



RULING OF THE TRIBUNAL

ON ITS INTERPRETATION OF THE TERMS OF REFERENCE

Introduction

1. On 13 May 2025, the Tribunal published a Notice of its intention to hold a public hearing on 16 June 2025 ('the Notice'). It invited interested parties to make submissions and, by reference thereto, to address the Tribunal at the hearing, should they wish to do so, in relation to the matters set out in Parts I and II of the Notice.

2. This Ruling is in relation to the matters set out in Part I of the Notice and, in particular, it addresses:

(i) the Tribunal's interpretation of 'abuse' as that term is defined in the Terms of Reference;

(ii) the request to the Tribunal that it adopt a broader interpretation of the term 'abuse'; and

(iii) the provisions of paragraph (iv) of the Terms of Reference.

Additionally, the Ruling addresses the Tribunal's interpretation of 'psychological harm' and 'harassment', as particular forms of abuse. It also sets out the Tribunal's position on family member of Defence Forces personnel who may have evidence that is helpful to the Tribunal's inquiry.

3. Schedule One of the Notice set out the Tribunal's interpretation of each form of 'abuse' as that term is defined in the Terms of Reference. Schedule One is appended as an Annex to this Ruling.

4. The Tribunal's interpretation of the provisions of paragraph (iv) of its Terms of Reference was also set out in the Notice (Schedule One).

5. In *Haughey v Moriarty* [1993] 3 I.R. 1 the Supreme Court adopted, as a correct statement of the law and practice applicable to Tribunals in this jurisdiction, a recommendation of the Report of the Royal Commission on Tribunals of Inquiry (November 1966), ('the Salmon Report'). The Supreme Court stated (at page 56):

"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."

6. On 20 June 2024, the Tribunal published its interpretation of the Terms of Reference and considered that, for the most part, the Terms of Reference were clear as to their meaning. However, it emerged during the course of the investigative phase of the Tribunal's inquiry that the particular forms of wrongdoing which constitute 'abuse', as that term is defined in the Terms of Reference, required some further clarification for the benefit of those who engage with the Tribunal.

7. On 9 April 2025, the Tribunal received correspondence inviting it to give further consideration to '*a broader reading*' of the term 'abuse'. The rationale provided for the request was based on the contention that certain systemic failures, particularly those related to health and safety, may constitute abusive treatment, by the Defence Forces, especially where risks were known, repeated and un-remedied.

8. As set out in the Notice, persons who wished to address the Tribunal in respect of the matters set out in paragraph 2 above, or any other matter relevant to the Terms of Reference, were invited to do so, in writing, on or before 3 June 2025.

9. On 16 June 2025, the Tribunal held a public hearing, and parties were afforded the opportunity to be heard as to how, in their view, the particular provisions of the Terms of Reference, as set out above, should be interpreted by the Tribunal.

Submissions Received

10. In advance of the public hearing, the Tribunal received submissions from several parties. All relevant submissions were published on the Tribunal's website on 6 June 2025. A synopsis of the relevant submissions received, both written and oral, is set out below.

The Defence Forces Lariam Justice Group

11. The Defence Forces Lariam Justice Group ('the Lariam Group'), was represented by Coleman Legal LLP. On behalf of the Lariam Group, it was submitted that the Tribunal should adopt a broader interpretation of the term 'abuse', as defined in the Terms of Reference. It was said that the interpretation of the term should be expanded to include persistent and systemic failures to comply with statutory health and safety obligations. Such failures, it was said, have resulted in psychological harm and an environment of fear among members of the Defence Forces. It was asserted that ongoing breaches of statutory obligations, particularly, regarding the enforced use of Lariam, had led to psychological burdens on members of the Defence Forces.

12. The Lariam Group submitted that the Defence Forces owes a duty of care under the Safety, Health and Welfare at Work Act 1989 and the Safety, Health and Welfare at Work Act 2005 (as amended). It was stated that ongoing and repeated breaches of such statutory obligations must be considered to constitute '*institutional abuse*'. Counsel on behalf of the Lariam Group, emphasised the reference to '*duty of care*' in the Statutory Instrument that established the Tribunal ['S.I. No. 304 of 2024'] and submitted that it is necessary for the Tribunal to examine the discharge by the Defence Forces of its obligations under safety, health and welfare legislation.

13. Concerns were raised by the Lariam Group about the alleged misuse by the Defence Forces of legislative exemptions against accountability for systemic health and safety violations. Cultural pressures within the Defence Forces that discourage personnel from raising concerns about unsafe practices were also referenced.

14. Further, the Lariam Group requested the Tribunal to consider an interpretation of 'abuse' to include retaliation against individuals who raised health and safety concerns.

Air Corps Chemical Abuse Survivors Group

15. The Air Corps Chemical Abuse Survivors Group ('the Hazardous Chemicals Group'), was represented by Coleman Legal LLP. This group supported the proposition that the Tribunal should adopt an expanded interpretation of 'abuse'. Its submission emphasised the need to recognise persistent and systemic failures on the part of the Defence Forces to comply with European Union, Constitutional and statutory obligations regarding safety and health, particularly, concerning exposure to hazardous chemicals. It was argued that such ongoing breaches should be recognised as forms of 'abuse'.

16. The Hazardous Chemicals Group submitted that the Tribunal's Terms of Reference include a broad spectrum of detrimental behaviours, including, 'discrimination' and 'psychological harm'. The argument was made that workers' rights are, fundamentally, human rights, and that every worker deserves dignity and ethical treatment in a safe work environment. It was submitted that workers in the Air Corps are particularly vulnerable to rights' violations due to exposure to toxic chemicals.

17. The written submission referred to the protections afforded by the European Convention on Human Rights ('the Convention') and the EU Charter of Fundamental Rights ('the Charter') relating to issues of health and safety. It was submitted that these legal frameworks obligate State organs, including, the Department of Defence and the Defence Forces, to uphold workers' rights. Additionally, the submission outlined Constitutional protections for fair working conditions, asserting that the Constitution guarantees to individuals the rights to life and bodily integrity. It was noted that common law duties of care owed by the Defence Forces to their members, reinforced the view that breaches of statutory obligations, particularly under health and safety legislation constituted institutional abuse.

18. The Hazardous Chemicals Group sought to include in the definition of 'abuse' penalisation or threats of penalisation arising from the reporting of health and safety concerns, referencing legislative provisions that protect whistleblowers against penalisation. It was said that 'abuse' is not only about the effects of rights' violations but also the mechanisms through which those violations occur.

The Former Search and Rescue Group

19. The Former Search and Rescue Group ('the SAR Group'), was represented by Coleman Legal LLP. It was submitted on behalf of the SAR Group that 'abuse' includes persistent and systemic violations of health and safety standards that have resulted in psychological harm or have created an environment of fear and intimidation for those who raise concerns.

20. Systemic breaches of health and safety obligations, it was said, imposed psychological burdens on personnel, particularly those exposed to unsafe working conditions or whose concerns were ignored or punished.

21. The written submission offered an analysis within existing categories of 'abuse', discussing psychological harm in terms of the persistence of safety failures, the lack of accountability and the '*retaliatory culture*' that imposed stress and trauma on service members. Institutional neglect and cultural abuse were described and it was said that the refusal to address expired equipment, non-compliance with safety audits and a failure to implement training on new procedures amounted to '*operationalised negligence*'. The Defence Forces, it was submitted, had fostered a culture that treated concerns about personal safety as insubordination. Recognising the various forms of institutional abuse would allow the Tribunal to discharge its mandate in a way that acknowledges '*the full range of harms*' suffered by Defence Forces personnel.

The Minister for Defence

22. The Minister for Defence ('the Minister') was represented by the Chief State Solicitor's Office. It was submitted on behalf of the Minister that the Resolutions of both Houses of the Oireachtas define the scope of the Tribunal's work, with the Terms of Reference expressly defining 'abuse' to exclude interpretations beyond those specified in the definition.

23. Attempts to shift the Tribunal's focus from examining the complaints processes in relation to complaints of abuse to a broader investigation of the Defence Forces overall health and safety regime would fall outside the scope of the Tribunal's jurisdiction.

24. Mr McGuinness, SC, on behalf of the Minister, did not make any submission that disagreed with the definition of ‘psychological harm’ as set out in Schedule One of the Tribunal’s Notice. However, he submitted that a ‘*wrongful act*’ causing ‘psychological harm’ must constitute a form of ‘abuse’ that comes within the existing definition of ‘abuse’.

25. In oral submissions, Mr McGuinness argued that ‘psychological harm’ should not be considered as a ‘standalone’ form of abuse. Whilst certain acts, such as, assault or torture, can cause ‘psychological harm’, not all distressing situations encountered by Defence Forces personnel that cause psychological harm, can be said to be as a result of ‘abuse’. This is because the situation does not involve an act committed by a perpetrator that is within the purview of the Defence Forces.

26. The Terms of Reference make reference to the Safety, Health and Welfare at Work Act 1989 and the Safety, Health and Welfare at Work Act 2005 (as amended) only in relation to Term of Reference (vii). This, it was said, indicates that the Tribunal cannot operate beyond its established authority without proper legislative amendment. The Supreme Court ruling in *O’Brien v Moriarty Tribunal* [2006] IESC 6 was cited to reinforce the point that the Terms of Reference reflect the intentions of the Oireachtas.

27. It was submitted that the literal meaning of the legislative text should prevail unless ambiguity exists. It was also said that the intent of the Oireachtas in establishing the Tribunal was clear. Any expansion of the Tribunal’s jurisdiction would require a formal amendment.

The Defence Forces Justice Alliance Group

28. The Defence Forces Justice Alliance Group (‘the DFJA’), was represented by JV Geary Solicitors. It was submitted by the DFJA that the Terms of Reference should be aligned with the recommendations of the Independent Review Group (IRG-DF), particularly, regarding fairness and accessibility for stakeholders. The DFJA’s submission highlighted its concerns regarding the Terms of Reference.

29. The DFJA, in oral submissions, expressed confusion about the Tribunal's objectives and the definitions provided in the Terms of Reference, noting a divergence from the established complaints systems and the IRG-DF's recommendations.

30. It was contended that the definition of 'abuse' as provided in the Terms of Reference is narrow and excludes a range of '*interpersonal issues*', which the group submitted are crucial for a comprehensive understanding of complaints presented.

31. The written submission called for a re-evaluation of the definition of 'abuse' to ensure that all relevant complaints can be addressed, effectively, including, the inclusion of '*interpersonal issues*'.

32. The DFJA expressed a concern about the current definition of 'psychological harm', arguing that it is inadequate and fails to adhere to recognised clinical standards. The group underscored the need for clarity and comprehensiveness in the complaints process to ensure that the Tribunal can serve its purpose effectively.

33. It was submitted that the existing Terms of Reference may hinder the Tribunal's pursuit of the '*degree of truth necessary to effect meaningful change*' within the Defence Forces.

The DF Whistleblowers Protected Disclosure Justice Group

34. The DF Whistleblowers Protected Disclosure Justice Group ('the Whistleblowers Group'), was represented by JV Geary Solicitors. It was submitted on behalf of the Whistleblowers Group that the definition of 'abuse' in the Terms of Reference is unsuitable and inappropriate in the Tribunal's '*search for the truth*'.

35. It was asserted that 'abuse' does not align with the established complaints processes of the Defence Forces and the use of that term may be a deliberate misdirection. The written submission urged the Tribunal to expand its interpretation of the Terms of Reference to encompass the facts and complaints raised by its members. The group emphasised the necessity for natural justice and fair procedures to apply, broadly, rather than in a limited manner, noting that the public deserves transparency regarding complaints from members of the Whistleblowers Group.

36. Additionally, the submission detailed '*relevant wrongdoings*' as set out in the Protected Disclosures Act 2014. It was noted that 'abuse' is not listed as a relevant wrongdoing under the Act. It was submitted that this raises questions about why the term 'abuse' is used in the Terms of Reference.

37. The Whistleblowers Group further submitted that the current Terms of Reference compromise their rights to fair procedures, contending that without appropriate revisions, the Tribunal may not address, effectively, the wrongdoings identified in the written submission.

The 34th Platoon Army Apprentice School Justice Group

38. The 34th Platoon Army Apprentice School Justice Group ('the 34th Platoon') was represented by JV Geary Solicitors. It was submitted on behalf of the 34th Platoon that the Tribunal's definition of 'psychological harm' equates psychological harm with '*psychological damage*'. This, it was said, was incorrect and unjust.

39. The Tribunal's definition, according to the 34th Platoon, limits recognition of psychological harm solely to diagnosable psychological injuries as classified by the Diagnostic and Statistical Manual of Mental Disorders ('DSM-5-TR'), thereby excluding individuals who experience significant distress or anxiety but who do not meet the criteria. It was argued that the impact of sustained bullying or exposure to toxic environments can have profound psychological effects, which the proposed definition fails to recognise.

40. It was further submitted that the definition of 'psychological harm' does not account for systemic and cumulative harm, which encompasses repeated '*lower-level instances*' of mistreatment which may, collectively, result in significant psychological harm.

41. Requiring a formal DSM-5-TR diagnosis, it was said, places an undue burden on complainants, particularly, those without access to mental health services or those who have endured harm, silently, without formal recognition.

42. The Tribunal was urged to adopt a more inclusive approach to psychological harm that considers both DSM-5-TR and International Classification of Diseases, 11th Revision ('ICD-11') recognised conditions, alongside credible evidence of distress, such as, witness testimonies. It was also said that many Defence Forces members may have experienced 'psychological harm', dating back to the early 1990s, and may have been unable to articulate their suffering due to societal ignorance at the time. The historical context, it was said, underscores the inadequacy of the Tribunal's definition and its exclusionary impact.

43. The group submitted that narrowing the eligibility to provide evidence of psychological harm would perpetuate systemic failures, silencing many who have suffered and who continue to be betrayed by the systems intended to protect them. The group urged the Tribunal to revise its definition of 'psychological harm' to include significant distress from systemic or cumulative mistreatment, to ensure that all experiences of psychological harm within the Defence Forces were acknowledged and investigated. It expressed concern that the Terms of Reference hinder a thorough investigation, creating contradictions that undermine the Tribunal's objectives and perpetuate institutional neglect, ultimately, traumatising witnesses who come forward in good faith.

Women of Honour

44. *Women of Honour* was represented by Malcomson Law Solicitors. It was submitted on behalf of Women of Honour that the Tribunal should adopt a broader interpretation of 'abuse', particularly, to include systemic health and safety violations. Persistent failure by an employer, including the Defence Forces to comply with obligations under the Safety, Health and Welfare at Work Act 2005 (as amended) should be interpreted as institutional abuse. The provisions of the Protected Disclosures Act 2014, it was said, support a broader interpretation of 'abuse' because to punish or ignore the reporting of systemic health and safety violations is in breach of its provisions and is abusive treatment.

45. Adopting a broader interpretation of ‘abuse’ would be consistent with the Tribunal’s Terms of Reference. Systemic exposure to hazardous environments could cause a person to suffer a psychological injury. Repeated and unaddressed exposure, it was said, would come within the Tribunal’s Terms of Reference because it would qualify as a complaint of ‘psychological harm’, consistent with the Tribunal’s interpretation of that term in Schedule One of the Notice.

46. The Tribunal’s mandate under Term of Reference (iv) is to investigate whether complaints of abuse were actively deterred or whether there was a culture that discouraged the making of such complaints. This, according to Women of Honour, aligns with a broader view that the Tribunal should investigate a culture that ignores or suppresses health and safety complaints. The Tribunal’s mandate under Term of Reference (vii) recognises systemic health and safety failures as a matter of urgent public concern. To include such failures under its interpretation of ‘abuse’ would ensure consistency.

47. It was further submitted that the findings of the IRG-DF and the experiences of members of the Defence Forces support a broader interpretation of the term.

48. At the public hearing, Mr Bradley, SC, submitted that the circumstances surrounding the prescription and use of the antimalarial medication, Lariam, during the course of service in the Defence Forces, comes under the interpretation of harassment as set out in Schedule One of the Notice. Accordingly, it would come within the definition of ‘abuse’ as provided in the Terms of Reference.

49. In reply to the written submission of the Defence Forces wherein prejudice was reference if the Tribunal were to adopt an ‘*effective amendment*’, Mr Bradley submitted that the requirement to consider additional files would be a task and not a prejudice.

50. Finally, Mr Bradley submitted that, if the Tribunal does not see fit to interpret its Terms of Reference to address health and safety concerns, then it would be open to the Tribunal under section 1A of the Tribunals of Inquiry (Evidence) Acts 1921 - 2011 to seek an extension in terms of the issues to be addressed as part of the Tribunal’s investigation.

The Defence Forces

51. The Defence Forces was represented by the Chief State Solicitor's Office. It was submitted that the Tribunal's interpretation of each of the forms of 'abuse' as set out in Schedule One of the Notice was not irrational nor did it fly in the face of common sense. As to psychological harm, it was submitted that the Tribunal is not concerned with establishing whether a wrongful act which resulted in a recognised psychological injury occurred. Rather, its concern is 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. There was 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. Such violations by the Defence Forces do not amount to any of the forms of 'abuse' as that term is defined in the Terms of Reference. Extending its interpretation of 'abuse' to include such violations would be irrational and would fly in the face of common sense.

52. The Defence Forces submitted that the broader interpretation of 'abuse' would amount to an effective amendment of the Terms of Reference. This could only be achieved by following the statutory procedure as set out in section 1A of the Tribunals of Inquiry (Evidence) Acts 1921 - 2011. The practical implications of adopting a broader interpretation would involve new search processes. Additional time and resources would also be required.

53. As to the Tribunal's interpretation of Term of Reference (iv) as set out in the Notice (Schedule One), it was submitted that this interpretation was not irrational nor did it fly in the face of common sense.

54. Counsel on behalf of the Defence Forces conceded that a technical or legalistic approach to interpretation could give rise to a view that an inquiry had not been made into all relevant matters. It was said that the Tribunal is fully entitled to adopt the interpretation as set out in Schedule One of the Notice.

55. In reply to the submission made by other parties that a broader interpretation should be given to the term 'abuse', Mr Lehane, SC, on behalf of the Defence Forces, referenced a comparative study carried out by the Office of the Attorney General into

Parliamentary Inquiries and Tribunals of Inquiry ('the comparative study'). He outlined the various phases of consideration involved in the drafting of the Terms of Reference of a Tribunal of Inquiry as set out in the comparative study. Bearing in mind those different phases, it was submitted that the Tribunal's Terms of Reference had undergone careful consideration across the legal, political and public interest sectors.

A Number of Individuals

56. On behalf of a number of individuals, represented by John Gerard Cullen Solicitors, it was submitted that irrational and perverse processing of complaints of abuse should be regarded as amounting to 'abuse'. Not to do so, it was said, would represent a further form of abuse.

57. 'Abuse', it was submitted, should be interpreted to include several matters: *'perverting protected disclosures and clinical evidence of wrongdoing'* by the Defence Forces; detriment within the meaning of the Protected Disclosures Act 2014; *'officer-perversion of complaints of abuse when transmitted via the Personnel Support Service'*; non-compliance with Article 6 of the Convention and Article 47 of the EU Charter of Fundamental Rights ('the Charter'); the failure of commanding officers to rationally investigate complaints of abuse, including, protected disclosures; the failure by the military police to investigate in accordance with the standards of best policing practice; and *'obliviousness/disregard of abuse'* by the Minister for Defence.

58. Mr Cullen submitted that the forms of 'abuse' were defined as *'functions of various acts, such as, the Offences Against the Person Act, the Employment Equality Act, and so forth'*. He contended that the Tribunal has an obligation, pursuant to section 3 of the European Convention of Human Rights Act 2003 to interpret the term 'abuse' in a manner consistent with the Convention. Non-compliance with Articles 3, 6 and 13 of the Convention, a lack of independent adjudication, a lack of sufficient adequate reasons and a lack of equality of arms in the complaints processes were, in themselves, a form of abuse.

An Individual

59. On behalf of one individual, it was submitted by Setanta Solicitors that the Tribunal should include abuse of power and the associated psychological abuse that this visits on victims when interpreting the term 'abuse'.

60. The Terms of Reference, it was said, encompass persons who did not make a formal complaint to the Defence Forces nor to the Minister for Defence. The interpretation of the term 'abuse' is a matter for the Tribunal and an amendment of the Terms of Reference would delay the Tribunal and should be avoided.

A Second Individual

61. Acting on behalf of another individual, Seán Costello & Co. Solicitors submitted that his client was satisfied to abide by the Tribunal's position on the definition of 'abuse'. An enlargement of 'abuse' to encompass allegedly persistent violations of health and safety legislation may, potentially, strain and dilute the resources of the Tribunal. Widening the definition of 'abuse', in the manner contemplated, may have two undesirable consequences, namely, the Tribunal's resources being expended on matters that involve instances concerning relatively low levels of culpability and the Tribunal's investigative period being elongated.

62. The individual submitted that, in light of the hierarchical nature of the Defence Forces, the definition of 'harassment' should be broadened to recognise that harassment arises not just as a consequence of a discriminatory ground but also in a situation where a victim/complainant is in a subordinate position to a perpetrator. Harassment, it was said, can be exacerbated by hierarchical relationships. An alternative definition of harassment was offered to include *'any form of unwanted conduct related to any of the discriminatory grounds or arising between parties of different grades within the Defence Forces.'*

63. Finally, Mr McGarry, SC, on behalf of the individual concerned, referred to the Tribunal's obligation pursuant to paragraph (II) of its Terms of Reference to report, as expeditiously as possible, on the matters under inquiry. If the Tribunal were to expand

the concept of 'abuse', as suggested, it is questionable whether there could be compliance with that obligation.

A Family Member of Defence Forces Personnel

64. On behalf of a family member of Defence Forces Personnel ('the family member'), it was submitted that there is a need for a broader interpretation of the Tribunal's Terms of Reference, particularly, regarding the definition of 'abuse'. Family members, it was said, have, historically, been recognised as important stakeholders by the Minister for Defence and the Defence Forces. However, the current interpretation of the Terms of Reference appears to exclude them from participating in the Tribunal. This would be a barrier to uncovering the truth.

65. The written submission urged the Tribunal to recognise that family members should have the opportunity to present evidence and testimonies relevant to their experiences and those of their loved ones in the Defence Forces. It called for the Tribunal to acknowledge the significance of family members' perspectives, particularly, regarding interpersonal issues, as originally recommended by the IRG-DF. It also argued that the Tribunal's proposed definition of 'psychological harm' equating it with '*psychological damage*' is misleading and fails to capture the essence of 'abuse'.

66. The family member contended that excluding Defence Forces family members from making submissions or providing evidence would undermine the Tribunal's objectives. Such exclusion would risk not only the public interest but would also hinder the changes required to address the toxic culture within the Defence Forces and the Department of Defence.

A Third Individual

67. A written submission was received from an individual who submitted that breaches of important constitutional rights, such as, fair procedures should be incorporated into a category of the Tribunal's Terms of Reference. The individual further

submitted that the restrictive definition of ‘abuse’ in the Terms of Reference might risk excluding some complainants.

68. The Tribunal recognises that what is set out above represents a synopsis of the submissions received. Each and every submission, both written and oral, on the matters set out in the Notice has been considered, carefully, by the Tribunal in advance of this Ruling.

Relevant Legal Principles

69. The jurisprudence of the Superior Courts makes it clear that Resolutions passed by both Houses of the Oireachtas define the Terms of Reference of the Tribunal and enjoy the presumption of constitutionality (*Haughey v Moriarty* [1993] 3 I.R. 1 at page 50 and *Goodman International v Mr Justice Hamilton* [1992] 2 I.R. 542 at page 586).

70. In *O’Brien v Moriarty Tribunal* [2006] IESC 6, the Supreme Court confirmed that a Tribunal must work within its Terms of Reference and may not unilaterally expand them. Mr Justice Hardiman stated at page 29 of his judgment that:

“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.”

71. In *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála* [2022] ILRM 313; [2022] IESC 43, Mr Justice Murray delivered an important judgment on statutory interpretation and considered (paragraph 115) that the words of a statute are given primacy as they are the best guide to the result the Oireachtas wanted to bring about. He observed:

“The importance of this proposition and the reason for it, cannot be overstated. Those words are the sole identifiable and legally admissible outward expression of its members’ objectives: the text of the legislation is the only source of information a court can be confident all members of parliament have access to and have in their minds when a statute is passed. In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve it.”

72. Murray J. considered that section 5 of the Interpretation Act 2005 required that the plain intention be evident from the legislation as a whole. At paragraph 128 he opined:

“That construction of s. 5 implements the purpose of the provision which was, simply, to make it clear that the plain intention of the Oireachtas in promulgating an Act is ascertained by its language viewed in context having regard to the object of the legislation. While the meaning of the language used in a provision remains the focal point of any exercise in statutory interpretation, textual or contextual ambiguity or obscurity as well as the production of absurdity or undermining of an identifiable legislative intent will enable the taking into account of broader considerations to ascertain and implement the legislator’s intention.”

73. The power to amend a Tribunal’s Terms of Reference is found in section 1A of the Tribunals of Inquiry (Evidence) Acts 1921 - 2011. Such an amendment requires a Resolution of both House of the Oireachtas. Section 1A states:

“Amendment of instrument by which tribunal is appointed.

1A.— (1) An instrument to which this section applies (whether made before or after the passing of the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998) shall be amended, pursuant to a Resolution of both Houses of the Oireachtas, by a Minister of the Government where—

(a) the tribunal has consented to the proposed amendment, following consultation between the tribunal and the Attorney General on behalf of the Minister, or

(b) the tribunal has requested the amendment.

(2) Without prejudice to the generality of subsection (1), the tribunal shall not consent to or request an amendment to an instrument to which this section applies where it is satisfied that such amendment would prejudice the legal rights of any person who has co-operated with or provided information to the tribunal under its terms of reference.

(3) Where an instrument to which this section applies is so amended this Act shall apply.

(4) This section applies, in the case of a tribunal to which this Act is applied under section 1 of this Act, to the instrument by which the tribunal is appointed."

74. It is worth emphasising at this point that the public hearing held by the Tribunal on 16 June 2025 did not concern the question of any amendment to the Terms of Reference. Its focus, rather, was on the Tribunal's interpretation of its Terms of Reference with particular reference to the matters as set out in the Notice.

Decision

The Tribunal's Interpretation of the Term 'Abuse'

75. Whilst the case law confirms that a Tribunal may take an early opportunity to explain its interpretation of the Terms of Reference, which this Tribunal did, it also anticipates that, as an inquiry proceeds, it may be necessary for a Tribunal to explain any further interpretation to be placed on the Terms of Reference in the light of the facts that emerge. In the course of its investigation, several potential witnesses sought to introduce facts which, taken together, they contended constituted what they described as '*institutional abuse*' within the Defence Forces. They urged the Tribunal to take account of such matters in its overall interpretation of the term 'abuse' and its investigation into the complaints processes for dealing with complaints of abuse. Against that background, the Tribunal considered it necessary to clarify its interpretation of such a fundamental term and it wished to afford to interested parties an opportunity to be heard on the issue in advance of so doing.

76. As is evident from the synopsis of submissions received, several parties have urged the Tribunal to interpret the term ‘abuse’ in such a way as to include persistent violations of health and safety legislation. Coleman Legal LLP, on behalf of its clients, invited the Tribunal to consider that *‘a reckless disregard for employee welfare, manifesting as persistent health and safety violations, can also constitute abusive treatment’*. Mr Gordon, SC, urged the Tribunal to *‘employ a generous interpretation of the definition of abuse’*, adding that a *‘narrow approach’* would defeat the objective for which the Tribunal has been established. Referencing the *‘duty of care’* that is referred to in S.I. 304 of 2024, he submitted that the Tribunal is required to examine the discharge by the Defence Forces of its clear obligations under safety, health and welfare legislation where that contributed to psychological harm, physical risk and otherwise. His position, it was said, was reinforced by the fact that the Statutory Instrument itself contains references to the complaints processes which include the Safety, Health and Welfare at Work legislation. Accordingly, in his view, it had been envisaged from the very beginning that safety, health and welfare would be a particular part of this investigation. On behalf of the three groups represented by Mr Gordon he urged the Tribunal to look at *‘the wider context’* set out in the Terms of Reference.

77. Other parties made broadly similar submissions. Mr Bradley on behalf of Women of Honour, advocated that legal frameworks support a broad interpretation of the Terms of Reference such as would include violations of health and safety legislation. The rationale, it was said, was grounded upon legal, ethical and institutional frameworks with reference made to legislation, Tribunal documentation and best practice standards.

78. On behalf of the Minister, it was submitted that the Tribunal must pay the greatest weight and respect to the words chosen, both in terms of the Resolutions passed and in the Statutory Instrument that gives effect to those Resolutions. Mr McGuinness submitted that it was open to the Oireachtas to permit the Tribunal to consider any situation or type of complaint through the lens of health and safety legislation. However, it had chosen not to do so, limiting its Resolutions (insofar as references to health and safety legislation were concerned) by the express use of the words *‘in so far as Term of Reference (vii) is concerned’*.

79. Replying to Mr McGuinness, Mr Gordon confirmed that his clients were not proposing new wording nor any violation of language but contended that clarification was appropriate, particularly, in the context of the health and safety authorities. He referred, in particular, to section 27 of the Safety, Health and Welfare at Work Act 2005 in the context of protections against dismissal and penalisation. Penalisation, it was said, includes any act or omission by an employer that affects, detrimentally, an employee with respect to a term or condition of his or her employment. To be refused permission to serve on overseas deployment unless Lariam was taken, was said to be an example of penalisation within the Defence Forces. In Mr Gordon's view, abuse frequently, if not always, involves some kind of penalty.

80. In approaching its interpretive task, the Tribunal considers that its starting point must be the literal wording of the Terms of Reference that were set out in the Resolutions of Dáil Éireann and Seanad Éireann. Those Terms make the boundaries of the Tribunal's jurisdiction. The Tribunal observes that the term 'abuse' is defined, expressly, in the Terms of Reference. The key question is whether, on a plain and literal reading, the wording in that definition is in any way ambiguous or unclear. Could it be said, for example, that a question might arise as to whether the term 'abuse' could be interpreted to mean a failure, even a persistent failure, to discharge health and safety obligations in respect of Defence Forces personnel? Is there any ambiguity or obscurity apparent in the definition?

81. The Terms of Reference state that:

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

There are, in total, eight specific types of wrongdoing identified in the definition of 'abuse'. These are:

- (i) Discrimination
- (ii) Bullying
- (iii) Harassment
- (iv) Physical torture
- (v) Physical assault
- (vi) Psychological harm

- (vii) Sexual assault, and
- (viii) Sexual misconduct

82. The Tribunal considers that there is nothing to suggest that the definition of ‘abuse’ as set out above is lacking in clarity or framed in ambiguous terms. As Counsel to the Tribunal observed, the Terms of Reference do not say that abuse ‘*includes*’ the list of wrongful acts that are set out in the definition. Rather, the Tribunal is told by the Oireachtas what the term ‘abuse’ means. There is nothing in the definition that suggests any vagueness as to the intention of the Oireachtas when formulating the definition. There is, in my view, no textual or contextual ambiguity such as would permit me to interpret ‘abuse’ to mean anything other than the eight types of abuse that are expressly listed. Nor does the definition leave open the possibility that some additional wrongs, apart from the eight wrongs specified, might be included.

83. In *Heather Hill* Murray J. observed that it is only if a literal interpretation gives rise to any ambiguity or misunderstanding that the Tribunal may proceed beyond that meaning to look behind the term to the intention of the Oireachtas. Affirming earlier case law, as in, *Dunnes Stores v Revenue Commissioners* [2019] IESC 50, as being the appropriate approach, Murray J. held that the use of interpretive aids is only necessary where there is obscurity, ambiguity or absurdity on a literal interpretation of a legislative provision. The Tribunal’s Terms of Reference are manifestly clear as to what ‘abuse’ means. That meaning is articulated in explicit and unambiguous terms. It follows that there is no need for me to look any further than the plain language of the text. There is no requirement to resort to interpretive aids or to examine any alternative purposive approach when determining what is meant by the term ‘abuse’.

84. It is true that the Statutory Instrument by which the Tribunal was established makes reference to ‘*a duty of care*’, a point upon which particular reliance was placed by Mr Gordon on behalf of the Lariam Group, the Hazardous Chemicals Group and the SAR Group. However, that reference is not apropos the work of the Tribunal. It is, rather, set out in the Preamble to S.I. 304 of 2024 which notes the decision of Government, in January 2022, ‘*to establish an Independent Review Group (IRG) to examine such issues and provide recommendations and guidance to the Minister for Defence on measures and strategies required to underpin a workplace based on dignity, equality, mutual respect, and duty of*

care for every member of the Defence Forces'. In contrast to the IRG's remit, there is no such task stipulated in this Tribunal's Terms of Reference. The specific matters into which I must inquire are set out in paragraphs (i) to (vii) thereof and I have neither the authority nor the jurisdiction to inquire into the discharge by the Defence Forces of '*a duty of care*' towards its members.

85. It is also true that the Terms of Reference contain an express reference to 'Complaints Processes' '*covered by*' the Safety, Health and Welfare at Work Acts 2005 (as amended) and, where applicable, the Safety, Health and Welfare at Work Act 1989. However, it is equally clear that such complaints processes are confined, expressly, to Term of Reference (vii) concerning complaints of hazardous chemicals at Casement Aerodrome, Baldonnell. The citation of the legislation is preceded by the express restriction encapsulated in the phrase '*in so far as (vii) below is concerned*'. On a plain and literal reading of the text, therefore, complaints processes '*covered by*' that legislation are expressly '*included*' in so far as complaints of hazardous chemicals are concerned, but no mention of those processes is to be found when it comes to the Tribunal's inquiry into any of the other Terms of Reference. Applying the maxim *expressio unius est exclusio alterius*, I am bound to conclude that the Safety, Health and Welfare at Work legislation has no application or relevance to the Tribunal's investigation into the complaints processes for complaints of abuse, more generally.

86. The foregoing considerations reinforce my finding that the Terms of Reference do not permit me to consider complaints about violations of health and safety obligations as complaints of 'abuse' within the meaning of that term as expressly defined.

87. Accordingly, I hold that I have no jurisdiction to interpret 'abuse' as meaning anything other than the eight specific wrongs that are listed in the definition of that word as set out in the Tribunal's Terms of Reference.

The Request for a Broader Interpretation of the Term 'Abuse'

88. Some parties argued that if the term 'abuse' is deemed not to include other types of abusive treatment, then they urged the Tribunal to amend its focus from a narrow approach to the complaints processes, to a broader examination thereof, such as would

permit the Tribunal to examine persistent breaches of health and safety legislation, more generally.

89. Several submissions expressed disappointment in relation to the Tribunal's Terms of Reference which were the subject of the Resolutions of Dáil Éireann and Seanad Éireann in establishing this Tribunal. In this regard, the DFJA conveyed that group's concern as to how eventual findings of '*truth*' can have any meaningful relevance given that the Terms of Reference and the definitions set out in S.I. 304 of 2024 '*diverge*' from the Defence Forces complaints system.

90. I pause to observe that there may be a certain misunderstanding on the part of the DFJA. Its submission appears to contend that several complaints made by their members about '*interpersonal issues*' would be excluded from examination by this Tribunal. The fact that the term '*interpersonal issues*' does not appear in the Terms of Reference does not exclude from the Tribunal's inquiry a person whose complaint about '*interpersonal issues*' otherwise falls within the Terms of Reference. If what the DFJA refers to as complaints about '*interpersonal issues*' arose from bullying or harassment or assault or any of the other wrongful acts set out in the definition of 'abuse', then this Tribunal *is* concerned with the manner in which a complaint about such '*interpersonal issues*' was responded to or whether there was a culture that discouraged the making of such a complaint.

91. As to those several parties who expressed disappointment, generally, with the Tribunal's Terms of Reference, I am satisfied that this is not a matter that falls within the Tribunal's jurisdiction. Responding to such submissions, Mr Lehane on behalf of the Defence Forces, referred the Tribunal to the comparative study carried out by the Office of the Attorney General which had identified the detailed procedural steps that are taken prior to the establishment of a Tribunal of Inquiry. Those procedural steps include, *inter alia*, the initial drafting of Heads of Terms, an examination of the proposed Terms by the Office of the Attorney General, considerations by the sponsoring Department and, in certain cases, consultation about the Terms of Reference with interested groups that are involved in the issue of public concern. Thereafter, following further consideration by the sponsoring Department and legal clearance by the Office of the Attorney General, there is a Government decision on the draft Terms of Reference after which Resolutions

containing those Terms are put before both Houses of the Oireachtas where they are subject to amendment during the course of debate. Once passed by Dáil and Seanad Éireann, the Resolutions are given effect by the signing of a Statutory Instrument that establishes a Tribunal.

92. Bearing in mind that this Tribunal's Terms of Reference have come into being following such detailed deliberation and dialogue, it is not for the Tribunal to revisit such matters. Its function is to carry out the specific tasks that are assigned to it under the Terms of Reference as they are, and to do so within the parameters set out therein. It is not open to a Tribunal, of its own volition, to broaden, amend, add to or detract from the Terms of Reference that delineate the jurisdictional boundaries of its inquiry. The findings of *Hardiman J. O'Brien v Moriarty Tribunal* are worth recalling:

"The Terms of Reference are the Instrument whereby the Houses [of the Oireachtas] 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 those 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."

93. Whilst a Tribunal has a wide discretion when interpreting its Terms of Reference, care must be taken so that it does not fall into error by confounding an interpretation of the Terms of Reference with an expansion thereof. As Mr McGovern, SC, pointed out, the Tribunal must be alert to the clear distinction between interpretation and expansion and, of itself, has no power to expand the Terms of Reference within which it must carry out its inquiry. The only way that a Tribunal's Terms of Reference may be changed is through the process set out in Section 1A of the Tribunals of Inquiry (Evidence) Acts 1921 – 2011. In relevant part, that section provides that:

"1A.- (1) An instrument to which this section applies (whether made before or after the passing of the Tribunals of Inquiry (Evidence)(Amendment)(No.2) Act, 1998 shall be amended, pursuant to a Resolution of both Houses of the Oireachtas, by a Minister of Government where –

(a) The tribunal has consented to the proposed amendment, following consultation between the tribunal and the Attorney General on behalf of the Minister, or

(b) The tribunal has requested the amendment.” [Emphasis is mine.]

94. The purpose of the public hearing held on 16 June 2025 was to consider matters pertinent only to the *interpretation* of the Tribunal’s Terms of Reference as set out in S.I. 304 of 2024. I have made my finding as to how this Tribunal must interpret the term ‘abuse’ as that term is defined and I reiterate that I am not entitled to interpret ‘abuse’ in an ‘expanded’ way such as would include violations of health and safety obligations.

The Tribunal’s Interpretation of Particular Forms of ‘Abuse’

Psychological Harm

95. Turning now to specific forms of abuse that are identified in the Terms of Reference, the Tribunal, in its Notice of 13 May 2025 (Schedule One) made certain observations in relation to ‘psychological harm’. It indicated that the linguistic context within which that term is framed in the Terms of Reference suggests that it should be interpreted to mean *‘a wrongful act which caused a complainant to suffer harm to the mind resulting in a recognised psychological injury’*.

96. Several parties made observations in relation to ‘psychological harm’ as a form of ‘abuse’ and furnished submissions in respect of the Tribunal’s interpretation of that term.

97. The written submission on behalf of the Minister for Defence noted the definition adopted by the Tribunal in respect of ‘psychological harm’ and stated that the Minister was not making any submission to the contrary. The written submission continued:

“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.”

98. In oral submissions, Counsel on behalf of the Minister argued that ‘psychological harm’ is not a freestanding form of ‘abuse’. The point was made that other forms of

‘abuse’, such as, rape, assault and torture could easily cause psychological harm. In addition, it was argued that one can envisage unhappy circumstances where members of the Defence Forces are presented with terrible incidents in the course of their duties which might cause them to suffer psychological harm but where it would be ‘*a complete misnomer*’ to say that they had suffered ‘abuse’. The latter submission advanced on behalf of the Minister is obviously correct. Indeed, in the Notice (Schedule One), the Tribunal itself had observed that the mere occurrence of psychological harm, howsoever caused, could not reasonably be said to be ‘abuse’. As Counsel to the Tribunal explained, the use of the word ‘*mere*’ was not used to suggest that there is something insignificant about the occurrence of psychological harm. Rather, the Tribunal was indicating that the presence alone of psychological harm, without any other factor, could not reasonably be said to be ‘abuse’.

99. That said, however, the Tribunal does not agree with the submission that ‘psychological harm’ is not to be regarded as a ‘*freestanding form*’ of ‘abuse’. On behalf of the Minister, it was argued that ‘psychological harm’ is either related to another form of ‘abuse’ or that ‘abuse’ has caused the ‘psychological harm’. That, however, is not the natural, ordinary or literal reading of the Terms of Reference where ‘abuse’ is defined as meaning eight specific wrongs of which psychological harm is identified as the sixth. Psychological harm is separately identified as a form of ‘abuse’ without any apparent requirement that it be caused by or related to other forms of ‘abuse’.

100. The Tribunal considers that just as it is obliged to ensure that it does not exceed its jurisdiction by interpreting the Terms of Reference in a manner that, in fact, expands them, it must be equally careful not to constrict its jurisdiction by departing from the plain and literal meaning of those Terms. As stated in *Statutory Interpretation in Ireland* (Dodd, D., 1st Edition, Bloomsbury Professional, 2008 at para. 507):

“The pre-eminent indicator of the legislator’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 interpreters task is at an end.”

101. There is nothing in the Terms of Reference to stipulate that ‘psychological harm’, as a distinct form of ‘abuse’, must have been caused by or related to one of the other forms

of 'abuse' set out in the definition. If the Oireachtas had intended that 'psychological harm' was to be understood by the Tribunal to mean harm caused by one of the other forms of 'abuse', as defined, then, to my mind, the Oireachtas would have said so.

102. What the other forms of 'abuse' have in common is that they are each wrongful acts. It is this linguistic context or the application of the interpretive maxim '*noscitur a sociis*' which drives the Tribunal to conclude that 'psychological harm' should be interpreted to mean a wrongful act which caused a complainant to suffer psychological harm. In this context, it is perhaps worth observing that discrimination (identified as one form of abuse) is wrongful without there being any requirement that it be intentional. It would not, therefore, be appropriate, in my view, to conclude that the wrongdoing which causes the complainant to suffer 'psychological harm' must be intentional wrongdoing.

103. A number of submissions were made on behalf of the DFJA. Firstly, reference was made to the sentence in Schedule One of the Notice that reads:

"The mere occurrence of psychological harm, howsoever caused, could not reasonably be said to be abuse."

104. The use of the word '*mere*', it was suggested, was belittling or dismissive of the significance of psychological harm. As explained previously, that view is based on a misunderstanding of the use of the word '*mere*'.

105. Issue was also taken with the sentence:

"The other categories of 'abuse' as defined in the Terms of Reference involve some action on the part of a perpetrator."

106. The submission suggested that, by implication, the Tribunal was suggesting that 'psychological harm' does not involve any action by a perpetrator. In fact, the Tribunal was suggesting exactly the opposite as was made clear by the conclusion that 'psychological harm' involves a wrongful act which caused a complainant to suffer harm to the mind.

107. Those clarifications aside, the Tribunal notes that the DFJA has '*put on record*' that the rest of the proposed definition '*ought to encompass*' the eight (8) disorders identified

in the DSM-5-TR. These include, Post-Traumatic Stress Disorder, Acute Stress Disorder and other trauma related disorders.

108. As noted above, the Tribunal considers that the linguistic context within which ‘psychological harm’ is framed in the Terms of Reference, suggests that it 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 DSM-5-TR (Classification: Trauma and Stressor-Related Disorders).

109. The Tribunal considers that ‘*a recognised psychological injury*’ is an important aspect of a complaint of ‘psychological harm’ as a form of abuse caused by a wrongful act. The reason for this is as follows. ‘Harm’ is a significant term and ‘abuse’ is a serious matter. The other forms of abuse, such as, physical torture, bullying, rape and physical assault—alongside which ‘psychological harm’ stands in the definition of ‘abuse’—all point to the necessity for something more persistent, more pervasive, than momentary anxiety or temporary upset or a transient feeling of sadness or a passing low mood.

110. At the same time, however, the Tribunal is precluded from investigating or making findings as to whether abuse complained of occurred. It is concerned with the processes within the Defence Forces for dealing with such complaints. It is for that reason that the Tribunal does not require the submission of evidence to support a complaint of abuse.

111. On behalf of the 34th Platoon, concern was expressed that the Tribunal’s definition of ‘psychological harm’ required a clinical diagnosis of such and, therefore, placed an unreasonable burden on complainants, particularly, those who may not have had access to mental health services or who may have suffered without a formal diagnosis. This concern is misplaced.

112. The Tribunal reiterates that its focus is on the complaints processes. It is not concerned with whether a particular complaint is well-founded or not. Thus, a complainant may allege that he or she suffered physical torture in the course of his or her training or work or career in the Defence Forces—without having to produce medical evidence to substantiate that claim. Equally, a complainant may allege that he or she suffered ‘psychological harm’ (*namely, a wrongful act which caused a complainant to*

suffer harm to the mind resulting in a recognised psychological injury) in the course of his or her training, work or career in the Defence Forces—without having to produce medical evidence to support it. The Tribunal’s task is to ascertain how a complaint of such ‘psychological harm’ was responded to and, if no such complaint was made, then it needs to understand why the person concerned chose not to make a complaint.

113. The Tribunal’s interpretation of a complaint of ‘psychological harm’ is a complaint of a wrongful act which is said to have caused a recognised psychological injury. The Tribunal does not require that it be provided with medical evidence but complainants are free to do so should they wish.

114. In separate submissions on behalf of Women of Honour and the Lariam Group, the point was made that breaches of health and safety obligations which caused psychological harm could amount to ‘abuse’ within the meaning of the Tribunal’s interpretation of the Terms of Reference. Mr Bradley submitted that systemic exposure to hazardous environments can lead to trauma, anxiety and stress-related disorders and, if such exposure was known, repeated and unaddressed, then it meets the Tribunal’s threshold of a ‘wrongful act’ causing ‘psychological harm’.

115. A clear and correct articulation of the issue with which the Tribunal is concerned was set out in the submission made by the Defence Forces wherein it stated:

“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.”

116. Elsewhere in this Ruling, the Tribunal has concluded that breaches of health and safety obligations do not fall within the definition of abuse and thus cannot, *per se*, be said to constitute ‘abuse’. Where those breaches resulted in ‘psychological harm’, however, the definition of ‘abuse’ can be met.

Harassment

117. Counsel on behalf of the individual represented by Seán Costello & Co. Solicitors, urged the Tribunal to adopt a broader definition of ‘harassment’ than the one set out in the Notice (Schedule One). This, it was said, would acknowledge that ‘harassment’ can be exacerbated by hierarchical relationships, even if not directly linked to a discriminatory ground.

118. The Tribunal considers that where there is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one person against another, in the context of a hierarchical relationship, such inappropriate behaviour, if it could reasonably be regarded as undermining the individual’s right to dignity at work, may form the basis of a complaint of bullying that took place in the context of a hierarchical relationship.

119. Accordingly, the Tribunal considers that it is unnecessary to adjust its definition of ‘harassment’ as set out in Schedule One.

‘Culture’ and the Tribunal’s Interpretation of Term of Reference (iv)

120. Pursuant to Term of Reference (iv) the Tribunal is charged with investigating whether complaints of abuse were actively deterred or whether there was a culture that discouraged the making of complaints of abuse. In its interpretation of its Terms of Reference as published on the Tribunal’s website, the Tribunal interpreted this term 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.”

121. The Tribunal, in the Notice, reiterated its interpretation of Term of Reference (iv) and observes that no submissions were received in respect of its interpretation in this regard.

Other Matters

Constitutional, Convention and EU Charter Rights

122. Several parties, including, the DFJA, made submissions in relation to the Constitution, the Convention and the EU Charter, essentially, setting out various provisions thereof. On behalf of his clients, Mr Gordon recalled that 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 processes."

He reminded the Tribunal that the Department of Defence and the Defence Forces are organs of the State. Article 17 of the Convention on the prohibition of abuse of rights was invoked, as was Article 31 of the EU Charter in relation to fair and just working conditions.

123. I have read and considered all submissions made in this regard.

The Evidence of Family Members


124. In response to the submission received on behalf of the family member, the Tribunal considers that the evidence of a family member may be relevant to its inquiry. Whilst a complaint of abuse is defined in the Terms of Reference as a complaint made to the Defence Forces or the Minister for Defence by specific categories of persons (namely, serving or former members of the Defence Forces, current or former civilian employees and current or former civil servants), that, in my view, does not exclude the possibility that a family member may have relevant evidence to give in relation to a complaint made by one or other of those categories of persons to the designated recipients. As Counsel on behalf of the Minister confirmed, the relevance or otherwise of evidence is a matter for the Tribunal. Accordingly, whilst the Tribunal must adhere to the definition of 'complaints of abuse' as set out in the Terms of Reference, it may well consider that the

evidence of family members is important when examining how a particular complaint was managed or, indeed, why a complaint of abuse was not made.

Conclusions

125. The findings of the Tribunal in relation to the above matters may be set out as follows:

- (i) the Tribunal's interpretation of the term 'abuse' is based on a plain and literal reading of the definition of 'abuse' as set out in the Terms of Reference;
- (ii) breaches of health and safety obligations cannot be said to constitute 'abuse' and, in examining the complaints processes for dealing with 'abuse', the Tribunal has no jurisdiction to investigate such alleged breaches or how complaints of such alleged breaches were responded to by the Defence Forces;
- (iii) the Tribunal's function is to interpret the Terms of Reference as they are and it has no power to enlarge its jurisdiction by '*expanding*' the Terms of Reference;
- (iv) the Tribunal's interpretation of a complaint of 'psychological harm' is a complaint of a wrongful act which is said to have caused a recognised psychological injury;
- (v) there is no requirement on any person to prove that an allegation of abuse is well-founded and, thus, there is no requirement that medical evidence be furnished to the Tribunal to substantiate a complaint of 'psychological harm' or a complaint of any other form of 'abuse' identified in the Terms of Reference;
- (vi) the Tribunal's interpretation of 'harassment' as a form of abuse remains unchanged, as does its interpretation of Term of Reference (iv); and
- (vii) the evidence of a family member of Defence Forces personnel may be admissible where that evidence is relevant to the Tribunal's inquiry.


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Annex

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.