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

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

NOTICE OF PUBLIC SITTING OF THE TRIBUNAL

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

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

I. Interpretation of the Tribunal's Terms of Reference

(i) Interpretation of '*abuse*'

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

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

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

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

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

(ii) Request for a broader interpretation of '*abuse*'

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

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

(iii) Interpretation of Term of Reference (iv)

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

> *"investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of the Complaints of Abuse."*

'*Complaints of Abuse*' is a defined term in the Terms of Reference which means:

> "*complaints made by:*
>
> - *serving or former members of the Defence Forces to the Defence Forces/Minister for Defence;*
> - *current or former civilian employees to the Defence Forces/Minister for Defence; and*

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

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

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

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

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

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

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

Written Submissions

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

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

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

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

Schedule One

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

A. Discrimination

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

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

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

B. Bullying

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

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

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

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

C. Harassment

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

"*(a) In this section—*

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

(ii) [. . .]

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

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

D. Physical torture

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

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

(a) for such purposes as—

(i) obtaining from that person, or from another person, information or a confession,

(ii) punishing that person for an act which the person concerned or a third person has committed or is suspected of having committed, or

(iii) intimidating or coercing that person or a third person,

or

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

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

E. Physical assault

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

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

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

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

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

F. Psychological harm

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

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

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

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

G. Sexual harassment

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

"*(a) In this section—*

[. . .]

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

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

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

H. Sexual misconduct

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

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

COLEMAN LEGAL LLP
84 Talbot Street, Dublin 1, D01 YX60
Tel: +353 1 5313800
Fax: +353 1 5312727
Email: Info@colemanlegal.ie

9 April 2025 Our Ref: [redacted]

Private and Confidential
The Defence Forces Tribunal
The Infinity Building
Third Floor
George's Court
George's Lane
Smithfield
Dublin
D07 E98Y

By email: info@toidf.ie

Re: Defence Forces Tribunal

Dear Members of the Tribunal,

We write to raise a number of matters that have arisen in the course of our engagement with the Defence Forces Tribunal on behalf of our clients. These matters are raised respectfully and in good faith, with a view to ensuring a process that is balanced, transparent and reflective of the Tribunal's commitment to fairness.

Scope of the term Abuse

We respectfully invite the Tribunal to give further consideration to a broader reading of the term "*abuse*" within its Terms of Reference. Specifically, we suggest that certain systemic failures, particularly those related to health and safety, may constitute not merely negligence but abusive treatment, especially where risks were known, repeated and unremedied.

Under the ***Safety, Health and Welfare at Work Acts 1989 and 2005***, employers are statutorily obligated to ensure, as far as is reasonably practicable, the safety, health and welfare of their employees. This duty encompasses providing a safe work environment, implementing safe systems of work and offering necessary training and supervision. Failure to abide by these obligations can result in senior management being held personally liable for breaches and can result in criminal charges.

While traditional interpretations of "abuse" often focus on overt interpersonal misconduct, we would implore the Tribunal to consider that a reckless disregard for employee welfare, manifesting as persistent health and safety violations, can also constitute abusive treatment. This perspective

aligns with the broader understanding that systemic failures, particularly when it results in harm. Notably, the Health Service Executive recognises that systematic and repeated failures inherent within an organization may be considered as organisational abuse, as indicated in the publication "Definitions and Categories of Abuse". In regards to organisational abuse it was detailed as follows;

> *"Systematic and repeated failures culturally inherent within the organisation or service may be considered as organisational abuse."*

[redacted]

If the Tribunal does not agree that gross negligence in the context of toxic chemical exposure with distinct lack of health and safety measures constitutes abuse, then we invite the tribunal to consider expanding the terms of reference, as per ***Haughey v Moriarty*** [1993] 3 I.R. 1., where it was stated:

> *"As the inquiry proceeds, it may be necessary for the Tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged."*

This precedent suggests that the Tribunal's interpretation of the Terms of Reference may be expanded or revised in light of emerging facts or circumstances during its inquiry. Such an approach would align with evolving understandings of organisational abuse that encompass reckless disregard for the welfare of personnel. We strongly urge the Tribunal to consider this perspective further.

[redacted]

[redacted]

- [redacted]
- [redacted]

[redacted]

We raise these points in the interests of clarity and fairness and would welcome the opportunity to discuss any of the above matters further with the Tribunal.

Yours faithfully,

Coleman Legal

_____

COLEMAN LEGAL

COLEMAN LEGAL LLP
84 Talbot Street, Dublin 1, D01 YX60
Tel: +353 1 5313800
Fax: +353 1 5312727
Email: Info@colemanlegal.ie

17 April 2025 Our Ref [redacted]

Private and Confidential
The Defence Forces Tribunal
The Infinity Building
Third Floor
George's Court
George's Lane
Smithfield
Dublin
D07 E98Y

By email: info@toidf.ie

Re: Defence Forces Tribunal

Dear Tribunal Registrar,

We write further to our correspondence dated 9 April 2025, in which we raised matters of considerable importance concerning the conduct and future operation of the Tribunal.

That letter was intended as an initial submission only. We now respectfully request the opportunity to make full and detailed written legal submissions to the Chair of the Tribunal in due course in support of this application.

We would be grateful if you could advise how you propose to receive those submissions and confirm the timeline and format for doing so.

Finally, we note that a meeting has been proposed by the Tribunal in recent days. We would appreciate receiving formal written details in respect of that meeting at your earliest convenience.

Yours faithfully,

Coleman Legal

COLEMAN LEGAL

THE DEFENCE FORCES TRIBUNAL

SUBMISSION ON BEHALF OF LARIAM GROUP CONCERNING THE INTERPRETATION OF 'ABUSE' UNDER THE TRIBUNAL'S TERMS OF REFERENCE

OUTLINE WRITTEN SUBMISSIONS

Introduction

1. This submission is made to the Defence Forces Tribunal on behalf of the Lariam Group for the purpose of seeking an expanded interpretation of the term "abuse" as defined under the Tribunal's Terms of Reference. Specifically, we invite the Tribunal to include within its interpretation persistent and systemic failures on the part of the Defence Forces to comply with various statutory obligations in the area of safety, health and welfare at work, where such failures have caused or contributed to psychological harm, physical risk and have created an environment of fear, intimidation or reprisal for raising concerns and have resulted in incidences of penalisation upon raising such concerns.

2. While the Tribunal's Terms of Reference already encompass a broad range of misconduct including psychological harm, it is respectfully submitted that ongoing and systemic breaches of statutory duties and the consequential detriment which Defence Forces personnel have experienced as a result should be expressly recognised as abuse.

Relevant Framework: Tribunal Terms of Reference

3. The Tribunal's current definition of "abuse" includes:

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

4. This Tribunal has published relevant guidance in relation to how a tribunal of inquiry should interpret its terms of reference which is to be found in Haughey v Moriarty [1993] 3 I.R. 1 and its approval at p.56 of the following recommendation from paragraph 79 of the Report of the Royal Commission on Tribunals of Inquiry (November 1966), (the Salmon report), as a correct statement of the law and practice applicable to Tribunals in this jurisdiction:

> *"The Tribunal should take an early opportunity of explaining in public its interpretation of its terms of reference and the extent to which the inquiry is likely to be pursued. As the inquiry proceeds, it may be necessary for the Tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged."*

5. It is respectfully submitted that various issues have arisen and facts have emerged in the interviews conducted so far which support an expanded interpretation of the term "abuse".

6. It is further submitted that the language of the Terms of Reference does not purport to be exhaustive and must be interpreted purposively in light of the Tribunal's investigatory role and in light of the results of its investigations so far.

7. S.I. No. 304/2024, which establishes this Tribunal, defines abuse as *"discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment and any form of sexual misconduct (including sexual assault, aggravated sexual assault and rape)"*. The inclusion of *"discrimination"* and *"psychological harm"* in particular suggest that the Tribunal's mandate extends beyond overt acts of interpersonal violence or harassment to include a much wider spectrum of behaviours which have resulted in detriment to Defence Forces personnel.

Basis For an Expanded Interpretation

Psychological Harm and Institutional Neglect

8. Where ongoing and systemic breaches of statutory safety obligations are tolerated and or institutionalised, the resulting environment imposes psychological burdens on affected personnel. Defence Forces personnel who were routinely exposed to unsafe working conditions which included the enforced ingestion of Mefloquine/Lariam as prophylaxis against malaria, or whose legitimate safety concerns in relation to same were ignored or punished, have suffered cumulative psychological harm. That harm is compounded where members perceive that their lives are expendable or that reporting concerns will cause even further harms.

Duty of Care and Legislative Obligations

9. For the cognisable period during which the tribunal is permitted to inquire, the Defence Forces were subject to the Safety, Health and Welfare at Work Act 1989 and the Safety Health and Welfare at Work Act 2005 as amended. Ongoing and repeated breaches of the statutory obligations arising under those acts, particularly where risks were known and persistent, and which breaches resulted in foreseeable harm must be considered institutional abuse.

10. It is submitted that Section 2(1) of the 1989 Act made clear that the Act applied to *"employment in the service of the State including employment under the Defence Forces,"* thereby expressly encompassing Defence Forces employment.

11. Section 6(2) of the 2005 Act excludes serving members of the Defence Forces from its provisions as follows;

> *Subject to section 11 , the relevant statutory provisions apply to members of the Defence Forces except when they are—*
>
> > *(a) on active service within the meaning of section 5 of the Defence Act 1954 or deemed to be on active service within the meaning of section 4 (1) of the Defence (Amendment) (No. 2) Act 1960 ,*
> >
> > *(b) engaged in action in the course of operational duties at sea,*
> >
> > *(c) engaged in operations in aid to the civil power, or*
> >
> > *(d) engaged in training directly associated with any of the activities specified in paragraph (a) to (c).*

Specifically in relation to Lariam/ Mefloquine complaints it is submitted that although the deployments requiring the administration of Lariam/Mefloquine fall under the definition of active service as defined in section 4(1) of of the Defence(Amendment) (no.2) Act 1960, the regime of selection, prescription and monitoring associated with the Lariam regime occurred mainly outside of the periods of deployment *"serving outside the State with an armed International United Nations Force"* (section 4(1) of the 1960 Act) and therefore the statutory obligations under 2005 Act are applicable.

12. The invocation of military exemption in such contexts would amount to a misuse of a narrowly drawn legislative defence. Consequently, it is submitted that the Defence Forces remained subject to the full application of workplace safety legislation in these matters, and that systemic violations in these non-exempted contexts should be treated as clear breaches of duty capable of constituting institutional abuse.

13. It is respectfully submitted that the following legislative provisions can inform an expanded interpretation of what conduct, behaviours and consequences can constitute abuse.

14. Section 27 of the Safety Health and Welfare at Work Act 2005 provides;

> *(1) In this section "penalisation" includes any act or omission by an employer or a person acting on behalf of an employer that affects, to his or her detriment, an employee with respect to any term or condition of his or her employment.*
>
> *(2) Without prejudice to the generality of subsection (1), penalisation includes—*
>
> > *(a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2001), or the threat of suspension, lay-off or dismissal,*
> >
> > *(b) demotion or loss of opportunity for promotion,*
> >
> > *(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,*
> >
> > *(d) imposition of any discipline, reprimand or other penalty (including a financial penalty), and*
> >
> > *(e) coercion or intimidation.*

15. The Protected Disclosures Act 2014 as amended provides at section 12

> *An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for having made a protected disclosure.*

and defines penalisation at section 3 as follows;

> *"penalisation" means any act or omission that affects a worker to the worker's detriment, and in particular includes—*
>
> *(a) suspension, lay-off or dismissal,*

(b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),

(e) unfair treatment,

(f) coercion, intimidation or harassment,

(g) discrimination, disadvantage or unfair treatment,

(h) injury, damage or loss, and

(i) threat of reprisal;

16. The Protected Disclosures Act 2014 as amended provides at section 13

> (*1) If a person causes detriment to another person because the other person or a third person made a protected disclosure, the person to whom the detriment is caused has a right of action in tort against the person by …*
> *(3) In subsection (1) "detriment" includes—*
>
> *(a) coercion, intimidation or harassment,*
>
> *(b) discrimination, disadvantage or adverse treatment in relation to employment (or prospective employment),*
>
> *(c) injury, damage or loss, and*
>
> *(d) threat of reprisal.*

Relevant evidence previously given to the tribunal which supports an expanded definition of abuse

17. [redacted]

18. [redacted]

19. [redacted]

20. Complainants can also give evidence of a “Lariam only” policy. Although alternative drug regimes were recommended in cases were personnel suffered psychiatric side effects from Lariam, Complainants were penalised for not taking Lariam by inter alia not being selected for future overseas deployment. They will also give evidence that this “Lariam only” policy was not enforced with officers above a certain rank, who had the option to take alternative anti-malarial drugs.

Evidence Of Systemic Health and Safety Failures

21. We are in possession of documents which evidence that Defence Forces’ conduct meets the standard of systemic neglect and foreseeable harm, in respect of health and safety, necessary to bring such conduct within the Tribunal’s conception of abuse. These documents collectively evidence an institutional pattern of disregard for known risks, reluctance to adapt practice in line with emerging best practice or medical warnings, and a willingness to penalise those raising legitimate safety concerns. The conduct evidenced therein not only resulted in harm to individual members but fostered a culture in which the reporting of adverse effects or questioning of policy was actively or passively discouraged. We are willing to furnish these documents to the Tribunal upon request.

22. Evidence reveals that the Defence Forces' regime for malaria, particularly the mandatory use of Lariam (Mefloquine), persisted despite well-documented neuropsychiatric risks indicating a failure to implement an effective risk assessment and gather informed consent from members. International guidance and pharmaceutical warnings highlighted severe adverse psychological side effects, including vivid nightmares, hallucinations and psychosis. Nonetheless, the regime remained in force, with limited avenues for opting out and inadequate policy response to emerging risks or requests for review.

23. Multiple documents we have been provided with by our clients, indicate an institutional failure to exclude at-risk personnel or to offer appropriate alternatives, even where there were medical contraindications or international advisories against Lariam. Correspondence from Defence Forces [redacted] that we are in possession of, and will provide to the Tribunal, further highlight the lack of a meaningful response to adverse data and the absence of a formal medical risk assessment, in breach of occupational safety legislation.

24. A recurring theme in evidence is the pressure brought on personnel to comply with the Lariam regime, notwithstanding adverse side effects or objections. Reports include threats to overseas deployment opportunities, indirect penalisation, and a culture of "Lariam only", whereby personnel who experienced psychiatric side effects and requested alternatives were denied future operational postings. Section 8 of the Safety, Health and Welfare at Work Act 2005 imposes a statutory duty on every employer to "ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees." This includes the requirement to conduct adequate risk assessments (section 19), to have appropriate preventive measures (section 8(2)(c)) and to provide necessary information and training (section 10). Evidence through our client's submissions and interviews indicates the Defence Forces did not comply with these statutory obligations.

25. The evidence that we are in possession of, makes it clear that Defence Forces command were on notice of the potential for psychological injury, including persistent anxiety, paranoia, and post-traumatic symptoms. Despite being on notice Defence Forces command failed to act or modify policy in a timely manner. Further evidence corroborates the widespread recognition, both internally and externally, of ongoing harm and the reluctance of the organisation to change course or engage transparently with affected members.

26. Taken together, the evidence presents a pattern of conduct amounting to more than simple error or isolated negligence. They reveal a culture of institutional neglect, and active penalisation of those reporting harm. In light of the Tribunal's Notice and its direction to consider whether a culture existed that discouraged complaints, this evidence directly supports a broader interpretation of "abuse" to include persistent and foreseeable health and safety failings, particularly where such failures have caused, contributed to, or perpetuated psychological injury and professional detriment. We intend to submit this evidential documentation to the Tribunal in due course, but have not appended it to this submission in light of the Tribunal's direction on this matter.

Conclusion

27. It is respectfully submitted that the Tribunal should adopt an interpretation of the term "abuse" to take account of the effects of the following conduct :

    a. Repeated or systemic breaches of health and safety standards or obligations

    b. Failures to act on known risks or identified hazards

    c. Retaliation against individuals who raised legitimate health and safety concerns

    d. Maintenance of unsafe procedures without training, consultation or remedy

    e. Behaviour or policy that foreseeably causes psychological harm or endangers lives by taking an indifferent approach to health and safety obligations

28. Such conduct is inconsistent with any concept of duty of care or good faith military command. It constitutes abuse not only by omission but by design. Recognising this form of institutional abuse ensures that the Tribunal discharges its mandate in a manner that acknowledges the full range of harms suffered by Defence Forces personnel.

Word Count: 2499

Coleman Legal

Coleman Legal

Alan Brady BL

Patrick Marron BL

John Gordon SC

TRIBUNAL OF INQUIRY INTO ISSUES RELATING TO THE COMPLAINTS PROCESSES IN THE DEFENCE FORCES AND THE CULTURE SURROUNDING THE MAKING OF COMPLAINTS

OUTLINE WRITTEN SUBMISSIONS CONCERNING THE INTERPRETATION OF 'ABUSE' UNDER THE TRIBUNAL'S TERMS OF REFERENCE

Introduction

1. This submission is made to the Defence Forces Tribunal on behalf of our affected clients for the purpose of seeking an expanded interpretation of the term "abuse" as defined under the Tribunal's Terms of Reference. Specifically, we invite the Tribunal to include within its interpretation persistent and systemic failures on the part of the Defence Forces to comply with various European, Constitutional and statutory obligations in the area of safety, health and welfare at work, where such have resulted in parties being exposed to hazardous chemicals.

2. While the Tribunal's Terms of Reference already encompass a broad range of misconduct including psychological harm, it is respectfully submitted that ongoing and systemic breaches of European, Constitutional and statutory duties and the consequential detriment which Defence Forces personnel have experienced as a result should be expressly recognised as abuse.

Relevant Framework: Tribunal Terms of Reference

3. The Tribunal's current definition of "abuse" includes:

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

4. This Tribunal has published relevant guidance in relation to how a tribunal of inquiry should interpret its terms of reference which is to be found in *Haughey v Moriarty* [1993] 3 I.R. 1and its approval at p.56 of the following recommendation from paragraph 79 of the Report of the Royal Commission on Tribunals of Inquiry (November 1966), (the

Salmon report), as a correct statement of the law and practice applicable to Tribunals in this jurisdiction:

> *"The Tribunal should take an early opportunity of explaining in public its interpretation of its terms of reference and the extent to which the inquiry is likely to be pursued. As the inquiry proceeds, it may be necessary for the Tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged."*

5. It is respectfully submitted that various issues have arisen and facts have emerged in the interviews conducted so far which support an expanded interpretation of the term "abuse".

6. It is further submitted that the language of the Terms of Reference does not purport to be exhaustive and must be interpreted purposively in light of the Tribunal's investigatory role and in light of the results of its investigations so far.

7. The inclusion of *"discrimination"* and *"psychological harm"* in particular suggest that the Tribunal's mandate extends beyond overt acts of interpersonal violence or harassment to include a much wider spectrum of behaviors which have resulted in detriment to Defence Force personnel.

Basis For an Expanded Interpretation

8. Workers' rights are human rights, and human rights are workers' rights. These rights are interrelated, indivisible and universal. They include civil, political, economic, social and cultural rights. Every worker has a right to dignity and to be treated ethically, with respect, and without being subjected to conditions of work that are dehumanizing or degrading. No one can be deprived of their human rights because of the work they perform.

9. Safe and healthy working conditions have been explicitly recognized as a human right since 1966, with the adoption of the International Covenant on Economic, Social and Cultural Rights. They are a fundamental aspect of the human right to just and favourable conditions of work. The right to safe and healthy work encompasses many other interrelated and interdependent human rights, including the rights to life, health, bodily (physical) integrity and security of the person. These are indivisible from the rights to information, meaningful participation and the freedoms of expression, assembly and association, as well as the right to an effective remedy.

10. Workers are especially vulnerable to the violation and abuse of their human rights, not the least of which is being subjected to exposure to toxic substances in the course of their work.

11. The right to information is the foundation for the realization of all workers' rights regarding toxic exposures. Workers have the right to know, inter alia, the implications of exposure, the action being taken to prevent exposure and their rights in relation to such exposure. Every worker has the right to know current information about their actual and potential exposures to toxic and otherwise hazardous substances. Illegitimate claims of confidentiality and secrecy involving health and safety information can mask problems and thereby stifle occupational health, while promoting a sense of impunity that can become contagious among bodies that continue to exploit and abuse workers by exposing them to toxic substances, and justify deriving benefits from doing so.

<u>The European Convention on Human Rights and European Union Law</u>

12. The European Convention on Human Rights (the "ECHR") and European Union law protect European citizens and more particularly workers from the abuse of their rights. Section 3(1) of the European Convention on Human Rights Act 2003 provides that:

> *"Subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions."*

13. The Department of Defence, the Minister for Defence and his/her office and the Defence Forces are organs of the State.

14. Article 17 of the ECHR is entitled "Prohibition of abuse of rights" and provides that:

> *"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

15. Article 31 of the EU Charter of Fundamental Rights and Freedoms (the "Charter") is entitled "Fair and just working conditions" and provides:

> "1. Every worker has the right to working conditions which respect his or her health, safety and dignity. […]"

16. Article 54 of the Charter is entitled “Prohibition of abuse of rights” and provides that:

> *“Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.”*

17. The European Convention on Human Rights (ECHR) and the European Charter of Fundamental Rights provide a framework for ensuring safe and healthy working conditions, including protection from the use of hazardous chemicals. While the ECHR doesn't explicitly mention "working conditions," it's submitted that the right to life and the right to freedom from torture and inhuman or degrading treatment (Articles 2 and 3) can be implicated by unsafe or unhealthy workplaces. The Charter, which complements the ECHR, explicitly recognizes the right to fair and just working conditions, including those that respect health and safety. Both instruments prohibit the abuse of those rights.

<u>The Constitution, Common Law and Statute</u>

18. It is submitted that outside of the rights conferred by the ECHR and EU law as set out above, workers have rights to air and just working conditions, including those that respect health and safety by virtue of the Constitution, Statutory protections and the common law. It is submitted that there are also equal prohibitions on the Defence Forces from abusing those rights also.

19. The Constitution protects a person’s right to life, bodily integrity and right to earn a livelihood. The Constitution prohibits the interference or abuse of those rights. An example may be that a person is protected from having their body unjustifiably interfered with by the exposure to hazardous chemicals.

20. The Defence Forces also owes common law duties of care to members of the Defence Forces not to intentionally or negligently cause them harm. It is accepted that members of the Defence Forces are sometimes in the course of their employment placed in situations where there is an unavoidable risk of death or serious injury. However, this does not provide the Defence Forces with immunity from liability. In the Supreme Court decision of *Ryan v Ireland* [1989] IR 177, Finlay CJ observed:

> *“In such situations considerations of standards of care drawn from the experience of the workplace may be of little assistance. There could, I think, be*

no objective in a master and servant relationship which would justify exposing the servant to risk serious injury or death other than the saving of life itself. In the execution of military service, exposing a soldier to such risk may often be justified by the nature of the task committed to the forces concerned. Furthermore, there can in relation to armed conflict be many situations where those in authority must make swift decisions in effect in the agony of the moment. Mere proof of error in such decisions would not in itself establish negligence. Importance may be attached, I am satisfied, in regard to alleged negligence in a military situation to the question as to whether the role of soldier at the time of the alleged negligence is one of attack or defence, or, to put the matter in another way, whether he is engaged actively in armed operation or is only passively engaged in them."

21. In Ryan, the plaintiff, an army private, was a member of the Defence Forces serving as a volunteer with the United Nations International Force in the Lebanon. He was placed on guard duty in a guard post which was a likely target for mortal attack by the Chetuhian militia. When such an attack took place, he was injured. He sued the State for negligence, claiming that the guard tent should have been more elaborately sandbagged to protect him from the effects of the attack. The Supreme Court rejected the defence of immunity from liability and ordered a retrial following a withdrawal of the case from the jury in earlier High Court proceedings. The retrial resulted in a verdict in the plaintiff's favour.

22. Aside for a common law duty of care, the Defence Forces are subject to statutory duties, the Safety, Health and Welfare at Work Act 1989 and most recently the Safety Health and Welfare at Work Act 2005 as amended. Ongoing and repeated breaches of the statutory obligations arising under those acts, particularly where risks were known and persistent, and which breaches resulted in foreseeable harm must be considered institutional abuse.

23. It is submitted that Section 2(1) of the 1989 Act made clear that the Act applied to *"employment in the service of the State including employment under the Defence Forces,"* thereby expressly encompassing Defence Forces employment. In addition, section 6(2) of the 2005 Act only excluded serving members of the Defence Forces from its provisions where they were, in essence, on operational duties.

24. It is accepted that military organisations have to maintain a system of hierarchy to maintain good order etc., especially in a time of conflict, this system can unfortunately

lead to persons abusing their rank/position to abuse other members rights or to cover up these abuses.

Penalisation for Raising Health and Safety Concerns

25. It is further submitted that the definition of abuse should include acts of penalisation or threats of penalisation.

26. Section 27 of the Safety Health and Welfare at Work Act 2005 provides:

> *"(1) In this section "penalisation" includes any act or omission by an employer or a person acting on behalf of an employer that affects, to his or her detriment, an employee with respect to any term or condition of his or her employment.*
>
> *(2) Without prejudice to the generality of subsection (1), penalisation includes—*
>
> > *(a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2001), or the threat of suspension, lay-off or dismissal,*
> >
> > *(b) demotion or loss of opportunity for promotion,*
> >
> > *(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,*
> >
> > *(d) imposition of any discipline, reprimand or other penalty (including a financial penalty), and*
> >
> > *(e) coercion or intimidation."*

27. The Protected Disclosures Act 2014 (the "2014 Act") as amended provides at section 12 that:

> *"An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for having made a protected disclosure."*

28. The 2014 Act defines penalisation at section 3 as follows;

> *""penalisation" means any act or omission that affects a worker to the worker's detriment, and in particular includes—*
>
> *(a) suspension, lay-off or dismissal,*
>
> *(b) demotion or loss of opportunity for promotion,*

(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),

(e) unfair treatment,

(f) coercion, intimidation or harassment,

(g) discrimination, disadvantage or unfair treatment,

(h) injury, damage or loss, and

(i) threat of reprisal"

29. The 2014 Act further provides at section 13 that:

"(*1) If a person causes detriment to another person because the other person or a third person made a protected disclosure, the person to whom the detriment is caused has a right of action in tort against the person by …*
(3) In subsection (1) "detriment" includes—

(a) coercion, intimidation or harassment,

(b) discrimination, disadvantage or adverse treatment in relation to employment (or prospective employment),

(c) injury, damage or loss, and

(d) threat of reprisal."

Relevant evidence previously given to the tribunal which supports an expanded definition of abuse

30. It is submitted that the providers of information to the Tribunal (the "Complainants") who were exposed to the use of hazardous chemicals in the Defence Forces have provided information to the tribunal in relation to, *inter alia*, the unsafe and dangerous use of hazardous chemicals, the unsafe working conditions and the fear or penalization for raising health and safety concerns. It is submitted that these are instances of abuse.

Conclusion

31. It is respectfully submitted that the Tribunal should expand the interpretation of the term "abuse" to include the following:

    a. Abuse of rights

    b. Human rights abuses

    c. Abuse of the employee/employer relationship

    d. Abuse of rank

    e. Abuse of position

    f. Exposure to hazardous chemicals

    g. Repeated or systemic breaches of health and safety standards or obligations

    h. Failures to act on known risks or identified hazards

    i. Penalisation

    j. Retaliation

    k. Maintenance of unsafe procedures without training, consultation or remedy

    l. Behaviour or policy that foreseeably causes psychological harm or endangers lives by taking an indifferent approach to health and safety obligations

32. Abuse is not just the effect of a breach of a persons rights. It is also the means to effect those breaches.

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Coleman Legal

Alan Brady BL

Patrick Marron BL

John Gordon SC

THE DEFENCE FORCES TRIBUNAL

SUBMISSION ON BEHALF OF DEFENCE FORCES FORMER SEARCH AND RESCUE PERSONNEL CONCERNING THE INTERPRETATION OF 'ABUSE' UNDER THE TRIBUNAL'S TERMS OF REFERENCE

OUTLINE WRITTEN SUBMISSIONS

Introduction

1. This submission is made to the Defence Forces Tribunal on behalf of Defence Forces former Search and Rescue (SAR) personnel for the purpose of seeking an expanded interpretation of the term "abuse" as defined under the Tribunal's Terms of Reference. Specifically, we invite the Tribunal to include within its interpretation, persistent and systemic violations of health and safety standards and legislation by the Defence Forces where such failures have caused or contributed to psychological harm, physical risk or have created an environment of fear, intimidation or reprisal for raising concerns.

2. While the Tribunal's Terms of Reference already encompass a broad range of misconduct including psychological harm, it is respectfully submitted that chronic failures to uphold known health and safety obligations; particularly where those failures are foreseeable, repeated, and embedded in institutional practice, should be expressly recognised as abuse.

Relevant Framework: Tribunal Terms of Reference

3. The Tribunal's current definition of "abuse" includes:

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

4. It is submitted that the language of the Terms of Reference does not purport to be exhaustive and must be interpreted purposively in light of the Tribunal's investigatory role. The inclusion of psychological harm in particular suggests that the Tribunal's mandate extends beyond overt acts of interpersonal violence or harassment to include subtler, systemic harms that compromise the mental welfare and safety of personnel.

Basis For an Expanded Interpretation

Psychological Harm and Institutional Neglect

5. Where systemic breaches of safety obligations are tolerated or institutionalised, the resulting environment imposes psychological burdens on affected personnel. Members of the Defence Forces who were routinely exposed to unsafe working conditions, or whose legitimate safety concerns were ignored or punished, have suffered cumulative psychological harm. That harm is compounded where members perceive that their lives are expendable or that reporting concerns will trigger reprisals.

Constructive Endangerment

6. Constructive endangerment occurs when an organisation maintains operations in a manner that foreseeably places lives at risk without appropriate mitigations or safeguards. Within military operations, especially search and rescue or aviation, failure to maintain safe practices not only jeopardises missions but creates a workplace that is functionally abusive in its disregard for member welfare.

Duty of Care and Legislative Obligations

7. The Defence Forces are subject to statutory health and safety obligations, including those under the Safety, Health and Welfare at Work Act 1989 (now repealed and replaced by the 2005 Act). Repeated violations of these obligations, particularly where risks were known and persistent, breach the State's duty of care. Where those breaches result in foreseeable harm or cultivate a culture of fear, they must be considered institutional abuse.

8. While certain limited exemptions apply to aspects of military activity under these Acts, such exemptions are confined strictly to operational contexts where compliance with health and safety legislation would conflict with the conduct of active service or military readiness. Section 3(1) of the 1989 Act made clear that the Act applied to “employment in the service of the State including employment under the Defence Forces,” thereby expressly encompassing Defence Forces employment save in exceptional circumstances. Similar provisions exist under Section 5 of the 2005 Act.

9. It is submitted that these exemptions do not and did not apply to the activities detailed herein, which relate to peacetime domestic operations, such as search and rescue missions, air traffic procedures, aircraft maintenance, logistical preparation, training and

the management of safety equipment. These functions are administrative, technical and operationally routine. They fall squarely within the standard scope of employer obligations and could reasonably be discharged without impeding Defence Forces capability or deployment.

10. Moreover, none of the failures outlined in this submission arose from situations requiring urgent military deployment, battlefield discretion or classified security decisions. Rather, they stemmed from preventable deficiencies in planning, supervision, procurement, training and culture. The invocation of military exemption in such contexts would amount to a misuse of a narrowly drawn legislative defence. Consequently, it is submitted that the Defence Forces remained subject to the full application of workplace safety legislation in these matters, and that systemic violations in these non-exempted contexts should be treated as clear breaches of duty capable of constituting institutional abuse.

11. A useful comparator is found in the Aer Lingus prosecution in 2017 by the HSA, where the company was fined €250,000 following the tragic death of [redacted], a cargo driver who sustained fatal injuries after falling from a loading bay at Dublin Airport. Despite having formally identified the risk in 2007 and issuing internal safety instructions, Aer Lingus failed to enforce its procedures in practice, allowing unsafe customs to persist unchecked. The Court found that the company's omission to ensure a safe system of work for non-employees was a breach of its statutory duties under the Safety, Health and Welfare at Work Act 2005.

12. This case illustrates that in environments where safety is paramount, the failure to enforce known and documented safety measures can give rise not only to fatal consequences but also to criminal liability. It is submitted that similarly blatant disregard for operational safety standards within a high-risk setting such as Defence Forces aviation, and in particular search and rescue, is not merely negligent, but could be characterised as abuse. Where lives are placed at risk through institutional inaction or the sidelining of enforceable procedures, such conduct ought properly to fall within the Tribunal's understanding of the term abuse.

Evidence Of Systemic Health and Safety Failures

13. The following documents, referred to below and which we will willingly provide to the Tribunal at their request, evidence that the Defence Forces' conduct meets the standard of systemic neglect and foreseeable harm, in respect of health and safety, necessary to bring such conduct within the Tribunal's conception of abuse.

14. [redacted]

15. [redacted]

16. AAIU Final Report 2000/011 (DH248 Crash at Tramore)

This Air Accident Investigation Unit report outlines several significant lapses in safety management by the Defence Forces directly related to their statutory and moral duties:

a. Use of Time-Expired Equipment: The investigation identified that essential safety equipment used during operations, such as flares, immersion suits and lifejackets were beyond their service dates. The decision to allow the use of such equipment was attributed to delays in servicing, a failure of logistics and health and safety oversight.

b. Inadequate Control Tower Staffing: A technician with no formal air traffic control, meteorology, or night operation qualifications was assigned to control tower duties during out-of-hours operations. This individual, was operating with no AFISO (Aerodrome Flight Information Service Officer) certification, and was responsible for communication, weather monitoring and runway lighting. This represented a significant breach of aviation safety norms.

c. Unreliable Runway Lighting System: The airport's ILS lighting system was known to malfunction when operated at full intensity due to a tripping circuit breaker. This issue had not been resolved at the time of the crash, representing a known, unremedied health and safety hazard.

d. Lack of Formal Visibility Reporting Systems: Waterford Airport lacked basic meteorological infrastructure such as an automated cloud base and visibility measurement system. Visibility was estimated using subjective visual references, a method unsuitable for aviation decision-making. More alarmingly, the crew were not briefed on these methods, undermining situational awareness.

e. Failure to File Flight Plans or Notify ARCC: Despite standard protocols, no flight plan was filed, and the Aviation Rescue Co-ordination Centre was not notified of the mission. This procedural lapse meant that when contact was lost, no immediate response was available.

Each of these failures reflects an organisational tolerance of risk in contravention of accepted health and safety obligations.

17. [redacted]

[redacted].

18. [redacted]

[redacted].

19. [redacted]

[redacted].

20. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

These actions created a hostile environment where personnel were afraid to voice legitimate health and safety concerns.

21. [redacted]

[redacted]

[redacted]

22. PDFORRA Press Statement dated 2 July 2003

PDFORRA reiterated that SAR personnel had lost confidence in the flight safety systems despite reforms promised in the wake of the Tramore tragedy. The statement warned that lives continued to be placed at risk and called for SAR operations to be suspended until safety was guaranteed.

23. [redacted]

24. We intend to submit this evidential documentation to the Tribunal in due course, but have not appended it to this submission in light of the Tribunal's direction on this matter.

Analysis Within Existing Categories of Abuse

25. Psychological Harm: The persistence of safety failures, the lack of accountability and the retaliatory culture imposed psychological stress and trauma on service members. Fear of reprisal for whistleblowing and a sense of institutional indifference compounded the mental toll experienced by Search and Rescue team members.

26. Bullying and Harassment: Several documents detail how safety concerns were met not with engagement, but disparagement, marginalisation or threats. Describing safety-focused personnel as a "disgrace" constitutes a form of verbal abuse and institutional bullying.

27. Neglect: Institutional neglect of known health and safety duties such as a refusal to address expired equipment, non-compliance with safety audits, and failure to implement training on new procedures amounts to operationalised negligence.

28. Cultural Abuse: The cumulative effect of reprisal, disregard, unsafe directives and procedural sabotage resulted in a culture that treated concerns about personal safety as disruptive or insubordinate.

Conclusion

29. The Tribunal is respectfully urged to adopt an expanded interpretation of "abuse" under its Terms of Reference to include conduct that meets the following criteria:

    a) Repeated or systemic breaches of health and safety standards or obligations

    b) Failures to act on known risks or identified hazards

    c) Retaliation against individuals who raised legitimate health and safety concerns

    d) Maintenance of unsafe procedures without training, consultation or remedy

    e) Behaviour or policy that foreseeably causes psychological harm or endangers lives by taking an indifferent approach to health and safety obligations

30. Such conduct is inconsistent with any concept of duty of care or good faith military command. It constitutes abuse not only by omission but by design. Recognising this form of institutional abuse ensures that the Tribunal discharges its mandate in a manner that acknowledges the full range of harms suffered by Defence Forces personnel.

Word Count: 2498

Coleman Legal

Coleman Legal

Alan Brady BL

Patrick Marron BL

John Gordon SC

SUBMISSIONS ON BEHALF OF

THE MINISTER FOR DEFENCE

IN RELATION TO THE INTERPRETATION OF

THE TERMS OF REFERENCE OF THE TRIBUNAL.

A. INTRODUCTION

1. The Tribunal has published a Notice of Public Sitting scheduled for 16th June 2025.

2. It is outlined in the Public Notice that parties may, if they wish to do so, make submissions in respect of the following matters: -

   (i) The Interpretation of the Tribunal's Terms of Reference; and / or
   (ii) An Application seeking an Extension of Time in respect of the Order of Discovery.

3. These submissions are prepared by the Minister in respect of the Interpretation of the Tribunal's Terms of Reference only. The Minister proposes to address, by way of separate submission, an application for an extension of the time in respect of the Order for Discovery made against the Minister on 27th January, 2025.

B. INTERPRETATION OF THE TRIBUNAL'S TERMS OF REFERENCE

4. Schedule One of the Public Notice**.**

4. (i) The Minister welcomes the Tribunal's interpretations of the constituent elements of the term *'abuse'* in its Terms of Reference and the clarity provided in respect of the definitions adopted from relevant statutory provisions.

4. (ii) Consequently the Minister has no submission to make in respect of the definition of discrimination, bullying, harassment, physical assault, physical torture, sexual harassment and sexual misconduct.

4. (iii) The Minister notes the definition adopted in Schedule One in respect of 'psychological harm' and is not making any submission to the contrary. However, it is submitted that '*wrongful act'*, whilst not further defined, clearly envisages an act or omission within the scope of the Terms of Reference i.e. the '*wrongful act'* must constitute a form of *'abuse'* coming within the definition itself.

5. Request for a broader interpretation of 'abuse'.

5. (i) The Public Notice outlines as follows;

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

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

5. (ii) By letter dated 16th May, 2025, the Minister requested as follows:

"In order to ensure that my client is in a position to fully understand the basis for the request and to be in a position to make a submission, I am requesting that a copy of the correspondence received by the Tribunal in relation to this issue is furnished."

5. (iii) By letter dated 20th May, 2025, the Tribunal provided a copy of the referenced correspondence dated 9th April 2025, duly redacted, to the Minister. This correspondence outlined *inter alia* that:

"We respectfully invite the Tribunal to give further consideration to a broader reading of the term 'abuse' within its Terms of Reference. Specifically, we suggest that certain systemic failures, particularly those related to health and safety, may constitute not mere negligence but abusive treatment, especially where risks were known, repeated and unremedied.

Under the Safety, Health and Welfare at Work Acts 1989 and 2005, employers are statutorily obligated to ensure, as far as reasonably practicable, the safety, health and welfare of their employees…

While traditional interpretations of 'abuse' often focus on overt interpersonal conduct, we would implore the Tribunal to consider that a reckless disregard for employee welfare, manifesting as persistent health and safety violations, can also constitute abusive treatment. This perspective aligns with the broader understanding that (sic) systemic failures, particularly when it results in harm." (emphasis added)

The said correspondence goes on to reference '*organisational abuse',* outlining a definition of same as '*systemic and repeated failures culturally inherent within the organisation or service'.*

The correspondence further encourages the Tribunal to 'expand' the Terms of Reference as follows:

"If the Tribunal does not agree that gross negligence in the context of toxic chemical exposure with distinct lack of health and safety measures constitutes abuse, then we invite the Tribunal to consider expanding the Terms of Reference."

Reference is made in the letter of 9th April 2025 to the case of ***Haughey v Moriarty***[1]. It should be noted that the extract taken from this case does not address a tribunal 'expanding' its Terms of Reference but instead outlines that a tribunal may explain a further interpretation of a term of reference in the light of facts emerging from its inquiries.

[1] [1993] 3 IR 1

5. (iv) It is acknowledged that the request is not a proposal by the Tribunal to further interpret and / or expand its Terms of Reference in the manner outlined. However, it is an invitation to the Tribunal to do the following:

(a) interpret '*abuse'* in the Terms of Reference to include '*a reckless disregard for employee welfare, manifesting as persistent health and safety violations';* and / or

(b) expand its Terms of Reference to include that '*gross negligence in the context of toxic chemical exposure with distinct lack of health and safety measures constitutes abuse'.*

For the reasons outlined below, it is respectfully submitted by the Minister that this invitation would require the Tribunal to bring matters which are outside its scope within the jurisdiction of its inquiry.

5. (v) In the first instance, the Resolutions of each House of the Oireachtas define the Terms of Reference of the Tribunal. As a whole and individually these terms constitute the "*definite matters ... of urgent public importance*" as required by Section 1 of the Tribunals of Inquiry (Evidence) Act, 1921. They are fixed by the Oireachtas and are given statutory effect by the Instrument appointing the Tribunal and defined therein. The terms constitute the exclusive task which the Tribunal can fulfil and set the limits and boundaries of that task.

5. (vi) The Terms of Reference of this Inquiry were laid before the Houses of the Oireachtas on 24th and 30th January 2024 respectively[2] and approved by each House.

The word 'abuse' is defined in clear terms as meaning "discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment and any form of sexual misconduct (including sexual assault, aggravated sexual assault and rape)". It excludes anything else.

[2] https://www.oireachtas.ie/en/debates/debate/dail/2024-01-24/18/: https://www.oireachtas.ie/en/debates/debate/seanad/2024-01-30/11/

These Resolutions, contained in the Statutory Instrument, empowered the Tribunal on 20th June 2024 by applying the 1921 Act, as amended, to it.

5. (vii) In its Opening Statement, the Tribunal succinctly summarised its task as follows:

"The Tribunal is tasked by those resolutions with inquiring, urgently, into a range of matters pertaining to the effectiveness of the processes and the culture within the Defence Forces for dealing with Complaints of Abuse, Investigating the nature and performance of the statutory role of the Minister for Defence / Department of Defence in the systems and procedures for dealing with complaints of abuse, forms part of the Tribunal's remit. Additionally, the Tribunal is to investigate the response to complaints in respect of the use of hazardous chemicals—within Air Corps' headquarters at Casement Aerodrome, Baldonnel—and to consider the adequacy of the complaints processes in the light of such response.

5. (viii) The correspondence submitted to the Tribunal dated 9th April 2025 seeks to rewrite the function and duty of the Tribunal from that which is expressly outlined in the Resolutions and the Statutory Instrument. Simply put, it seeks to amend the focus and examination of the Tribunal from the Complaints Processes in the Defence Forces to an examination of the Health and Safety regime in the Defence Forces generally (including alleged breaches of health & safety legislation, issues of alleged recklessness and / or issues of alleged gross negligence). These are not matters currently falling within the terms of the Resolutions and / or the Instrument establishing the Tribunal. Further, and whilst it is unclear from the letter, this suggested expanded inquiry could potentially cover the same time period (40 years) provided for in respect of the matters currently defined as constituting 'abuse'.

5. (ix) The Terms of Reference make express reference to the Safety, Health and Welfare at Work Acts, 1989 and 2005 under provision (G) of "Complaints Processes" '*only in so far as Term of Reference (vii) is concerned*'. Nothing in the literal interpretation of provision (G) suggests a vagueness or absurdity or a result not within the reasonable contemplation of the Oireachtas. It was open to the Oireachtas to consider any situation / type of complaint through the lens of this legislation and did not do so.

5. (x) It is respectfully contended that it is clear that the Tribunal cannot itself amend the Resolutions, the Terms of Reference or the Instrument by which it is established. It is further respectfully contended that it cannot proceed to carry out work which is outside of its Terms of Reference. To do so, would lead to the Tribunal acting outside its jurisdiction. It is of course open to the Tribunal to seek to amend or to consent to an amendment of its governing Terms of Reference. This process is specifically provided for under Section 1(A)(1) of the Tribunals of Inquiry (Evidence) Act, 1921.

In ***O'Brien v Moriarty***[3] the Supreme Court confirmed that the Terms of Reference governing the Tribunal were those laid down by the Houses of the Oireachtas and the Tribunal could not by way of interpretation seek to expand the same. Hardiman J in his judgment stated that:

"The words of the 1921 Act as amended and of the Terms of Reference are of central importance in this case. The first defines the power of the Houses of the Oireachtas themselves to call for a statutory inquiry: they cannot seek an inquiry with a roving, or open ended, or indefinite remit. The Terms of Reference are the instrument whereby the Houses control the Inquiry for which they have called. The words of the Terms of Reference must be taken to express the intention of the Houses. It is for the Tribunal to work within these terms and not unilaterally extend them. That power is restricted to the Houses, who have provided an easy process for seeking an extension of the terms, if needed. A construction of the Terms of Reference according to the ordinary legal rules of construction is essential if the primacy of the Oireachtas in this area is to be recognised and given effect to." [4]

5. (xi) The Minister also refers to Dodd & Cush, *Statutory Interpretation in Ireland*[5] where it is outlined that the presumption for the literal interpretative approach is the correct approach and that the alternative purposive approach is the exception. Importantly, they note that if the literal interpretation gives rise to a plain and unambiguous meaning, then the interpreter should not proceed beyond that meaning. In particular, the authors' state as follows:

[3] [2006] IESC 6.
[4] ibid. p. 29.
[5] 1st edn, Bloomsbury Professional 2008 at para. [5.07].

"The literal approach arises from an oft-repeated logic: the fundamental object of all interpretation is to give effect to the intention of the legislature. The pre-eminent indicator of the legislature's intention is the text actually chosen by the legislature itself to indicate its intention. In construing the text chosen by the legislature, the first consideration is to give the words used their literal meaning. If that meaning is plain and unambiguous, the interpreter's task is at an end."

5. (xii) It is respectfully submitted that the intent of the Oireachtas in establishing the Tribunal and providing the Terms of Reference is clear and that there is no room for ambiguity in respect of same. The Tribunal, in interpreting its Terms of Reference, cannot now lawfully proceed so as to bring matters outside of its jurisdiction within its jurisdiction, without proceeding under section 1(A)(1) of the Tribunals of Inquiry (Evidence) Act, 1921.

6. <u>Interpretation of Term of Reference (iv)</u>

6. (i) The Tribunal is charged by Term of Reference (iv) '*to investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of the Complaints of Abuse'.*

6. (ii) It is outlined in the Public Notice that:

"The Tribunal in its interpretation of its Terms of Reference (available on the Tribunal's website) adopted an interpretation of this Term of Reference to mean that: "If a complaint of abuse was not made, whether due to a perceived culture or a fear of retaliation or otherwise, such failure to complain at the relevant time, will not act as a bar to any person who wishes to give evidence to this Tribunal".

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

Indeed, in its Opening Statement, the Tribunal stated that:

"*The Tribunal is tasked by those resolutions with inquiring urgently into a range of matters pertaining to the effectiveness of the processes and the culture within the Defence Forces for dealing with complaints of abuse*."

"Some have already indicated, publicly, a willingness to speak about their experiences and to share their knowledge. Others may have chosen not to do so but may still want the whole truth to emerge. This is the opportunity to be heard, to participate in a fact-finding process that aims to establish the truth about the complaints processes and the culture surrounding the making of specific types of complaints within the Defence Forces. Whatever your relevant experience of or within the Defence Forces may be—whether negative or positive, damaging or constructive—concerning the culture and the processes for dealing with the type of complaints that fall within the Tribunal's jurisdiction, you are invited and encouraged to come forward and to assist the Tribunal in establishing the truth."

6. (iii) The Minister does not wish to make any submission that is contrary to what has been outlined by the Tribunal in that Statement and its interpretation that it is entitled to hear any such evidence on this issue, and reflects a perfect understanding of its task under the Terms of Reference.

6. (iv) This reflects the public position taken by the Tánaiste and Minister of the Defence, prior to and during the Dáil and Seanad debates on 24th and 30th January 2024, as outlined above. The only issue remaining for the Tribunal is to determine whether or not such witnesses are to be given representation either generally or limited in relation to the taking of their evidence under para. (iv), which is of course, a matter for the Tribunal.

Diarmaid McGuinness SC
Sinéad McGrath SC
Ruth Mylotte BL
Karl Shirran BL
Dated, 3rd June 2025,
Word Count (2,500)

Submission to the Defence Forces Tribunal

by the Defence Forces Justice Alliance Group

(hereinafter referred to as "the DFJA")

Since the establishment of the Independent Review Group (IRG-DF) under Chair, Ms. Justice Bronagh O'Hanlon and following its recommendation to initiate a Statutory Inquiry, the DFJA (formerly the CANARY Movement) has consistently strived to ensure the Terms of Reference (ToR) would be suitable for uncovering the truth.

These efforts sought ToR that reflect the intent of the IRG-DF recommendations, particularly those in paragraphs 4.1.1 and 3.3.10 of the IRG-DF Report. The DFJA also sought to ensure ToR's fairness and accessibility—especially for stakeholders who made submissions to RAISEACONCERN and the IRG-DF Review concerning interpersonal issues.

At the outset of the ToR development process, the DFJA expressed serious concerns that it may be unconstitutional and not in the public interest for the Minister for Defence and the Department of Defence, both of whom have vested interests and conflicts of interest, to oversee the process.

During the Tribunal's first public sitting on 24 June 2024, its sole member stated in the Opening Statement: "*Establishing the truth... is what this Tribunal has been established to do.*"

The DFJA formally notes, however, that the ToR, as shaped by the disconnected definitions introduced in S.I. 304/2024, particularly regarding "*Abuse*" and "*Complaints of Abuse*", pose a fundamental barrier to achieving that goal.

The DFJA, one year into the operation of the Tribunal, both individual DFJA submitters and those involved in subgroups remain unclear about the nature of the truth the Tribunal is currently seeking to establish.

Furthermore, the DFJA wishes to inform the Tribunal of concerns as to how any eventual findings of "truth" can hold meaningful relevance, given that the ToR along with the definitions set out in S.I. 304/2024 which diverges from the Defence Force complaints system.

This disconnection arises from the unexplained introduction of the definitions of abuse and complaints of abuse from the actual Defence Forces complaints systems and the actual IRG-DF recommendations (Complaints Systems, Interpersonal Issues, Transparency and Accountability).

Although the seven main ToR outlined in S.I. 304/2024 appear straightforward, they become difficult, if not impossible to properly understand, when considered in light of the disconnected definitions introduced in S.I. 304/2024.

These definitions complicate matters because firstly they did not exist within the complaints system or processes in the Defence Forces and secondly it appears that, for a complainant to gain access to the Tribunal's proceedings, the complainant must demonstrate that their interpersonal issue of complaint falls under the category of abuse or complaints of abuse.

Very few if any members of the DFJA submitted complaints of abuse. They submitted Redresses of Wrongs, Complaints of Inappropriate Behaviour and Complaint Grievances. Those members of the DFJA who did submit complaints view these unique definitions to be unnecessary and a potential vehicle for unjustified exclusion from the Tribunal proceedings.

Interpretation of the ToR

(i) Interpretation of 'abuse' and (ii) Request for expanded interpretation of 'abuse'

The Tribunal gave notice that the term '*abuse*' is defined in its ToR. [1]

[1] "*Discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment or sexual misconduct (including sexual assault, aggravated sexual assault and rape).*"

It further clarified that the Tribunal was established to examine and report on the Defence Forces' complaints processes related to '*complaints of abuse'*, to evaluate how such complaints were handled, and to investigate whether complaints were actively discouraged or whether a culture existed that inhibited the reporting of abuse.

The relevant paragraphs (4.1.1 and 3.3.10) of the IRG-DF Report recommending a statutory inquiry, the term '*abuse*' does not appear.

Instead, the Report refers to "*interpersonal issues*."

It is reasonable to consider that the IRG-DF Review members, having conducted a thorough, year-long examination, had a more objective and expert grasp of the matters requiring investigation than the Minister for Defence and the Department, who led the development of the ToR.

In its place, they introduced the unique and disconnected concept of abuse and complaints of abuse.

The term "*interpersonal issues*", though seemingly simple, was wisely chosen by the IRG-DF because it accurately and inclusively encompasses the full range of complaint processes within the Defence Forces' complaints systems.

In contrast, the terminology of abuse and complaints of abuse, as introduced by the Minister and Department, is significantly narrower in scope; does not encompass the full range of complaint processes within the Defence Forces' complaints systems; and consequently is inherently exclusionary.

Whether the discarding of the IRG-DF recommendation and terminology was made deliberately or through a lack of understanding, it has introduced an unacceptable risk of **exclusion.**

The DFJA urges the Tribunal to interpret its ToR in a way that prevents any such exclusion from taking effect and ensures that the full breadth of the complaints process within the Defence Forces complaints systems, availed of by DFJA members, qualify for inclusion before this Tribunal.

The definition of abuse should be expanded to incorporate the term "*interpersonal issues*" as used in the IRG-DF's recommendation for a statutory fact-finding process.

Including "*interpersonal issues*" in the interpretation of abuse would facilitate ease of access to the Tribunal proceedings, enable investigation and support the request for a broader interpretation concerning persistent health and safety violations by the Defence Forces.

Interpretation of the ToR

Regarding the Tribunal's Notice of Public Sitting dated 16 June 2025, in particular, Schedule One, the Tribunal's published a set of definitions are widely accepted.

However, the DFJA wishes to formally place on record that within Administrative Instruction A7, Chapter One, there exists a corresponding set of definitions.

In several instances, these are expanded versions of those presented in the Tribunal's Notice. These definitions have been in active use within the Defence Force complaints system and, accordingly, their formal status and relevance should be officially recognised.

The DFJA further notes the Tribunal's position, wording, interpretation, and definition relating to *Psychological Harm* as outlined in Schedule One.

The DFJA believes the definition provided therein does not share the status of the other definitions, as it is neither widely accepted nor appears to have any statutory or institutional foundation.

Moreover, and most troublingly, the definition appears to describe *Psychological Damage* rather than *Psychological Harm*. The DFJA respectfully requests that the Tribunal clarify which experts in psychological harm or trauma, if any, were consulted prior to the publication of Schedule One.

Following consultations with qualified psychological trauma professionals, the DFJA also notes its categorical disagreement with the statement contained in Schedule One that: *"The mere occurrence of psychological harm, howsoever caused, could not reasonably be said to be abuse."*

The use of the word 'mere' in this context demonstrates a troubling degree of insensitivity and ignorance. It suggests a fundamental misunderstanding of the subject matter and raises legitimate concerns about the fairness and impartiality of those responsible for drafting such language.

Any reasonable observer would find such phrasing to be dismissive, unreasonable and alarming. The DFJA urges the Tribunal to reconsider the *psychological harm* related language and definitions presented in Schedule One and to consult trauma experts so the definition reflects established clinical standards.

The DFJA further notes its concern regarding the scripted sentence: "*The other categories of* 'abuse' *as defined in the Terms of Reference involve some action on the part of a perpetrator.*"

This statement is not only confusing, but also appears to suggest, by implication, that psychological harm does not involve any action by a perpetrator.

Such a position is incomprehensible, especially when abuse of power and rank, followed by a systemic failure to properly address complaints and a subsequent cover-up, clearly involves not just one, but multiple perpetrators of psychological harm.

The DFJA firmly disagrees with the position implied by this sentence and regards it as yet another example of language crafted either by individuals lacking adequate knowledge and understanding of the subject matter, or alternatively possessing an ulterior motive, lacking fairness and independence.

The DFJA put on record that the initial words of the proposed definition of Psychological Harm, "*A wrongful act which caused a complainant to suffer harm to the mind...*" are inconsistent with earlier suggestions that psychological harm can occur without the involvement of a perpetrator.

This contradiction in language, interpretation, and definition serves only to contribute to confusion rather than offering clarity.

The DFJA further put on record that the remaining content of the proposed definition of Psychological Harm, ought to encompass those 8 identified in Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR)[2].

Other matters relevant to the ToR

The DFJA is at a complete loss as to how any eventual findings of "*Truth*" can hold significant relevance, given that the ToR, along with the definitions outlined in S.I. No. 304 of 2024 are;

1. Disconnected from the Defence Forces complaints system. This disconnection stems from the use of a definition of abuse that did not exist at any point between 1983 and 2024.
2. Disconnected from the IRG-DF's stated objectives for the statutory fact-finding process, as outlined in paragraphs 4.1.1 and 3.3.10 of the IRG-DF Final Report.
3. Unfit for purpose where it is expected that the ToR would reflect the recommendations of the IRG-DF regarding the statutory fact-finding process.

[2] *Classification: Trauma - and Stressor-Related Disorders' – and include Post Traumatic Stress Disorder, Acute Stress Disorder, Adjustment Disorders, Reactive Attachment Disorders' – and include Post Traumatic Stress Disorder, Acute Stress Disorder, Adjustment Disorders, Reactive Attachment Disorder, Disinhibited Social Engagement Disorder, Other Specified Trauma and Stressor-Related Disorder, and Unspecified Trauma and Stressor-Related Disorder*

The DFJA requests the Tribunal to provide an interpretation of, how the ToR and definitions contained in S.I. No. 304 of 2024 can be understood in a manner consistent with the IRG-DF's objectives for the statutory fact-finding process, in paragraphs 4.1.1 and 3.3.10 of the IRG-DF Final Report

The DFJA are deeply troubled and concerned that that the ToR outlined in S.I. No. 304 of 2024 were;

A. Developed in such a manner as to exclude the following categories of persons from the investigatory process (including the making of submissions), rather than facilitating their inclusion:

1. Serving members of the Defence Forces.
2. Retired members of the Defence Forces.
3. Affected family members of serving members of the Defence Forces.
4. Affected family members of retired members of the Defence Forces.
5. Affected family members of deceased members of the Defence Forces.
6. Affected family members of deceased civilian employees of the Defence Forces.

B. Developed in such an inappropriate manner that they are and will continue causing further psychological harm and trauma to victims of abusive interpersonal interactions (issues) within the Defence Forces, submitting to the Tribunal.

C. Developed inappropriately that they reflect a complete disregard for whether the interpersonal issues contained in submitted complaints are credible or substantiated.

D. Developed in such a way that they are fundamentally flawed and unacceptable.

This approach effectively reduces the complainant to a passive object, exposing them to a potentially degrading and retraumatising experience.

Such objectification stems from the artificial division of the complainant's complaint into two disconnected parts: the core allegations of the complaint, which the Tribunal is explicitly excluding from investigating and the procedural handling of the complaint, which is the only aspect the Tribunal proposes to materially investigate.

This artificial fragmentation of the submitter's complaint handling experience, demonstrates disregard for the full context of their trauma and poses a significant risk of further psychological harm being inflicted through the Tribunal process itself.

Rather than placing the public interest above all other considerations, the vested and conflicted interests of the Minister and the Department are prioritised.

The IRG-DF explicitly recommended the establishment of a statutory fact-finding process to identify systemic failures, if any, in the *complaints system* within the Defence Forces.

The DFJA highlights a significant distinction between an investigation of processes and an investigation of a system. While "*processes*" refer to the specific tasks, steps, and procedures within a workflow, a "*system*" encompasses these processes along with the broader structure, interactions, and governance that work together to achieve overarching objectives.

The DFJA requests the Tribunal to provide an interpretation of complaints processes which is broadened to include the ordinary and natural meaning of the words "*complaints system*".

The nature, substance, form, and extent of this consultation between the Minister for Defence and the Attorney General has not been disclosed to stakeholders nor made available in the public domain. It is unclear whether the Attorney General approved the process by which the ToR were developed.

This concern is particularly relevant in relation to ToR 6, which involves the Tribunal's examination of the statutory roles and performance of the Minister, Secretary General, and Department staff themselves.

Page 2 of S.I. No. 304 of 2024, under the signature of the Minister for Defence is worthy of note. [3]

Neither the Minister nor the Department of Defence engaged with the DFJA during the development of the ToR.

Consequently, the DFJA's (CANARY Movement) observations and comments, were not considered, or included in the process. No meaningful engagement was ever initiated by the Minister or the Department with the DFJA.

Furthermore, the DFJA notes the ToR were developed and finalised without any involvement from the principal stakeholder group, the DFJA, which had submitted extensive evidence to the IRG-DF and whose members have submitted over 120 statements to the Defence Forces Tribunal.

Page 3 of S.I. No. 304 of 2024 refers to "*Complaints Processes*" as including, but not limited to, those listed. The DFJA requests that the Tribunal clarify the phrase "**includes but is not limited to**" and set out the criteria as to what unlisted complaints system or process may be considered part of the list.

The DFJA wishes to place on record concern regarding the ToR which are notably ambiguous, especially regarding the apparent requirement that complaints about mishandling or improper investigation of a complaint must somehow be linked to an element of abuse or aligned with the unconventional and specific definition of abuse in order to be eligible for consideration by the Tribunal. Clear and definitive interpretation would address this confusion.

[3] "*Mindful that the Minister for Defence has consulted with the Attorney General and the observations and comments from key stakeholders have been considered in the development of the terms of reference.*"

Conclusion

The ToR for the Tribunal as they currently stand, are a flawed product of an outdated and inadequate approach to investigating state-sponsored wrongdoing.

This approach, conducted through statutory inquiries with ToR developed by an entire Department that may itself be implicated in the issues under investigation, is deeply worrying.

This view was effectively acknowledged on 17 April 2025 by the current Taoiseach, who signed S.I. No. 304 of 2024, following the publication of the Farrelly Commission's Final Report [4].

The DFJA is concerned that the ToR themselves may also be unconstitutional.

The DFJA is profoundly disappointment that despite decades of tireless efforts to expose systemic institutional wrongdoing within the Department of Defence and the Defence Forces, that the ToR are flawed.

Given the restrictive and exclusionary nature of the ToR, the DFJA fears that this Tribunal may ultimately fall short in the pursuit of a degree of truth necessary to effect meaningful change on a Department and Defence Forces basis.

As a result, there is a serious risk that the Tribunal will not sufficiently serve the public interest and may instead represent a further misuse of public resources and funds.

Defence Forces Justice Alliance Group

[4] *"The State needs to fundamentally reflect on the costly and lengthy commissions of inquiry which come up with deeply unsatisfactory findings."*

Submission to the Defence Forces Tribunal by the Protected Disclosure Justice Group

June 2025

The Protected Disclosure Justice Group (hereinafter called the "Whistleblower Group") wish to make the following submissions to the Tribunal ahead of its public sitting on the 16th June 2025.

1. Interpretation of the Tribunal's Terms of Reference

(i) Interpretation of 'abuse'

The Whistleblower Group believe that the use of the word *'abuse'* as defined in the terms of reference is unsuitable and unhelpful for the Tribunals search for the truth.

It is submitted that the inappropriate definition of the term *'abuse'* is a further hindrance to the Tribunal. Nowhere in the complaints processes in the Defence Forces is the word *'abuse'* or *'complaints of abuse'* part of the listed complaints processes.

The use of the word *'abuse'* is a misdirection, that may unfortunately be deliberate, and the Tribunal is urged to reconsider the narrow definition set out in the terms of its reference.

Paragraph 6 of the Tribunal's Terms of Reference states as follows:

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

The Whistleblower group respectfully requests the Tribunal to expand and/or revise the Tribunal's interpretation of its Terms of Reference in light of the facts, circumstances and complaints that members of the Whistleblowers Group are trying to bring to the State's attention and more especially, this Tribunal's attention.

The public deserve to know Whilstleblower Group member's complaints and that natural justice and fair procedures apply and not in a restricted way.

2. Protected Disclosures Act 2014 – Part 2

The following matters are relevant wrongdoings for the purposes of this Act—

(a) that an offence has been, is being or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged,

(f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,

(g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or

(h) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

Pursuant to Part 2 of the Protected Disclosures Act 2014, Paragraph 5(3) (a) to (h) inclusive sets out what '*Relevant Wrongdoings*' amount to.

This list is of eight sub-categories is comprehensive and allows for the reporting of wrongdoings in a broad range of matters. However, '*Abuse*' is **not listed** as part of the 'Relevant Wrongdoings' in the Protected Disclosures Act 2014.

This raises the questions - where did the use of the word '*abuse*' come from? It is submitted that the terms of reference for the Tribunal in their present form should be seen as "**Relevant Wrongdoings for the purpose of the Act.**"

No appropriate action has been taken to stop the wrongdoings.

It is submitted that members of the Whistleblower Group's right to fair procedures do not exist in this Tribunal because of the unfair, unfit, and incorrect terms of reference for the Tribunal.

Protected Disclosure Justice Group
3 June 2025

Submission to the Defence Forces Tribunal by the 34th Platoon Army Apprentice School Justice Group

June 2025

The 34th Platoon Justice Group wish to express significant concerns regarding the definition of '*psychological harm*' as outlined in the Tribunal's Notice of Public Sitting scheduled for 16 June 2025.

The definition which appears is not a definition of 'psychological harm' but is in fact a definition of 'psychological damage'. Specifically, it is submitted that the current definition is incorrect, unjust, and unfair for the following reasons:

1. Restrictive Interpretation:

The Tribunal's current definition of psychological harm is overly restrictive, limiting recognition of harm to diagnosable psychological injuries as classified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR).

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

The impact of sustained bullying, harassment, or exposure to a toxic environment may cause severe psychological distress without culminating in a clinically diagnosed condition. Thus, the existing definition is fundamentally unjust to those whose suffering is profound but not formally categorised under DSM-5-TR criteria.

2. Exclusion of Systemic and Cumulative Harm:

The Tribunal's definition does not account for systemic or cumulative harm, wherein repeated, lower-level instances of mistreatment, intimidation, or harassment may collectively result in significant psychological harm.

This oversight is particularly relevant in military contexts, where power dynamics and hierarchical structures can exacerbate the psychological impact of sustained exposure to toxic conditions.

By focusing solely on clinically diagnosed conditions, the Tribunal fails to address the broader, more pervasive effects of persistent mistreatment that may not meet DSM-5-TR criteria but nonetheless have a devastating impact on an individual's psychological well-being.

3. Unfair Burden of Diagnostic Criteria:

Requiring a DSM-5-TR diagnosis as the threshold for recognition of psychological harm places an unreasonable burden on complainants, particularly those who may not have access to mental health services or those who may have suffered in silence for years without formal diagnosis. This approach disproportionately disadvantages those who have not obtained a clinical diagnosis but have nevertheless endured profound psychological harm.

4. International Standards and Best Practices:

While the DSM-5-TR provides a structured framework for diagnosing mental disorders, it is not the primary diagnostic standard in Ireland, where the International Classification of Diseases, 11th Revision (ICD-11) is more commonly applied in clinical practice.

A more equitable approach would consider psychological harm as inclusive of conditions recognised in both the DSM-5-TR and ICD-11, as well as significant distress that does not meet diagnostic criteria but can be demonstrated through credible evidence, such as witness testimony or behavioural changes.

5. Historical Context and Awareness of Psychological Harm:

For some members of the Defence Forces, the psychological harm inflicted may have occurred as far back as the early 1990s. In particular, individuals aged between 16 and 18 at the time who were subjected to harmful behaviour over a sustained period of three years may not have been aware of the nature or impact of psychological harm.

During that era, societal awareness of mental health was considerably less developed, and formal diagnoses of psychological trauma were less accessible or even non-existent. This lack of awareness may have prevented victims from recognising, articulating, or seeking support for the psychological harm they endured, further underscoring the unjust impact of the Tribunal's narrow definition, which effectively disregards the profound and lasting impact of such historical abuse.

6. Restriction on Eligibility to Give Evidence:

By narrowing the scope of who is considered eligible to give evidence, the Tribunal risks perpetuating the same systemic failures that allowed wrongdoing to go unaddressed for decades.

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

Many former members who experienced abuse within the Defence Forces have long been denied justice and recognition. Denying them the opportunity to formally document their experiences now—due to overly rigid definitions and eligibility criteria—continues the disservice and betrayal by the very systems that should protect them.

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

In light of the above issues outlined, it is submitted that a revised definition of ***psychological harm*** that includes not only clinically recognised disorders but also significant distress or psychological impact resulting from systemic or cumulative mistreatment ought to be considered and included.

This revision aligns with principles of fairness and inclusivity and ensures that the Tribunal adequately addresses all forms of psychological harm experienced by Defence Forces personnel, irrespective of diagnostic labels.

The current definition of psychological harm is unjustly narrow and fails to encompass the full spectrum of psychological harm experienced by complainants in military contexts.

A more comprehensive definition, as outlined in the proposed revision, would uphold principles of justice, equity, and accessibility for all affected parties.

The Tribunal is respectfully urged to reconsider and reinterpret its definition of '*psychological harm*' and adopt a definition commonly used in this State—one that better reflects the realities of psychological distress and trauma within military environments.

Such a definition should ensure that all past and present members of the Defence Forces who suffered psychological harm can gain unrestricted and equitable access to the Defence Forces Tribunal.

The 34th Platoon Justice Group wishes to formally place on record our belief that the current Terms of Reference are inadequate to ensure a proper investigation into psychological harm. As presently framed, the definition prevents a full and truthful account of the psychological harm experienced by Defence Forces personnel from emerging in these proceedings.

Furthermore, we wish to express serious concern over the current paradox: while psychological harm is acknowledged as relevant to access the Tribunal, the acts that caused such harm are explicitly excluded from investigation under Statutory Instrument No. 304 of 2024.

This contradiction, embedded in the Terms of Reference, is not only unfit for purpose but represents a source of further trauma to witnesses who have come forward in good faith. It is submitted that this procedural inconsistency undermines the very objective of the Tribunal and continues the cycle of institutional neglect.

34th Platoon Justice Group

3.6.25

WRITTEN LEGAL SUBMISSIONS ON BEHALF OF [redacted]

IN RESEPCT OF THE INTERPRETATION OF THE TERM 'ABUSE'

Interpretation of 'abuse'

'Abuse' is defined as '*discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment and any form of sexual misconduct (including sexual assault, aggravated sexual assault and rape'.* The Term does not include the Defence Forces' Complaints Process itself which, it is submitted, constitutes a recursive and egregious abuse of abuse.

Background to 'Abuse'

This firm represents seven complainants [redacted]

[redacted]

Informal and formal complaints of abuse proved wholly futile and escalated the abuse.

This firm also represents a civil servant w[redacted] We submit that the proposed interpretation of the term of the 'abuse' to exclude such irrational and perverse processing of complaints of abuse (under the guise of a remedy) amounts to a further organised, egregious abuse of abuse.

1

It is submitted, in respect of the interpretation of the term 'abuse', that the term 'abuse' is implicitly reductively interpreted by the Defence Forces in its discussions on discovery where for example 'complaints processes' are reduced to 'key documents' 'contained' and 'maintained' on the Defence Forces' impugned complaints files. The term is thus rendered anodyne and sanitized in a sort of aside, in *obiter dicta* in the Defence Forces' discussions on discovery.

1. 'Abuse' as Perverting Protected Disclosures and Clinical Evidence of Wrongdoing

Complaints of 'abuse' (See E and F of the Tribunal's Terms of Reference) in the case of the seven complainants were transmitted *via* the Personnel Support Service and *via* civilian medical certificates (evidencing [redacted] the wrongdoing of interference with bodily integrity). They amounted to protected disclosures within the terms and meaning of the *Baranya* case [2022] IESC 5 in the Supreme Court judgement of Mr Justice Hogan.

Firstly, given the status of such complaints of 'abuse' as protected disclosures to the PSS, they amounted to complaints not simply (as suggested by the Defence Forces in its submissions/discussions on discovery) complaints *simpliciter* but rather protected disclosures evidencing wrongdoing and requiring effective investigation.

Secondly the clinical diagnoses of [redacted] - were also protected disclosures of 'abuse'/attacks on bodily integrity (within the terms of E and F of the Terms of Reference). [redacted]

The denial of abuse (conveyed *via* the PSS) and the covering-up of abuse (conveyed *via* civilian medical certification) and the return of the complainants for further retaliation constituted a systemic, corporate abuse by officers.

Where, on the other hand, the definition of 'abuse' by the Defence Forces (see it submissions on Discovery) is limited only to whatever is described on a Defence Forces' complaint's file which has been 'opened' and 'maintained' by the Defence Forces, such will abstract from the latter institutional escalation in 'abuse' (under the cover of a grievance process) which is supposedly the subject matter of this Inquiry.

2. 'Abuse' as Obliviousness to Detriment

Apropos of protected disclosures, it is firstly submitted that it makes no sense to investigate protected disclosures (*per* E and F of Terms of Reference) without also interpreting the term 'abuse' as 'detriment' within the meaning of the Protected Disclosures Act 2014. 'Abuse', it is submitted, must be held to

include ‘detriment’. The alternative is to abstract the ‘abuse’ from its context of reprisal and distort its sense.

3. ‘Abuse’ as Officer-Perversion of Complaints of Abuse when Transmitted via the Personnel Support Service.

[redacted]

[redacted]

[redacted] The reductive interpretation of ‘abuse’ (implicitly proposed in a sort of *sotte voce* aside from the Defence Forces) will underestimate the intensity of the abuse, coercion of the abused and the perversion of the ostensible complaints process.

The Tribunal has determined that the Personnel Support Service is an official mechanism for the submission of informal complaints of ‘abuse’ and it refers to paragraph 153 of the Defence Forces Administrative Instructions A7 Chapter 1. The PSS accordingly functions not only as mediator but as an actor at the informal stage in the complaints process which members are encouraged to use.

It is submitted that it must not be a question therefore of simply the Tribunal engaging with the Personnel Support Service on this issue of the PSS (See 5 in the discussion on discovery) – as proposed. The Tribunal must, it is respectfully submitted, also engage with the *former* members of the Personnel Support Service (who are no longer in the employment of the Defence Forces and therefore free from coercion) and also with these seven complainants on the suppressed documents.

[redacted]

3

The foregoing *modus operandi* of suppression is routinely employed by senior officers to protect officers who abuse. They amount to recursive abuse, an ironic abuse of 'abuse' masquerading as remedy.

4. 'Abuse' as non-compliance with Article 6 ECHR, Article 47 of the EU Charter Standards of Rationality and Fair Procedures in the Determination of 'Complaints of Abuse':

A Tailor's Dummy in Military Dress:

In addition to the latter *physical suppression* of complaints and or evidence of 'abuse' at the informal or PSS stage, a second form of 'abuse', at the formal stage, involves gross *intellectual abuse* where determinations are characterised by a lack of rationality, lack of fair procedures, lack of any empirical inquiry, a want of analysis and reasons.

[redacted]

The Defence Forces must therefore, it is submitted, be required to discover not just complaints of 'abuse' as recorded on files which they 'opened' and 'maintained' but also determinations which meet Article 6 ECHR standards of rigour and adequate empirical and scientific investigation, sufficient reasons, evince compliance with a right of reply, show sufficient reasons for the failure to examine real evidence and the lack of independence in adjudicators etc. In their submissions on discovery, the limitations imposed on the interpretation of 'abuse' by the Defence Forces trivialise the abuse caused by the complaints processes and are overly reductive.

5. 'Abuse' as the Failure of Commanding Officers to Rationally Investigate:

Where Protected Disclosures, as defined in the *Baranya* case, as disclosures of wrongdoing have been made to commanding officers (as here) and the chief of staff (as here), there is an obligation on such officers to treat them as protected disclosures and to prevent the causation of detriment. A complainant must not (as here) be met with studied incomprehension or

inchoate discourse in full uniform.

In relation to the submissions from the Defence Forces on discovery (at Category 10), it is submitted given the volume of complaints (from seven complainants), the serious nature of the threats (from [redacted] but in any case threats seeking the withdrawal of complaints of abuse, [redacted] etc, there was an onus in such circumstances on Commanding Officers of their own motion in respect of complaints of 'abuse' to carry out an effective investigation in accordance with Article 6 ECHR rights standards of *intellectual* rigour for the seven complainants. The abuse of 'medical' science by medical officers within the Defence Forces in the investigation of abuse is also clearly a species of abuse which calls for an effective investigation by Commanding Officers.

The failure of Commanding Officers to so effectively investigate amounts to an egregious institutional 'abuse' of the abused. The limitation (on discovery) to Army documents of complaints without any regard for reasons for the inaction from Commanding Officers will grossly understate and distort the abuse.

6. 'Abuse' as Failure by the Military Police to Investigate in accordance with Standards of Best Policing Practice

[redacted] The Defence Forces say that they do not intend to provide any documentation which has already been provided (category No. 6 of discussion of discovery). Given the seriousness of the complaints sent to the Military Police, the absence of any transparent effective police investigation of such abuse consistent with Article 6 ECHR rights (to reasons, to expert analyses, to equality of arms) is a telling measure of the futility of the complaints processes and this egregious counter intuitive abuse of abuse.

Accordingly, the Military Police must be requested to present not just their own files but files which meet international best practice standards in policing. Where these do not exist, it is submitted that the military police must be asked to explain the lack of rigour. (It is conceded that if they claim to have provided documents already, there is no necessity for them to provide them again. The documents already provided however are no answer)

7. 'Abuse' as Obliviousness/ Disregard of Abuse by the Minister for Defence

In relation to the discovery sought from the Minister for Defence (discussion at Category 3), protected disclosures were made within the terms and meaning of the *Baranya* case by all seven complainants to the Minister for Defence. The Minister has apparently done nothing and has adopted an apparently *faux naif* incomprehension so far. Will the Minister deny knowledge of the abuse of 'abuse' as expressly defined? Is this naivety abuse?

We accordingly on behalf of [redacted] request an expanded interpretation of 'abuse' in the above terms.

Dated 3rd June 2025

John Gerard Cullen Solicitors
Hartley Business Park
Carrick on Shannon
County Leitrim

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

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

Filed and delivered on the day of June 2025 by Malcomson Law Solicitors on behalf of Women of Honour

Word Count: 1,745 Words

Submissions:

1. Pursuant to Notice of Public Sitting of the Tribunal scheduled for the 16th of June 2025, interested parties are invited to make submissions in respect of the existing terms of reference adopting a broader interpretation of 'abuse' in order to encompass allegedly persistent violations of health and safety legislation by the Defence Forces.

2. Interested parties are also invited to make submissions in respect of Application seeking an Extension of Time in respect of Order for Discovery. The Chief of Staff of the Defences Forces has indicated to the Tribunal that he intends to seek an extension of time within which to comply with the Tribunal's Order for Discovery dated the 28th day of January 2025.

3. In this regard, the interested party known as "Women of Honour" as represented by Malcomson Law Solicitors, make the following submissions in support of such a broader interpretation of the word "abuse" and also in opposition to the Application seeking an Extension of Time in respect of Order for Discovery by and on behalf of The Chief of Staff of the Defences Forces.

(A) Support a broader interpretation of the term "abuse" within the Defence Forces Tribunal's Terms of Reference-

4. To support a broader interpretation of the term "abuse" within the Defence Forces Tribunal's Terms of Reference, particularly to include systemic health and safety violations, the following reasoning is provided. Each point is grounded in legal, ethical,

and institutional frameworks, with references to relevant legislation, tribunal documentation, and best practice standards.

Legal Frameworks Support Broader Interpretation

A. Safety, Health and Welfare at Work Act 2005

5. This Act imposes a statutory duty on all employers, including the Defence Forces, to ensure the safety, health, and welfare of employees. Section 8(2)(g) requires employers to provide systems of work that are planned, organised, performed, maintained, and revised as appropriate to be safe and without risk to health. Persistent failure to comply with these obligations—especially where risks are known and unremedied—constitutes a breach of statutory duty and should be interpreted as institutional abuse. Reference: Safety, Health and Welfare at Work Act 2005, Sections 8 and 19.

B. Protected Disclosures Act 2014 (as amended)

6. This Act protects whistleblowers who report health and safety risks. Retaliation against individuals who raise such concerns is explicitly prohibited and is itself a form of abuse. If systemic health and safety violations are reported and ignored or punished, this constitutes both a breach of law and abusive treatment. Reference: Protected Disclosures Act 2014, Sections 5 and 12.

Psychological Harm as Defined by the Tribunal:

7. In the Tribunal's own interpretation (Schedule One of the Public Sitting Notice), "psychological harm" includes:

   "A wrongful act which caused a complainant to suffer harm to the mind resulting in a recognised psychological injury."

8. Systemic exposure to hazardous environments (e.g. toxic chemicals at Casement Aerodrome) can lead to trauma, anxiety, and stress-related disorders.

9. If such exposure is known, repeated, and unaddressed, it meets the Tribunal's threshold of a "wrongful act" causing psychological harm. Reference: DSM-5-TR classification of trauma-related disorders; Tribunal's Public Sitting Notice, Schedule One, Section F.

Institutional Neglect and Culture of Silence:

10. Tribunal's Term of Reference (iv)

    "Investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of the Complaints of Abuse."

11. A culture that ignores or suppresses health and safety complaints fosters fear and silence. This aligns with the Tribunal's mandate to investigate systemic deterrents to reporting abuse. Reference: S.I. No. 304 of 2024, Term of Reference (iv).

Independent Review Group (IRG) Findings:

12. The IRG Final Report (2023) found that: Health and safety complaints, particularly in the Air Corps, were mishandled. Personnel feared retaliation or career damage for raising concerns. There was a pattern of institutional denial and lack of accountability. Reference: IRG Final Report to the Minister for Defence (2023), Chapter 3.4.1.

Comparative Jurisprudence and International Standards:

13. In international human rights law, systemic neglect of health and safety—especially when it results in harm—is recognised as a form of degrading treatment or abuse.
14. The European Court of Human Rights has held that failure to protect individuals from known environmental or occupational hazards can breach Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to private life). Reference: ECHR case law, e.g., Brincat and Others v. Malta (2014).

Precedent in Tribunal's Own Scope:

15. Term of Reference (vii) explicitly mandates the Tribunal to: "Investigate the response to Complaints of Hazardous Chemicals and to consider the adequacy of the Complaints Processes in light of the responses to same."

16. This shows that the Tribunal already recognises systemic health and safety failures as a matter of urgent public concern.

17. Including such failures under the broader definition of "abuse" ensures consistency and completeness in the Tribunal's investigative scope. Reference: S.I. No. 304 of 2024, Term of Reference (vii).

Conclusion:

18. A broader interpretation of "abuse" to include systemic health and safety violations is:

    a) Legally justified under Irish and international law.
    b) Ethically necessary to uphold the Defence Forces' duty of care.
    c) Consistent with the Tribunal's Terms of Reference and interpretive guidance.
    d) Supported by the findings of the Independent Review Group and the lived experiences of Defence Forces personnel.

19. It is therefore respectfully submitted that this Tribunal proceeds by adopting a broader interpretation of 'abuse' in order to encompass allegedly persistent violations of health and safety legislation by the Defence Forces.

(B) <u>Opposition to the Application seeking an Extension of Time in respect of Order for Discovery by and on behalf of The Chief of Staff of the Defences Forces-</u>

20. An extension of time for compliance with a Discovery Order in the context of the Defence Forces Tribunal of Inquiry could have a significant impact on the Tribunal's ability to complete its work within the statutory three-year timeframe mandated by its establishment.

21. The Tribunal was established on 20 June 2024 under the Tribunals of Inquiry (Evidence) Acts 1921 to 2011. It is obliged to complete its work within three years, i.e., by 20 June 2027.

22. The Tribunal's investigative phase is heavily dependent on timely discovery of documents from the Defence Forces and the Minister for Defence.

23. These documents are essential for:
Reviewing complaints and institutional responses.
Preparing for interviews and public hearings.
Ensuring procedural fairness for all parties.

Potential Impact of Extensions:

24. The Tribunal initially ordered discovery to be completed by:
2 July 2025 (Defence Forces)
16 June 2025 (Minister for Defence)

25. Any extension beyond these dates would:

Delay the investigative phase, including interviews and analysis.

Postpone public hearings, which are contingent on full document review.

Compress the remaining timeline, increasing pressure on the Tribunal to conclude its work within the statutory limit.

26. Any further extension of time for discovery must be carefully balanced against the Tribunal's statutory obligation to conclude by June 2027. Delays in discovery risk cascading delays across all phases of the Tribunal's work and may necessitate legislative or procedural interventions to maintain the integrity and effectiveness of the inquiry. The Women of Honour would respectfully request that if such an extension of time be granted and delay be caused as a result, it would be desirous that the Tribunal extend the duration of the Tribunal to reflect the extension of time period.

The Extension of time sought will cause delay finalising draft Complainant Statements:

27. The Tribunal has agreed to accept Complainant statements from Women of Honour in draft form. The Tribunal has effectively allowed that statements may remain in draft form until complainants have had an opportunity to review the documents subject to discovery provided that the Tribunal's Consent Form has been completed by the individuals concerned.
28. The Tribunal confirmed that Malcomson Law will receive all relevant documents/files for each individual complainant before any interview takes place, but only after the Consent Form is submitted.

29. The Tribunal acknowledged that:
"If any other issues arise then, the individuals can amend their Statements to address those issues and that will allow the Tribunal to consider as to whether such individuals should be interviewed."

30. This approach allows complainants to:
Review the discovery material relevant to them.
Amend or finalise their statements accordingly.
Ensure their statements are informed and complete before any formal engagement with the Tribunal.

Conclusion:

31. If an extension of time is granted for the delivery of discovery, it will likely have a direct delaying effect on the finalisation of draft witness statements.

32. As outlined, the draft Statements are contingent on Discovery. Malcomson Law has indicated that many of the statements submitted are in draft form because the Complainants have not yet had access to relevant documentation (e.g. personnel files, complaint records, medical files). The statements may need to be amended or expanded once discovery is reviewed. Thus, finalisation is dependent on timely receipt of discovery.

33. Delayed Discovery will inevitably result if delayed finalisation of statements. Also, if discovery is delayed, Complainants will not be in a position to review the documents relevant to their cases. Malcomson Law will not be in a position to advise or assist in refining the statements. The Tribunal will not be able to assess whether individuals should be interviewed or called to give evidence.

34. Such delay may potentially/is likely to create a bottleneck in the investigative phase. This in turn , may create a knock-on effect in respect of the Tribunal's Timeline which requires work to be completed by 20 June 2027.

35. Delays in finalising statements due to late discovery could postpone interviews and hearings and compress the time available for public hearings, analysis, and report writing.

36. It is, therefore, respectfully submitted that this Tribunal refuse the Application seeking an Extension of Time in respect of Order for Discovery by and on behalf of The Chief of Staff of the Defences Forces.

Dated this 3rd day of June 2025

Raymond Bradley SC

Karl Sweeney BL

Signed: Malcomson Law

Malcomson Law

Iceland House,

Arran Court,

Smithfield,

Dublin 7.

To:

The Defence Forces Tribunal of Inquiry

The Infinity Building

Third Floor

George's Court

George's Lane

Smithfield

Dublin 7

D07 E98Y

Tribunal of Inquiry into Issues Relating to the Complaints Processes in the Defence Forces and the Culture Surrounding the Making of Complaints

('Defence Forces Tribunal')

INTERPRETATION OF THE TERMS OF REFERNCE

Submissions of the Defence Forces

Office of the Chief State Solicitor

Word Count: 2,114

3 June 2025

Contents

Introduction

1. The Defence Forces welcomes the opportunity, as an affected party, to make submissions on:

    (I) Interpretation of the Tribunal's Terms of Reference

        (i) Interpretation of 'abuse'
        (ii) Request for a broader interpretation of 'abuse'
        (iii) Interpretation of Terms of Reference (iv)

    (II) The Request by the Chief of Staff of the Defence Forces for an extension of time within which to comply with the Tribunal's Order for Discovery dated 28 January 2025.

Submission on 1(i) - Interpretation of "abuse"

2. The Tribunal was established by Instrument dated **20 June 2024**.

3. In ***Haughey v Moriarty [1999] 3 IR 1***, 56, Hamilton CJ, citing the Salmon Commission Report, stated:

> *"The tribunal should take an early opportunity of explaining in public its interpretation of its terms of reference and the extent to which the inquiry is likely to be pursued. As the inquiry proceeds, it may be necessary for the tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged."*

4. The Tribunal explained in public its interpretation of the Terms of Reference **on 24 June 2024**.

> *"How the Terms of Reference are to be interpreted is a matter for the Tribunal. In accordance with accepted practice, the Tribunal has published its interpretation of the Terms of Reference and this document is available on the Tribunal's website.*
>
> *In approaching the task of interpreting the Terms of Reference, the Tribunal has sought to apply to the words their ordinary and natural meaning. In the Tribunal's view, the words are expressed in clear language, and it does not appear that any particular word requires a technical interpretation. The Tribunal's publication of its interpretation of the Terms of Reference is, of course, without prejudice to the fact that it may be necessary (and appropriate) to elaborate on its interpretation in the light of emerging information."*

5. The document referred to by the Sole Member is dated **20 June 2024** and states in relevant part:

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

...

8. In the view of the Tribunal, the wording of the Terms of Reference, including the definitions is, in the main, unambiguous and conveys the meaning intended. It is clear that it is not the function of the Tribunal to establish whether any individual complaint is or was well founded.

9. The Tribunal, in approaching the task of interpretation of the Terms of Reference has, in general, sought to apply the ordinary and natural meaning of the words used. The Terms of Reference, in the Tribunal's view, are expressed in clear language and it does not appear that any particular words require a technical interpretation.

10. In the Terms of Reference, the following definitions are provided:

> *"Abuse" means discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment and any form of sexual misconduct (including sexual assault, aggravated sexual assault and rape)."*

6. The Tribunal has taken the view, as notified to the Defence Forces on **14 May 2025,** that "*the Tribunal considers it necessary that all parties have a clear understanding of what each category of 'abuse' is interpreted by the Tribunal to mean."*

   The Defence Forces are unclear why, notwithstanding the statement made in **June 2024** "[t]he Terms of Reference, in the Tribunal's view, are expressed in clear language and it does not appear that any particular words require a technical interpretation," that it is now necessary in **June 2025**, to set out the Tribunal's interpretation of each category of 'abuse' as that term is defined in the Terms of Reference.

7. The Defence Forces agreed with the Statement made by the Tribunal in June 2024 that "the wording of the Terms of Reference, including the definitions is, in the main, unambiguous and conveys the meaning intended." That is why the Defence Forces did not avail of the invitation of the Tribunal contained in paragraph 11 of the 20 June 2024 document to "*address the Tribunal in relation to any aspect of the Tribunal's interpretation of its Terms of Reference*."

8. Nevertheless, the Defence Forces welcomes the decision of the Tribunal to provide further clarity on its terms of reference.

9. The legal principles applicable to the interpretation of Tribunal terms of reference are well established and have been repeatedly stated by the Supreme Court

    - in ***Redmond v Flood [1999] 3 IR 79***, the Supreme Court stated at 91 that *"the interpretation of the terms of reference of a tribunal of inquiry must depend on the ordinary meaning of the words contained therein*,"
    - in ***Desmond v Moriarty [2004] 1 IR 334***, the Supreme Court stated at 367 that "*It is primarily for the Tribunal to interpret its terms of reference.*"
    - in ***O'Brien v Moriarty [2006] 2 IR 221***, the Supreme Court stated at 222 that "*the interpretation of the terms of reference is a function of the respondent and not for the courts."*
    - in ***O'Brien v Moriarty (No 2) [2006] 2 IR 415,*** the Supreme Court stated at 415 that "*if the terms of reference of a tribunal were vague or ambiguous, it was for the tribunal to interpret them and the role of the court was not to interfere save where the decision was irrational or flew in the face of common sense*."

10. Having regard to these well-established legal principles, the Defence Forces submit as follows on the Tribunal's interpretation of abuse:

    A. The definition of **Discrimination** adopted by the Tribunal in Schedule One is not irrational nor does it fly in the face of common sense.

B. The definition of **Bullying** adopted by the Tribunal in Schedule One is not irrational nor does it fly in the face of common sense.

C. The definition of **Harassment** adopted by the Tribunal in Schedule One is not irrational nor does it fly in the face of common sense.

D. The definition of **Physical torture** adopted by the Tribunal in Schedule One is not irrational nor does it fly in the face of common sense.

E. The definition of **Physical assault** adopted by the Tribunal in Schedule One is not irrational nor does it fly in the face of common sense.

F. The definition of **Psychological harm** adopted by the Tribunal in Schedule One is not irrational nor does it fly in the face of common sense.

G. The definition of **Sexual harassment** adopted by the Tribunal in Schedule One is not irrational nor does it fly in the face of common sense.

H. The definition of **Sexual misconduct** adopted by the Tribunal in Schedule One is not irrational nor does it fly in the face of common sense.

11. The Tribunal is not, as has been stated by the Sole Member, concerned with whether claims of abuse are well-founded but rather with how the Defence Forces responded to 'complaints of abuse' and to investigate whether such complaints were actively deterred or whether there was a culture that discouraged the making of complaints of abuse. To use the example of (F), psychological harm, the Tribunal is not concerned with establishing whether a wrongful act resulting in a recognised psychological injury occurred but rather with the manner in which a complaint alleging that a wrongful act resulting in a recognised psychological injury was responded to, or whether there was a culture that discouraged the making of such a complaint.

Submission on 1(ii) - the Request for a broader interpretation of 'abuse'

12. The Tribunal has not provided the Defence Forces with a copy of the correspondence requesting a broader interpretation of the term abuse.

13. These submissions proceed on the basis that the Notice of Public Sitting, at section 1(ii), provides the substance of the rationale for the request for a broader interpretation of the term abuse and, all information necessary to adequately respond to the request. The rationale is stated as follows:

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

14. The Defence Forces submit that there is no basis in law for the Tribunal to adopt a broader interpretation of "abuse" in order to encompass allegedly persistent violations of health and safety legislation.

15. Allegedly persistent violations of health and safety legislation by the Defence Forces do not amount to:
    - discrimination,
    - bullying,
    - harassment,
    - physical torture,
    - physical assault,
    - psychological harm,
    - sexual harassment and,
    - any form of sexual misconduct (including sexual assault, aggravated sexual assault and rape)."

16. Accordingly, the extension of the interpretation of abuse to include allegedly persistent violations of health and safety legislation by the Defence Forces would be irrational and would fly in the face of common sense.

17. Such an interpretation would amount to an effective amendment of the Terms of Reference. The manner in which the terms of reference of a tribunal may be amended are clearly set out in section 1(a) of the Tribunals of Inquiry (Evidence) Act 1921, as inserted by section 1 of the 1998 (No 2) Act). An amendment along the lines proposed, if the procedure set out for amendment was followed, would clearly prejudice the legal rights of the Defence Forces as a person who has co-operated with, and provided information to, the Tribunal under its terms of reference.

18. There is also a practical implication to any broadening of the definition of abuse. Should the definition of abuse be broadened as proposed, the Defence Forces would be required to search all complaints listed under the Terms of Reference definition of "Complaints Processes", to ascertain if complaints fit within the broader definition. This would equate reconsidering approximately 4000 files. The Defence Forces would also have to arrange searches for all unit health and safety logs of current, overseas and disbanded units, and order server and electronic searches for correspondence relating to health and safety matters to determine whether any complaints existed, and whether the alleged violations were persistent. It is not clear how long such a process would take, and what additional resources would be required, as there is no central ledger or database of Health and Safety across the Defence Forces complaints which dates back to 1983.

Submission on 1(iii) - Interpretation of Term of Reference (iv)

19. Term of Reference (iv) requires the Tribunal to:

> *"investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of Complaints of Abuse;*

20. In its original interpretation of the Terms of Reference, the Tribunal stated:

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

21. The Defence Forces did not avail of the invitation of the Tribunal contained in paragraph 11 of the 20 June 2024 document to address the Tribunal in relation to its interpretation of Term of Reference (iv).

22. The Tribunal now adds to its interpretation of Term of Reference (iv) as follows:

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

23. Having regard to these well-established legal principles on the interpretation of tribunal terms of reference, referred to earlier in these submissions, the Defence Forces submit that the further interpretation of Term of Reference (iv) is not irrational nor does it fly in the face of common sense.

PATRICK McCANN SC

DARREN LEHANE SC

ELIZABETH DONOVAN BL

CAROLINE A. CARNEY BL

[redacted]

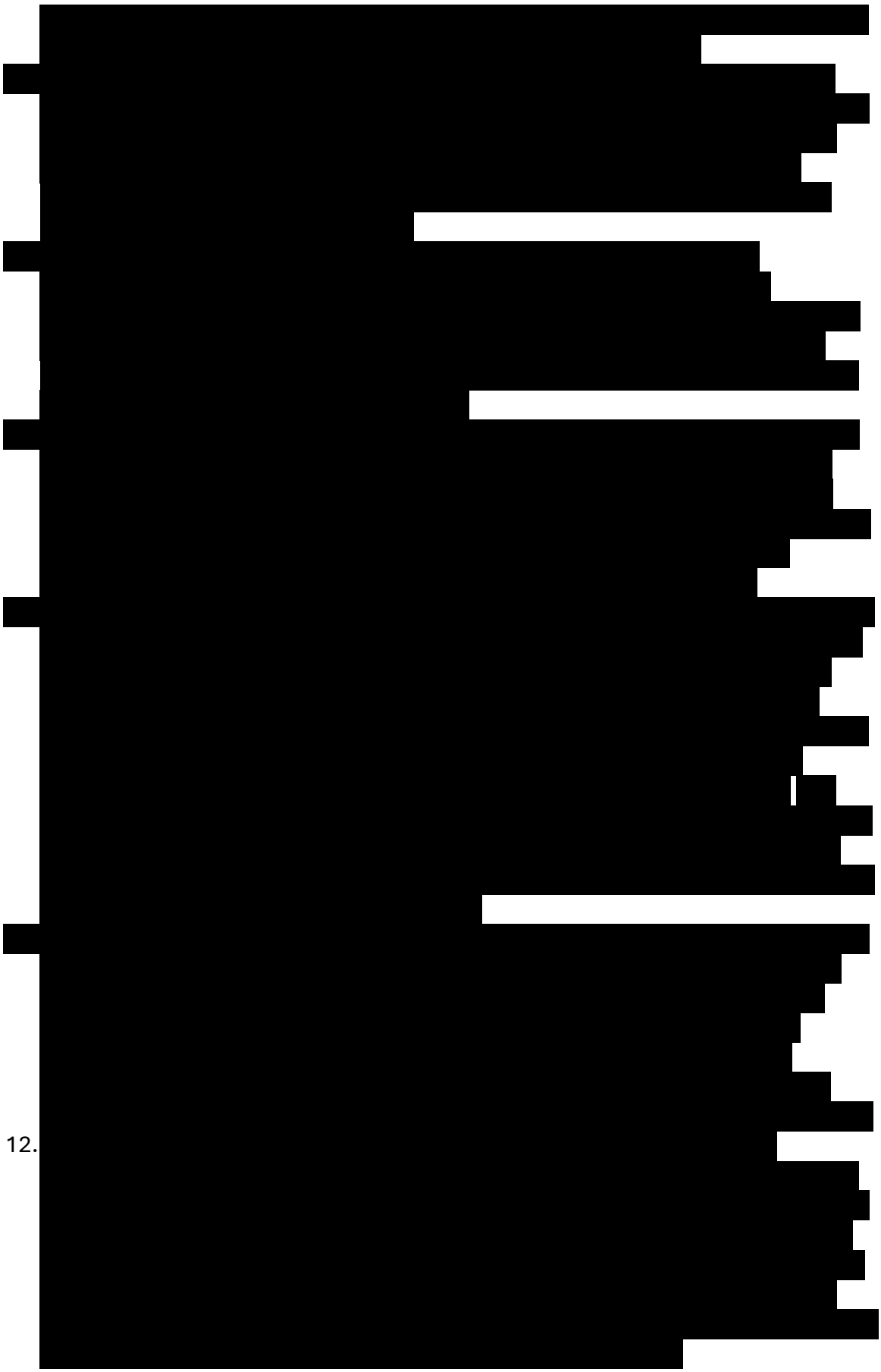
01 June 2025

Defence Forces Tribunal

Dear Members of the Tribunal,

Further to your correspondence of 14th May, please accept this letter as my statement that I would like to submit to the Tribunal, for your consideration.

1. [redacted]
2. Regarding the Terms of Reference and types of, or definition of, abuses considered I would like to propose that abuse of power and the associated psychological abuse that this visits on victims should be included, to the fullest extent.
3. [redacted]



12.

13. [redacted]

14. [redacted]

[redacted]

Yours sincerely

Tribunal of Inquiry into Issues Relating to the Complaints Processes in the Defence Forces and the Culture Surrounding the Making of Complaints

('the Tribunal')

OUTLINE WRITTEN SUBMISSIONS ON BEHALF OF [redacted]

TAKE NOTICE that Sean Costello & Co Solicitors, on behalf of [redacted], hereby deliver the following written submissions in support of an application for representation and further to an invitation by the Tribunal to address certain matters set forth in the Notice published about, and relating to, a sitting of the Tribunal on 16 June next 2025 next; -

Format of the within submissions

The within submissions will address the following matters;

(1) Some background in relation to [redacted] is, and a summary of the basis upon which his evidence is directly relevant to the matters to be investigated by the Tribunal, bearing in mind the terms of reference (TOF) of the Tribunal

(2) A short submission on the enlargement of the definition of "*abuse*" within the TOF.

(3) A short submission on potentially enlarging the definition of "*harassment*" within the TOF.

1. Background

[redacted] has submitted a detailed initial Statement, which outlines the substance of the matters upon which he can assist the Tribunal.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

2. **<u>The suggested enlargement of the definition of "*abuse*"</u>**

The Tribunal has invited submissions as to whether a broader interpretation of '*abuse*', which would encompass allegedly persistent violations of health and safety legislation by the Defence Forces, should be applied.

The Tribunal has outlined that the request is underpinned by an assertion that allegedly systemic failures relating to health and safety, in circumstances where the risks were known to the Defence Forces, repeated by the Defence Forces, and not remedied by the Defence Forces, amount to abusive treatment.

[redacted] is satisfied to abide by the Tribunal view on this, having considered all submissions. However, there is some concern that such an enlargement may potentially strain the resources of the Tribunal, and dilute its ability to address instances which fit more easily within the definition of "*abuse*".

It is also the case that widening the definition of "*abuse*" in the manner contemplated may also have two other undesirable effects, namely

(i) Involving the Tribunal resources being expended on matters that, whilst amounting to infringement of health and safety, involve instances which involve relatively low culpability

(ii) The enlargement of the term in the manner contemplated, is very likely to elongate the investigative period needed, and considerably lengthen the amount of Tribunal time required

3. <u>The definition of harassment in the TOF</u>

The Tribunal proposes adopting the definition of harassment section 14A (7) of the Employment Equality Acts 1998 – 2021

It is submitted that given the hierarchical nature of the Defence Forces it may be worthwhile to consider broadening the definition to recognize harassment that arises not just as a consequence of a discriminatory ground but that arises in a situation where the victim/complainant is in a subordinate position to the perpetrator. This would acknowledge that harassment can be exacerbated by hierarchical relationships, even if not directly linked to a discriminatory ground

A suggested amendment to 14(a)(7)(i) would read (proposed amendment in underline)

references to harassment are to any form of unwanted conduct related to any of the discriminatory grounds <u>or arising between parties of different grades within the Defence Force</u>.

It is submitted that the proposed amendment will encapsulate conduct of a serious nature, not specifically linked to a discriminatory ground.

Padraig D Lyons BL

Paul McGarry SC

To Defence Forces Tribunal Team. 3rd June 2025

Terms of Reference.

As a family membe of a serving member of the Irish Defence Forces, my family member made a submission/statement to the Tribunal in August 2024, in respect of the Tribunals Notice of Public Sitting-16th June 2025, specifically regarding the Tribunals invitation to those who have made a statement to the Tribunal and/or who have been granted representation and who wish to address the Tribunal in respect of any of the matters set out or any other matter relevant to the Terms of Reference, to make submissions, in writing, this is my submission and in respect of my fam,ily member 's Aug 2024 submission. I wish to submit in respect of any other matter relevant to the Terms of Reference and the Interpretation of the Tribunal's Terms of Reference (1) Interpretation of 'abuse' and (2) Request for a broader interpretation of 'abuse.

Any other matter relevant to the Terms of Reference.

Family members, spouses, partners, parents, children and siblings of those who are serving or have served previously been recognised and engaged with by the Minister, Dept of Defence and the Defence Forces as important stakeholders in matters relating to the Defence Forces. Family members made submissions to Raiseaconcern and the IRG-DF Review. As the Terms of Reference stand, in absence of appropriate interpretation from the Tribunal, family members appear to be excluded from the Tribunal and its proceedings. This is not an acceptable situation and is not in the interest of the stated aim of the Tribunal to reach the truth within allowing any obstacles to the truth The exclusion of family members from the Tribunal is an obstacle to the truth.

I respectfully submit that, if the Tribunal is genuinely interested in pursuing the truth in all aspects of military service and the associated stakeholders. Family members of serving members, retired members and deceased members should have access to this Defence Forces Tribunal as there are many possible circumstances and scenarios, similar to ours, where family members have relevant evidence to submit or provide to the Tribunal. The Terms of Reference need to be interpreted in such a manner so as to allow family members of deceased members of the Defence Forces to submit to the Tribunal on behalf of their deceased family members. The Terms of Reference need also to be interpreted in such a manner to allow family members of serving or retired members of the Defence Forces to achieve access to the Tribunal by means of being recognised as admissible witnesses in respect of their family members submission to the Tribunal. It will clearly be unfair and an obstacle to the truth, should the Terms of Reference and their interpretation serve to exclude such family members from the Tribunal proceedings, particularly in circumstances where Defence Forces family members have experienced unacceptable behaviour by the Defence Forces.

I believe that it is only right that I get the opportunity to highlight and put on public record the harassment, discrimination and abuse that we have gone through and are still currently experiencing, all of which was and is entirely unnecessarily. My concern is that, how these actions and behaviours by serving members associated with submitted complaints have impacted us, are not reflected in The Defence Forces Tribunal. In addition neither is the direct impact of this behaviour on any family member of serving personnel who have been affected. Family circumstances and caring responsibilities of a child/adult with associated discrimination is not reflected in the tribunal therefore I think it's imperative that you get my perspective on this matter that is still ongoing.

I feel that it is essential in the interests of fairness and overall scope of the Tribunal, that I (and other (DF family members in similar circumstances) should have access to the Tribunal in order to assist the Tribunal's pursuit to the truth and that the Tribunal terms of reference and their interpretation should reflect the importance of family members as stakeholders by allowing their access to the Tribunal.

I respectfully submit that the Tribunals interpretation of the definitions of abuse and complaints of abuse, in the terms of reference, should be broadened to include interpersonal issues, which was the original recommendation of the IRG-report. This would expand the possible inclusion of family members to the Tribunal. It should be noted that nowhere in the IRG-Report recommendations was it suggested or documented that Defence Forces family members should be excluded from the Tribunal.

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

In conclusion, the exclusion of Defence Forces family members, spouses, partners, parents, children and siblings from making relevant submissions or providing relevant evidence as witnesses to the Tribunal is not acceptable. This exclusion should it occur, clearly it will not serve the public interest of achieving a fit for purpose Tribunal arriving at the full truth and may instead represent a significant obstacle to the truth. If Defence Forces family members remain excluded from the Tribunal, consequently, there is a serious risk that the Tribunal will not sufficiently serve the public interest and may instead not just represent a waste of public funds but also a waste of an opportunity to impose necessary change to the toxic culture within and emanating from the Defence Forces and Dept of Defence.

Yours sincerely.

Mobile [redacted]

Dear Sir ,
I respectfully submit the following observations to the tribunal

1 I recommend the tribunal include "breaches of important constitutional rights " such as "fair procedures " as highlighted as 1 of 2 risks to avoid on page 10 of its opening statement as a category to examine in its terms of reference . The breach of that same important constitutional right , expertly identified by the tribunal , of unfair procedures , encapsulates most of my experience with the culture within the Air Corps which led to complaints and the complaints were then dealt with in a procedurally unfair manner . The restrictive definition of abuse with its 7 sub categories might risk excluding some complainants who do not match the injury , gender, frequency or physical requirements of the legal definition of the subcategories .

2 [redacted] .

3 [redacted] .

4 [redacted] .

5 [redacted]

Please let me know if I can be of any assistance in carrying out your important role .

[redacted]