, Tribunals are established by the Oireachtas to inquire into matters that are of urgent public importance. To my mind, particular attention must be paid to those twin factors of urgency and public interest when considering applications for an extension of the time for compliance with a Tribunal's Orders for Discovery.

55. Moreover, this Tribunal, unlike parties in litigation, does not have any documentation of its own to examine in pursuit of its mandate conferred by the Terms of Reference. It is, rather completely dependent upon the production of documentation generated by the two parties against whom the Orders of Discovery have been made in order to carry out the task delegated to it by the Houses of the Oireachtas. Put simply, this Tribunal cannot operate without the documentation to be furnished to it by the Minister and the Defence Forces. It is, therefore, of paramount importance that such documentation be furnished to the Tribunal in a timely and efficient manner and there is an obligation upon both the Minister and the Defence Forces to ensure that this is done.

56. The costs to be incurred by a public inquiry are borne by the public exchequer and vigilance must always be exercised in this regard. It was, nevertheless, the public's representatives that established the Tribunal, considering the inquiry to be a matter of urgent public importance. Urgency comes at some cost. That is an important consideration to bear in mind. So too, however, is the fact that the longer it takes a Tribunal to complete its work, the greater is the likelihood of increased costs.

Application on Behalf of the Minister for Defence

57. The Minister for Defence was ordered to make discovery within twenty (20) weeks of the date of the Order, that is, on or before 16 June 2025. By that date the Minister had furnished some one hundred and fifty-four (154) complaint files to the Tribunal comprising over sixteen thousand and two hundred (16,200) pages. This, the Tribunal was told, constitutes, approximately, thirty to forty per cent (30 – 40 %) of the total volume of relevant documentation held by the Minister. The Tribunal notes that an extensive review for relevance is ongoing and that certain files may *'fall away'*.

58. The Minister sought an additional twenty-two (22) weeks to comply with the Tribunal's Order for Discovery. Reviewing the progress made, to date, Ms McGrath indicated that *'the search and retrieval process was huge'*. The search continued throughout the summer of 2024 and by October, thousands of pages of documents were with counsel for assessment. I am satisfied that the first stage, involving the retrieval exercise, appears to have been completed by the Minister for Defence. I am also satisfied that the Minister appears to have, substantially, completed the second stage of uploading and deduplication of the documents in question.

59. As to the 'narrowing' of the vast range of potentially relevant documents by the search for key words and the like, the Tribunal was informed that the Minister had secured a new Discovery platform, a software process that makes the material more intelligible and the discovery process more efficient.

60. Finally, in relation to the review stage, it is clear that the remaining balance of the documentation in the Minister's possession is currently being reviewed by trained lawyers for relevance.

61. Applying the principles articulated by Clarke J. in *Thema*, I am satisfied that the Minister is fully aware of his obligation to comply, to the best of his ability, with the Order for Discovery that has been made by the Tribunal. I also accept that, in view of the extraordinary length of the relevant period of inquiry and the GDPR considerations that arise, the scale of the task in hand is significant. Given the likely scale of discovery, the Minister had obviously given thought as to how best he could comply with an Order for Discovery without causing undue delay. This was evident in the immediate commitment and engagement shown by the Minister and his team in locating, at an early stage, the materials necessary for the Tribunal to complete its task. The Minister's sensitivity to the position of the complainants was also evident in his undertaking to have all priority files furnished to the Tribunal by 8 September 2025 and before that date if the relevant materials are ready for production to the Tribunal.

62. In considering the appropriate length of time which the Minister should be given to comply with his discovery obligations, I should have regard to the two factors of timeliness and costs. Paramount, however, in my view, is the requirement in S.I. 304 of 2024 that obliges the Tribunal to endeavour to complete its work within three years of the date of its establishment ('the three-year mandate'). As of the date of the public hearing, the Minister had secured some eleven (11) redaction counsel to assist with the work. I am satisfied that the Minister is conscious of the importance of timeliness in making discovery, as ordered, and I note that he has raised no issue in respect of cost.

63. The Tribunal was informed that by October 2024, hundreds of files involving thousands of pages had already been provided to the Minister's counsel for review and redaction. As the fourth stage of the discovery process was already underway in advance

of the Tribunal's Order for Discovery, it cannot be said that the Minister had failed to progress matters in the pre-discovery phase.

64. In making the Order that I propose to make, I have had regard to all of the above matters. I have also taken account of the fact that the Minister has provided a realistic timeframe for delivering the balance of the relevant documentation in his possession and has undertaken to do so within the extended period requested for compliance with the Tribunal's Order, that is, by 17 November 2025.

The Order

65. Accordingly, I propose to make an Order extending the time for the Minister for Defence to comply with the Tribunal's Order for Discovery that was made on 27 January 2025.

66. I will fix 17 November 2025, as the date by which the Minister is obliged to complete the discovery process.

Application on behalf of the Chief of Staff of the Defence Forces

67. The Chief of Staff of the Defence Forces was ordered to make discovery within twenty-two (22) weeks of the date of the Order, that is, on or before 2 July 2025. As of the date of the public hearing, the Defence Forces had furnished some 450 (four hundred and fifty) files comprising over twenty thousand (20,000) pages, of which some four thousand (4,000) pages were blank.

68. The Tribunal notes that the Defence Forces have indicated that the overall number of relevant files in its possession is two thousand and seventy (2,070). Assuming that this number is correct, it means that, as of the date of the public hearing, the Defence Forces had produced, approximately, twenty-two per cent (22%) of the total amount of documentation to be discovered.

69. The Tribunal observes that since the public hearing one hundred and twenty (120) files have been furnished to the Tribunal by the Defence Forces bringing the overall percentage of files discovered, to date, to, approximately, 28%.

70. The Defence Forces now seeks an additional twenty-two (22) weeks commencing on 2 July 2025, to comply with the Tribunal's Order for Discovery.

71. I now turn to review the progress made, to date, by the Defence Forces in terms of the four stages of the discovery process.

72. The Defence Forces confirmed, and I accept, that it had '*started*' searching for relevant documentation prior to the Tribunal's establishment. I also accept that the Chief of Staff has put significant resources into locating documentation and providing a physical infrastructure for the work. I was informed that some forty members of the Defence Forces are '*working on this on a full-time basis*'. Notwithstanding such investment, however, the Defence Forces could only confirm that, as of 16 June 2025, the first stage of the process (retrieval) had been completed only in respect of complaint files created pursuant to Section 114 of the Defence Act 1954, Administrative Instruction A7 – Chapter 1, and Administrative Instruction A7 – Chapter 2—and even that was subject to an additional '*marker search*' being carried out on the servers.

73. As to the second stage, it would appear that if the retrieval of all potentially relevant documentation has not, as yet, been finalised by the Defence Forces, it follows that the Tribunal cannot be satisfied that the uploading and deduplication stage, which trails the retrieval process, has been completed.

74. As to the third stage of 'narrowing' the range of documents by searching for key words and the like, it is clear that the Defence Forces uses some software to assist it in the discovery process. Reference was made in the written submission to the *'the procurement and installation of specialist search software'* as being among the reasons for delaying, from time to time, the work of redaction counsel. There was also a reference to servers being searched for *'markers'* that appear to be missing from certain complaint files. However, no mention was made of any tools acquired to assist, specifically, in 'narrowing' the scope of all documents gathered, by using key words. The Tribunal does not know, for example, whether the Defence Forces secured a specialised discovery platform with targeted search capabilities in order to speed up the discovery process.

75. Finally, in relation to the review stage, the Tribunal accepts that a volume of documentation falling within relevant categories of discovery has been passed to Counsel. Mr McCann informed the Tribunal that in advance its publishing the Notice of an Intended Order for Discovery, redaction counsel had been given access to the Defence Forces IT system. Whilst he confirmed that counsel were, and are, involved in the redaction process, which he described as requiring *'a high level of skill and training'* in that the Protocol entails not just the redaction of personal data but the insertion of codes for characters and locations, it was not at all clear to me whether redaction counsel are also involved in exercising the type of judgment that Clarke, J. envisaged would be required at the fourth stage of the process.

76. The Tribunal recalls that in *Thema*, Clarke J. considered that the fourth stage of review by trained lawyers is conducted for the purpose of determining whether the documents identified by a party's retrieval search and uploading process fall within any of the relevant categories of discovery. Thus, in his view, the final call on relevance was made by trained lawyers acting on behalf of a party against whom an Order for Discovery had been made. He also envisaged that among the functions of the lawyers would be the labelling of documents by reference to the various categories of discovery, and the formation of some view as to whether there might be a basis for claiming privilege or the like over certain documentation. This work involves a level of professional judgment that is different from redacting personal data even where there is the additional requirement to insert codes in place of characters and locations, which I acknowledge may be time consuming. The Tribunal has no desire to direct the internal operations of the discovery processes that are currently underway in the Defence Forces. However, it is concerned with the rate at which documents are furnished to the Tribunal as a result of the processes adopted. An internal review of such working procedures may assist in ascertaining whether improvements might be made.

77. Turning to the matters that a Court should consider when dealing with an application for an extension of time for compliance with an Order for Discovery, the starting point is, that the Chief of Staff of the Defence Forces has a basic obligation to comply, to the best of his ability, with the Tribunal's Order. Several explanations for the pace of progress in complying with that Order have been advanced by the Defence Forces. These range from the Tribunal's non-acceptance of the Defence Forces proposal to divide the Order into two phases, the '*real burden*' imposed by GDPR obligations, the '*absorption*' of resources in response to the Tribunal's request that certain files be prioritised,

together with matters pertaining to the recruitment and training of redaction counsel and to issues around IT malfunctioning.

78. Without underestimating the challenges involved, the Tribunal observes that the Defence Forces cannot but have been aware, long before the Order for Discovery was made, that the Tribunal would require it to provide significant volumes of documentation to assist it with its inquiry. Whatever form the eventual Order would take, whether divisional or unitary, it was always the case that the Defence Forces would be obliged to provide that significant body of documentation within a specified period of time. How that period was to be used in order to meet its legal obligation was a matter for the Defence Forces.

79. Moreover, the fact that the Tribunal requested that 'consent' files be prioritised as part of the discovery process cannot have come as a surprise. It was known to the Defence Forces before the terms of the Order were finalised that such a request would be made, as is evident from Note 5 of the redaction Protocol. For that reason, the claim now raised that the retrieval, collation and redaction of such priority files in response to the Tribunal's request had somehow '*absorbed*' resources that would otherwise have been used on '*the Discovery files*' is perplexing, to say the least.

80. I acknowledge, readily, that GDPR rights and obligations impose a particular burden and prolong the discovery process. However, notwithstanding the several challenges faced by the Defence Forces, the fundamental principle remains unchanged. A party who is subject to an Order for Discovery, must comply with its terms. I am satisfied that the Chief of Staff of the Defence Forces is aware of his obligation in this regard.

81. The discharge of that obligation, however, entails attending to other obligations. As noted by the High Court in *Thema*, there is an obligation on parties to consider, even before an Order for Discovery is made, how best to put themselves in a position to be able to comply, in a timely fashion, with any Order for Discovery that might, reasonably, be anticipated. It is reasonable for the Tribunal to expect that the Defence Forces would have put itself in a position to comply with its discovery obligations, post Order, by taking all appropriate preparatory steps necessary to minimise the period likely to elapse between the making of the Order for Discovery and the period prescribed for compliance therewith.

82. There is also an obligation on a party to consider how best it can meet its obligation in a way that does not delay, unduly, the proceedings or add, unnecessarily, to the costs likely to be incurred. I have observed elsewhere in this Ruling, that such an obligation, at least insofar as expedition is concerned, may carry even greater weight when it comes to proceedings before a Tribunal of Inquiry—bearing in mind the urgent nature of its work.

83. There can be little doubt that as of the passing of the Resolutions of the Oireachtas in January 2024, the Defence Forces knew that a Tribunal was to be established, and the scope of its inquiry was readily ascertainable. It was foreseeable that a Tribunal charged with investigating the complaints processes within the Defence Forces in relation to complaints of abuse would seek discovery of relevant complaint files.

84. I am aware that the Defence Forces discharge several important responsibilities. Nevertheless, it is a matter of some concern that seventeen (17) months since the Terms of Reference were known, one year on from the Tribunal's establishment and five months after the Discovery Order was made, the Defence Forces cannot yet confirm that all

searches in respect of all categories of documents that fall within the Tribunal's Order for Discovery have been carried out and completed. In this regard, it appears that, in addition to servers having to be searched for missing markers on complaint files, full and final searches of all military police files and court marital records remain, as yet, outstanding. Clarke, J. in *Thema* held that a party has an obligation to use its best endeavours to progress stages one and two of the discovery process before the terms of discovery are finally determined. (Emphasis added.) Whilst I accept that the Defence Forces 'started conducting searches' before the Tribunal was established, it is regrettable that as of the date of the public hearing of this application, those preparatory steps have not, as yet, been progressed to completion.

85. In his judgment in *Thema*, Clarke J. observed that:

"A party which has failed to take reasonable steps to put itself into a position to comply, once an Order is made, with its discovery obligations, may find the Court less sympathetic to any plea which it might make concerning the burden of having to meet an onerous discovery obligation in a short period of time. The Court is entitled to assume and expect that a party will have taken reasonable steps, in advance of the terms of discovery being fixed . . . by Court Order, to put itself in a position where it can comply with the obligations arising in an expeditious way".

Mr Justice Clarke continued:

"In the context of following a process analogous to the four stage discovery process discussed earlier, there seems to me to be no reason why stages one and two cannot be carried out in advance of the finalisation of the terms of discovery for the assembly of the "universe" of materials and the uploading of those materials where possible

(together with the assembly of any documents that must be kept in hard copy form) can go ahead on the basis of a reasonable assumption as to the broad parameters of discovery which is likely to be ordered". (Emphasis is mine.)

86. No reason has been offered as to why, at the very least, stage one of the four stage discovery process, could not have been carried out by the Defence Forces in advance of the finalisation of the terms of the Order. The Tribunal observes that far from having stage one *completed* before the Order was made, it was not until November 2024, the same month as the terms of the Intended Order were published, that it '*became apparent*' to the Defence Forces that there were more files to be discovered and that the number of complaint files would be '*substantially greater*' than that which had been, initially, estimated. Such an indicative pace of progress in approaching the task in hand at stage one of the process, cannot but have an impact, in terms of the rate at which documents are furnished, further down the line. Of course, no Court or Tribunal can order a party to do the impossible. Even accepting that the process involved in locating and searching for 2,070 relevant files—that are stored, among others, in several locations nationwide and span a period of forty-one-years—is not a simple task, it comes nowhere near the impossible.

87. In considering the appropriate length of time which the Defence Forces should be afforded to comply with its discovery obligations, I must have regard to the paramount importance of the requirement in S.I. 304 of 2024 that obliges the Tribunal to endeavour to complete its work within the three-year mandate. As noted earlier, the requirement not to delay proceedings is to be balanced with the costs that might have to be incurred by greater expedition. I have observed elsewhere in this Ruling, that such an obligation, at least insofar as expedition is concerned, may carry even greater weight when it comes

to proceedings before a Tribunal of Inquiry—bearing in mind the limited period within which it must carry out its investigation and furnish its Report together with the urgent nature of its work. The Tribunal anticipates that as less time will be required for the training of redaction counsel, gains made in this regard will be reflected in the rate at which documentation is furnished to the Tribunal. As to costs, it was indicated by Counsel that these *'have not been a factor in terms of resourcing the Defence Forces'*. I note, in this regard, that the Defence Forces succeeded in securing some thirty-two (32) redaction counsel to assist it with its endeavours.

88. In striking the balance required, I cannot lose sight of the fact that time is of the essence to the Tribunal given its three-year mandate. Unless discovery is made, promptly and efficiently, the Tribunal will be unable to complete its work, report to the Taoiseach, and make such findings and recommendations as it sees fit within the period specified in the Terms of Reference. I do not underestimate the task in hand but I am satisfied that it can be completed.

Women of Honour

89. The concerns raised by Mr Bradley on behalf of Women of Honour regarding the lack of specificity on the part of the Defence Forces in making the application for an extension of time are valid. As Mr Bradley correctly observed, an unreserved commitment to comply with an Order extending the time ought, properly, to have been given.

90. Before turning to the Order that I proposed to make, it is apposite, at this point, to clarify the position pertaining to certain matters raised in the submission filed on behalf of Women of Honour.

91. First, it was said that the Tribunal had agreed to accept complainant statements from Women of Honour in draft form. The submission stated that the Tribunal had, effectively, allowed statements to remain in draft form pending review, by those had completed consent forms, of the documents to be discovered. The Tribunal does not accept that this is the case.

92. The Tribunal has received statements from members of Women of Honour in draft form. Those statements may be updated, if necessary, during the private investigative phase. However, all complainants are obliged, from the outset, to give as comprehensive a statement as they can to the Tribunal in assisting it with its inquiry. If additional information comes to light, a statement may be amended or updated. Accordingly, it is inaccurate to say that the Tribunal has allowed statements from Women of Honour to remain in draft form until the complainants have reviewed the documents that are subject to the discovery provided that consent forms have been completed by the persons concerned.

93. Second, Women of Honour submitted that if an extension of time were granted in respect of the delivery of discovery, this may create a '*bottleneck*' in the Tribunal's investigative phase which, in turn, may have a '*knock-on*' effect on the Tribunal's timeframe for the completion of its work. This is a valid concern. It is true that the Tribunal has a relatively limited time within which it must endeavour to complete its work. It is also true that the Tribunal is determined to strive to complete that work within the period specified in the Terms of Reference. If the Defence Forces and the

Minister provide to the Tribunal all priority files, (that is, *complete* priority files), by no later than 8 September 2025 (as *per* the Minister's proposal), then I am hopeful that the extension of time sought should not have a negative impact on the Tribunal's schedule in terms of advancing towards its public hearing phase. The receipt of all priority files in early September 2025 will enable the Tribunal to interview, within a relatively short time thereafter, those individuals who have submitted statements to the Tribunal and who have not, as yet, been interviewed.

The Order

94. In contrast to the position of the Minister, the Defence Forces did not give an undertaking that if an extension of time were granted, the discovery process would be complete by 30 November 2025. On behalf of the Defence Forces, it was indicated that it proposes '*on a without prejudice basis*' to furnish to the Tribunal with the balance of discovery (1,620 additional files) by that date. The Tribunal was told that unforeseen IT difficulties may arise and that there was a '*big risk*' that a renewal of the current quota of 32 redaction counsel might not be made after August 2025.

95. The Tribunal is left in a position where the best that the Defence Forces appears to be able to offer is that it will only be able to '*substantially*' meet the deadline of the 30 November 2025, should the extension requested be granted. Whilst acknowledging the challenges it faces, it is for the Defence Forces to organise itself in such a way as to ensure that it can comply with its obligations under the terms of the Tribunal's Order. It is expected that the Defence Forces will prioritise compliance with the terms of the Order for Discovery and will allocate its resources, accordingly.

96. I acknowledge that considerable efforts have been made by the Defence Forces to meet particular deadlines requested by the Tribunal and I accept that it wants to comply with the Order for Discovery. Bearing in mind the delays that occurred earlier in the discovery process, it seems to me that a correspondingly larger burden now falls on the Defence Forces to complete the process by 30 November 2025, at the very latest. On a more positive note, Mr McCann expressed a reasonable belief that, henceforth, the work output can and will increase and he offered several plausible grounds upon which that belief was founded. The Tribunal recognises that the output of the Defence Forces in relation to Discovery has improved over recent weeks.

97. Accordingly, I am prepared to grant the application on behalf of the Defence Forces for an extension of time, but I will do so on certain terms. I propose to fix the date of 30 November 2025 as the date by which Defence Forces is obliged to complete the discovery process.

98. In making that Order, I am conscious of the need for the Defence Forces to accelerate the pace of furnishing discovery to the Tribunal—particularly, having regard to the setbacks and challenges which it claims have caused some delay. As discovery from the Defence Forces is essential to the work of the Tribunal, greater certainty and greater alacrity must be brought to the matter.

99. Accordingly, and in the absence of an undertaking that discovery will be made within the extended period, I propose to fix quarterly dates by which specific aggregates of outstanding documentation are to be delivered to the Tribunal. Whilst appreciating the issues that confront the Defence Forces and acknowledging the burden of the redaction process involved, the Tribunal, to borrow a phrase from Clarke J. in *Thema*, cannot operate '*at the pace of the slowest party*'.

100. The Tribunal has been informed that the Defence Forces holds a total estimate of 2,070 relevant files, of which 570 have been furnished to the Tribunal as at the date of this Ruling. This leaves a balance of, approximately, 1,500 relevant files. Those outstanding files must be discovered to the Tribunal within the 22 week extended period that the Defence Forces have requested and that I propose to grant.

101. Accordingly, and on the assumption that the aforesaid figures given to the Tribunal are correct, I will make an Order extending by 22 weeks the time for compliance with the Tribunal's Order for Discovery and I will do so on the following terms:

- that on or before 6 August 2025, that being one quarter way through the extended period, not less than 375 files are to be discovered to the Tribunal, that being 25% of the total number of currently outstanding documents that are relevant to the Tribunal's Order for Discovery;
- that on or before 17 September 2025, that being half way through the extended period, not less than a further 375 files are to be discovered to the Tribunal, that being another 25% of the total number of currently outstanding documents that are relevant to the Tribunal's Order for Discovery;
- that on or before 22 October 2025, that being three-quarters way through the extended period, not less than a further 375 files are to be discovered to the Tribunal, that being a further 25% of the total number of currently outstanding documents that are relevant to the Tribunal's Order for Discovery; and
- finally, that on or before 30 November 2025, that being the end of the extended period, all remaining files that fall with terms of the Tribunal's Order for Discovery are to be discovered.

102. An Order in the above terms is required to ensure that complete discovery is made by the Defence Forces no later than 30 November 2025, which will be seventeen (17) months into the Tribunal's three (3) year mandate.

Answer.
30 Nov 2025.