

THE TRIBUNAL OF INQUIRY INTO CERTAIN MATTERS RELATING TO
THE COMPLAINTS PROCESSES IN THE DEFENCE FORCES AND THE
CULTURE SURROUNDING THE MAKING OF COMPLAINTS AS
ESTABLISHED ON 20TH DAY OF JUNE 2024 BY S.I. 304/2024

PUBLIC HEARING OF THE TRIBUNAL OF INQUIRY BEFORE
THE SOLE MEMBER, MS. JUSTICE ANN POWER,
AT THE INFINITY BUILDING, THIRD FLOOR,
GEORGE'S COURT, GEORGE'S LANE, SMITHFIELD, DUBLIN 7
ON WEDNESDAY, 3RD JUNE 2026 - DAY 1

1

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1 THE TRIBUNAL COMMENCED ON WEDNESDAY, 3RD JUNE 2026 AS
2 FOLLOWS:

3
4 SOLE MEMBER: Good morning, everyone. Mr. Cush.

5 MR. CUSH: Good morning, Judge. 10:02

6
7 Judge, this morning we're proposing to begin with an
8 opening statement on behalf of the Tribunal, after
9 which we're intending to take appearances from the
10 parties present today, and after that, we're proposing 10:03
11 to take the evidence of the first witness, Cpt. Bratli.

12 SOLE MEMBER: Yes.

13 MR. CUSH: And if I may just, respectfully suggest, at
14 this point, that before commencing that evidence we
15 might take a short break of whatever duration you see 10:03
16 fit?

17 SOLE MEMBER: Of course.

18 MR. CUSH: But just before we start.

19
20 OPENING STATEMENT BY MR. CUSH 10:03

21
22 MR. CUSH: So, Judge, it is my function to deliver an
23 opening statement on behalf of the Tribunal for the
24 purposes of outlining, in public, an overview of the
25 Tribunal's work, its Terms of Reference, the way in 10:03
26 which its investigations have been conducted since its
27 establishment and the manner in which it intends to
28 proceed from now to the conclusion of its
29 investigations.

1 The background to the establishment of this Tribunal of
2 Inquiry is well known; serious allegations of sexual
3 violence, sexual harassment, bullying and
4 discrimination within the Irish Defence Forces were
5 broadcast in an RTÉ Radio One documentary entitled 10:04
6 "Women of Honour" in 2021. The broadcast gave voices
7 to experiences that, until then, had gone largely
8 unheard. What emerged was not simply a series of
9 individual grievances but of broader concern about the
10 structures, practices and culture within the Defence 10:04
11 Forces that may have allowed such experiences to
12 persist. These matters demanded, not only attention,
13 but decisive action. The Government established a
14 non-statutory Independent Review Group to examine the
15 issues and to make recommendations to the Minister for 10:04
16 Defence, on measures and strategies required to
17 underpin a workplace based on dignity, equality, mutual
18 respect and duty of care for every member of the
19 Defence Forces.

20
21 The Review Grew published its report in March 2023.
22 Its first recommendation was the establishment of a
23 statutory fact-finding process to identify systemic
24 failures, if any, in a complaints system in order to
25 ensure accountability and transparency. Accordingly, 10:05
26 following a resolution of Dáil Éireann on 24th January
27 2024 and of Seanad Éireann on 30th January 2024, the
28 Tánaiste and Minister for Defence on the 20th day of
29 June 2024, by instrument pursuant to the Tribunals of

1 Inquiry (Evidence) Acts 1921-2011 established this
2 Tribunal of Inquiry.

3
4 The matters of urgent public importance into which this
5 Tribunal is required to inquire are set out in 10:05
6 paragraphs 1 to 7 of the resolution of the Houses of
7 the Oireachtas and they constitute the Terms of
8 Reference of this Tribunal. Conceptually those seven
9 paragraphs fall into three distinct subject areas for
10 investigation, namely the processes and systems for 10:06
11 dealing with complaints of abuse, that is paragraphs 1
12 to 5. The role played by the Minister for Defence and
13 her department in those procedures and systems, that's
14 paragraph 6. And the response made to complaints of
15 hazardous chemicals and the adequacy of the complaints 10:06
16 processes in the light of such responses, that is
17 paragraph 7.

18
19 In respect of the first subject area, the process for
20 dealing with complaints of abuse, paragraphs 1 to 5 of 10:06
21 the Terms of Reference task the Tribunal with examining
22 whether those processes within the Defence Forces were
23 fit for purpose, and were properly implemented. The
24 Tribunal must consider the outcome and response to
25 complaints of abuse and whether there were any systemic 10:06
26 failures in the complaints processes. The Tribunal
27 must also investigate whether complaints of abuse were
28 actively deterred or whether a culture existed which
29 discouraged their making and whether complainants were

1 subject to retaliation or reprisal.

2

3 The period under investigation by the Tribunal is a
4 long one, it covers four decades from 1 January 1983
5 until 20 June 2024. Two important points must be
6 emphasised at the outset.

10:07

7

8 First, it is clear that the Tribunal's focus is on
9 complaints processes within the Defence Forces and not
10 on the merits of any individual complaints of abuse.

10:07

11 The Terms of Reference expressly preclude the Tribunal
12 from investigating or making findings on matters which,
13 if established by a court of law, would be criminal in
14 nature.

15

10:07

16 Second, and notwithstanding that limitation, the
17 Tribunal is entitled to hear evidence of alleged abuse
18 and its consequences. The Tribunal takes the view that
19 it must hear such evidence because an understanding of
20 the abuse complained of is necessary to enable the
21 Tribunal to consider the response to such complaints,
22 and to establish the adequacy of the processes that
23 were available to deal with complaints of abuse.

10:08

24

25 These two points have important implications for the
26 manner in which the Tribunal must conduct its
27 investigations. This is a matter to which I will
28 return.

10:08

29

1 I want to say something about the unique nature of the
2 Defence Forces workplace. The Tribunal is no doubt
3 aware that the Defence Forces provide a unique and
4 distinctive workplace, one that is discernibly
5 different from every other employment context. Defined 10:08
6 by its strict hierarchy, its chain of command structure
7 and its deep sense of collective purpose, it is a
8 workplace unlike any other. Whether in defence of
9 national security or on overseas missions, members will
10 be called to put that lives on the line or to entrust 10:09
11 their lives to a fellow Defence Force members. As
12 obedience to commands is integral to the members' whole
13 existence, the maintenance of good order and discipline
14 is a key element in military life. Its strict
15 disciplinary code includes elements that have no 10:09
16 equivalent in civilian life and a recruit on joining
17 submits voluntarily to this code.

18
19 Membership of the Defence Forces also brings unique and
20 stringent obligations and responsibilities. All 10:09
21 relationships are predicated on a fundamental principle
22 that all lawful orders must be obeyed. The
23 countervailing principle, or corollary of this, is that
24 all authority must be exercised with the highest sense
25 of responsibility. This relationship of unquestioned 10:09
26 obedience to a superior sets the Defence Forces apart
27 from all other organisations within the State. It
28 means that the membership of the Defence Forces cannot
29 be equated to employment within a civilian workforce.

1 The Irish Defence Forces comprising the Army, the Naval
2 Service and the Air Corps is a large and complex
3 organisation. In considering whether processes for
4 dealing with complaints of abuse within the Irish
5 Defence Forces were appropriate, the Tribunal will 10:10
6 consider the processes that were in place within
7 military contexts. A consideration of how military
8 forces in other jurisdictions dealt with complaints of
9 abuse over the last 40 years may be helpful for
10 comparative purposes in establishing whether the 10:10
11 processes available to personnel in the Irish Defence
12 Forces were broadly similar and whether they were
13 appropriate and fit for purpose.

14
15 I want to say something now about the work of the 10:10
16 Tribunal to date. The Terms of Reference require the
17 Tribunal to report to the Taoiseach with such findings
18 and recommendations as it sees fit as expeditiously as
19 possible. The Tribunal has at all times approached its
20 work with that objective in mind. 10:11

21
22 The maxim in relation to a Tribunal of Inquiry is that
23 every Tribunal starts out with a blank piece of paper.
24 It pursues no agenda, its team is neutral, it's on a
25 fact-finding mission. At its commencement it knows 10:11
26 nothing about the evidence that will be uncovered as a
27 result of its investigation.

28
29 It's the task of a Tribunal to seek out those who have

1 information relevant to its inquiry and to use the
2 powers conferred upon it by law to elicit relevant
3 witness statements and examine all relevant
4 documentation. In this regard the Tribunal has acted
5 assiduously and persistently in progressing as private 10:11
6 investigations.

7
8 within 24 hours of its establishment, and in
9 anticipation of the scale of material that it would
10 want to examine, the Tribunal make Protective Orders in 10:11
11 respect of the Chief of Staff and the Minister for
12 Defence. Those orders directed the parties concerned
13 to retain, protect and preserve all documents and
14 devices that contain information or material as is
15 relevant or potentially relevant to the matters under 10:12
16 inquiry. The orders indicate a broad interpretation
17 applied to the terms "documents" and "preservation".

18
19 Three days later the Tribunal held its first public
20 sitting on 24 June 2024. On that occasion, Judge, you 10:12
21 outlined the Tribunal's mandate, the stages of its work
22 and the limits of his jurisdiction.

23
24 A call for information was issued on the same day, and
25 repeated thereafter, inviting any person who might 10:12
26 assist the Tribunal to come forward. No fewer than 312
27 people responded to the Tribunal's call for
28 information. For many, if not most of those coming
29 forward, it was a brave and difficult decision on their

1 part to share their experiences with the Tribunal.
2 Every statement furnished to the Tribunal has provided
3 a valuable contribution to the Tribunal's understanding
4 of the matters it must investigate.

10:13

5
6 It has also been apparent to the Tribunal that those
7 coming forward are almost invariably motivated, not
8 just by the opportunity to voice their own concerns,
9 but also by the interests of the Defence Forces
10 themselves.

10:13

11
12 For reasons which I will explain shortly, it will not
13 be possible for the Tribunal to call as witnesses all
14 of those who provided information. But it is
15 appropriate that the Tribunal should take this first
16 opportunity in public to thank them for their
17 contribution.

10:13

18 19 APPLICATIONS FOR LEGAL REPRESENTATION

20 On 22nd July 2024 the Tribunal sat for the purpose of
21 considering applications for legal representation from
22 several parties and representative groups. Given the
23 serious allegations of abuse that have been the subject
24 of complaints by many who had contacted the Tribunal,
25 considerable concern was expressed by such interested
26 persons about sharing information with the Tribunal in
27 the absence of legal assistance.

10:13

10:13

28
29 On 25 July 2024, the Tribunal delivered its ruling in

1 respect of those applications. Initially, grants of
2 limited legal representation were afforded in relation
3 to the Tribunal's private investigative phase. More
4 recently, further grants have been made for limited
5 representation during the public hearings phase of the 10:14
6 Tribunal.

7
8 The Tribunal's legal team held numerous meetings with
9 interested groups. Arising from concerns expressed
10 during those engagements, the Tribunal wrote to the 10:14
11 Chief of Staff of the Defence Forces in August 2024
12 requesting that a formal direction issue through the
13 chain of command confirming that members engaging with
14 the Tribunal would be supported and would not be
15 subject to any penalty. 10:14

16
17 The Tribunal also requested the dissemination of a
18 detailed frequently asked questions document which it
19 had prepared. The Chief of Staff responded positively
20 and both the requested direction and the Tribunal's 10:15
21 frequently asked questions document were duly
22 disseminated.

23 24 DISCOVERY AND DATA PROTECTION

25 The Tribunal is tasked with conducting a public inquiry 10:15
26 that extends over 41 years, a period during which
27 volumes of documents and files relevant to the work of
28 the Tribunal were created.

1 The Tribunal considered that in order to conduct a
2 rigorous and robust investigation into the complaints
3 process within the Defence Forces in respect of
4 complaints of Abuse, it was necessary for it to examine
5 every complaint file that had been created arising from 10:15
6 every Complaint of Abuse that was made over the 41-year
7 period of its inquiry.

8
9 An equally robust approach was taken to relevant
10 documentation in the possession of the Minister for 10:15
11 Defence. It was clear that such discovery would be
12 extensive. At the same time the Tribunal was obliged
13 to reconcile its investigative obligations with its
14 obligations under enhanced data protection and privacy
15 rights as prescribed by national and EU law. 10:16

16
17 Several meetings between the Tribunal's legal team and
18 the legal representatives of the Defence Forces and the
19 Minister were held with a view to reconciling the
20 Tribunal's requirement for extensive discovery with the 10:16
21 rights and obligations arising under the General Data
22 Protection Regulation and the constitutional right to
23 privacy.

24
25 GDPR considerations require the creation of a series of 10:16
26 protocols designed to respect data protection and
27 privacy right and obligations, whilst facilitating the
28 Tribunal in examining all relevant documentation
29 necessary for its investigation.

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Following a request by the Tribunal, a series of regulations were made under the Data Protection Act 2018. These were Data Protection Act 2018, section 84, (Defence Forces Tribunal of Inquiry) Regulations 2024, which permitted the processing of personal data; Data Protection Act 2018, section 53(1), (Defence Forces Tribunal of Inquiry) Regulations 2024, which permitted the processing of sensitive personal data; and Data Protection Act 2018, section 66, (Defence Forces Tribunal of Inquiry) Regulations 2024, which are restrictions the Tribunal require.

10:16

10:17

During the course of the public hearings it will be evident that redactions have, where necessary, been made on certain documentation. The Tribunal may make such redactions where material is not relevant to any issue arising for its determination and/or where it is necessary to protect the rights of privacy or confidentiality or data protection of any party or individual.

10:17

10:17

ORDERS FOR DISCOVERY

The Tribunal has to date made three Orders for Discovery against the Chief of Staff of the Defence Forces. The first order was made on 28th January 2025 and setting out 12 categories of documentation. It required discovery about 2 July 2025 of all complaint files and other materials the Tribunal deemed relevant

10:17

1 to its inquiry.

2

3 The Defence Forces sought an extension of time. And on
4 30th June 2025 the Chief of Staff was given a further
5 22 weeks within which to comply with the order. 10:18

6

7 On 28th November 2025, the Chief of Staff swore an
8 Affidavit of Discovery in compliance with the
9 Tribunal's order.

10

10:18

11

12

13

14

15

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20

Information brought to the Tribunal's attention through
interviews with individuals and files discovered gave
rise to the Tribunal making a second Order for
Discovery as against the Chief of Staff of the Defence
Forces on 13th February 2026. The documents sought in
this instance related to an investigation conducted by
the Military Police in respect of the death of an
Apprentice on 27 June 1001 at Devoy Barracks, Naas,
County Kildare. 10:18

21

22

23

24

25

26

On 12 March 2026 the Chief of Staff swore a
Supplemental Affidavit of Discovery and produced the
requested documentation, in addition to other documents
that had come to light since his first affidavit had
been sworn. 10:19

27

28

29

Pursuing a trail of information identified in that
further tranche of documentation, the Tribunal made a
third Order for Discovery as against the Chief of Staff

1 on 22nd March 2026. In this regard, discovery was
2 required in respect of additional documents and
3 materials relating to the Army Apprentice School, Devoy
4 Barracks, Naas, from 1989 to 1992.

10:19

6 ORDERS FOR DISCOVERY, THE MINISTER FOR DEFENCE

7 On 22nd January 2025 the Tribunal made an Order for
8 Discovery in respect of the Minister for Defence
9 requiring by 16th June 2025, the discovery of all
10 documents and materials in the Minister's possession
11 that are relevant to the matters within its remit as
12 stipulated in the order.

10:19

13
14 In response to an application made on behalf of the
15 Minister, the Tribunal, on 30th June 2025, extended the
16 time for compliance with its order for discovery by 22
17 weeks.

10:19

18
19 On 18 November 2025, the Secretary General of the
20 Department of Defence swore an Affidavit of Discovery
21 on behalf of the Minister for Defence. A Supplemental
22 Affidavit of Discovery was sworn on 23rd February 2026
23 by the Secretary General of the Department of the
24 Minister for Defence to address and discover additional
25 material delivered to the Tribunal after the swearing
26 of her initial affidavit.

10:20

10:20

27
28 It is self-evident that the volume of documentation
29 which the Tribunal is processing is voluminous and, as

1 matters stand, it extends to over 226,000 pages of
2 materials that require to be examined and assessed.
3 The review of this documentation is a massive task and
4 it forms part of the ongoing work of the Tribunal.

10:20

5
6 INTERPRETATION OF TERMS OF REFERENCE

7 On 13th May 2025, the Tribunal issued a public notice
8 of its intention to hold a meeting on 16th June 2025 to
9 consider the interpretation of its Terms of Reference.
10 Interested parties were invited to make submissions on
11 three key issues:

10:21

- 12
- 13 1. The definition of the various elements of abuse;
- 14
- 15 2. Whether a broader interpretation of abuse should be
16 adopted; and
- 17
- 18 3. The interpretation of Term of Reference 6
19 concerning whether complaints of abuse were deterred or
20 discouraged.

10:21

10:21

21
22 Submissions were received from several parties and they
23 were published on the Tribunal's website. The Tribunal
24 delivered its ruling on the interpretation of its Terms
25 of Reference on 30th June 2025. It confirmed its
26 preliminary interpretation of certain elements of abuse
27 and declined to adopt a broader interpretation of the
28 definition, noting that to do so would amount to an
29 impermissible expansion of its Terms of Reference.

10:21

1
2 In respect of Terms of Reference 6, the Tribunal
3 confirmed that a failure to make a complaint at the
4 relevant time, whether due to a perceived culture, fear
5 of retaliation or otherwise, did not preclude a person 10:22
6 from coming forward with evidence relevant to the
7 Inquiry. The ruling can be found on the Tribunal's
8 website.

9
10 INTERVIEWS CONDUCTED 10:22

11 In order to ensure a thorough and proper investigation
12 of the matters falling within its Terms of Reference,
13 it has been and continues to be necessary for the
14 Tribunal to interview many individuals.

15 10:22
16 The process of conducting interviews commenced in
17 January 2025. To date 190 individuals have been
18 interviewed, some of them more than once. In addition,
19 a further 17 individuals have been interviewed in
20 circumstances where it is alleged that they played a 10:22
21 role in the handling of complaints and/or contributed
22 to a culture within the Defence Forces that discouraged
23 the making of complaints of abuse.

24
25 All interviews were conducted by two members of the 10:22
26 Tribunal's team. The interviews are recorded and that
27 recording is then transcribed so there is an accurate
28 account of the meeting. The interview process remains
29 ongoing.

1 ORDER FOR DISCLOSURE

2 During its private investigations the Tribunal was
3 required to address a further practical and procedural
4 necessity. On 23rd October 2025 the Tribunal made an
5 Order for Disclosure directing the Chief of Staff and 10:23
6 the Minister for Defence to disclose information
7 concerning the identity and the contact details of
8 certain individuals. These included investigating
9 officers, decision-makers, mediators and persons
10 involved in processes for dealing with complaints of 10:23
11 abuse, as well as those who may have deterred the
12 making of such complaints, and those engaged in
13 responding to or failing to respond to complaints of
14 hazardous chemicals.

15
16 The disclosure order was limited in scope, confined to 10:23
17 what was strictly necessary to enable the Tribunal to
18 contact the individuals concerned by post, telephone or
19 e-mail.

20
21 The orders were necessary to ensure the Tribunal could 10:23
22 discharge its statutory functions and that its inquiry
23 proceeded in accordance with fair procedures and
24 constitutional justice. Individuals whose actions or
25 omissions may be the subject of criticism are entitled 10:24
26 to be heard by the Tribunal and to be given an
27 opportunity to vindicate their good name.

1 THE SCALE OF THE TASK AND THE ANTICIPATED APPROACH

2 Judge, I have outlined some of the measures that have
3 been taken to ensure that a robust and meaningful
4 investigation is carried out.

5 10:24

6 The sheer scale of this task in hand cannot be
7 overstated. Most tribunals of inquiry established in
8 the State to date have focused either on specific dates
9 or incidents of or particular individuals and certainly
10 on more limited timeframes. In contrast, this Tribunal 10:24
11 is tasked with investigating multiple processes in
12 relation to complaints of abuse in Defence Forces over
13 a period of four decades, a significant period of time
14 and, as you observed at the outset, the Tribunal's task
15 is a formidable one.

16 10:25

17 Notwithstanding its very lengthy period of review the
18 Tribunal is obliged by its Terms of Reference to
19 endeavour to complete its work within three years of
20 its establishment. Conscious, no doubt, of the 10:25
21 difficulty posed by that objective, the Oireachtas
22 included within the Terms of Reference a specific
23 provision to the effect that the Tribunal may exercise
24 a discretion in relation to the extent of the evidence
25 that it hears and will be entitled to consider that a 10:25
26 sample of evidence on particular issues is sufficient
27 for it to make conclusions and report upon its
28 findings.

29

1 Given the requirement of expedition set by the Terms of
2 Reference and the objective of a completion of its work
3 within three years of its establishment, the Tribunal
4 will be obliged to avail of a power to limit the extent
5 of the evidence that it adduces and, therefore, the 10:26
6 number of witnesses that it calls to provide oral
7 testimony.

8
9 Although today sees the commencement of the Tribunal's
10 public hearings, it is important to point out that its 10:26
11 investigations are ongoing and are being carried out in
12 tandem with the first round of public hearings. The
13 timelines envisaged by the Terms of Reference
14 necessitate this approach. Evidence will, therefore,
15 be adduced before the Tribunal in a modular fashion. 10:26

16
17 Before turning our attention, Judge, to what the
18 Tribunal will consider in this module, it may be
19 helpful to provide a very brief overview of the types
20 of processes that were available to Defence Force 10:26
21 personnel and relevant civilians and civil servants
22 when it came to the making of complaints of abuse.
23 The Terms of Reference identifies six distinct
24 complaint processes, five of which are potential
25 mechanisms for processing complaints of Abuse. These 10:27
26 are:

- 27
28 1. Complaints seeking a redress of wrong;
29

1 effective complaints process or whether the complaints
2 processes available to members of the Defence Forces
3 were in fact effective.

4
5 Among the matters which the Tribunal will explore will 10:28
6 be:

7
8 1. whether members were informed adequately, or at
9 all, of the existence and/or scope of the various
10 Complaint Processes available; 10:28
11

12 2. whether members were informed adequately, or at
13 all, of how to initiate the various complaints
14 processes available; 10:28
15

16 3. whether the investigation of complaints was
17 performed competently; 10:28
18

19 4. whether the confidentiality of the process was
20 maintained so far as practicable; and 10:29
21

22 5. whether complainants, and those complained against,
23 were notified of the outcome of the investigation and
24 the extent of that notification. 10:29
25

26 I mentioned at the outset that the seven key matters
27 into which the Tribunal must inquire fall broadly into
28 three subject areas, the largest of which concerns the
29 systems and processes for dealing with complaints of

1 abuse.

2
3 The Tribunal must establish the adequacy or otherwise
4 of the processes that were available to complainants,
5 the extent of adherence thereto and the response to 10:29
6 complaints of abuse. It must identify if there were
7 systemic failures in those processes and investigate
8 whether complaints were actively deterred or whether
9 there existed a culture that discouraged the making of
10 complaints. It must also investigate whether 10:30
11 complainants suffered retaliation, reprisals,
12 intimidation or penalties as a consequence of having
13 made a Complaint of Abuse.

14
15 During the private investigative stage of its work, the 10:30
16 Tribunal's legal team interviewed several people who
17 alleged that they had suffered abuse during their time
18 within the Defence Forces but who had not availed
19 themselves of the relevant Complaints processes. In
20 such cases the lengthy process, having to wait to 10:30
21 receive complaint files from the Chief of Staff before
22 scheduling interviews did not arise. These individuals
23 were amongst the first to be interviewed by the
24 Tribunal's legal team and many of them will give
25 evidence during this forthcoming module. 10:30

26
27 THE FIRST MODULE, ACT OF DETERRENCE AND CULTURE, TERMS
28 OF REFERENCE (i v)

29 Today we're commencing the first module of public

1 hearings which will focus on Term of Reference (iv).
2 This requires the Tribunal to investigate whether
3 complaints of Abuse were actively deterred or whether
4 there was a culture that discouraged the making of
5 complaints of abuse. The primary focus of this module 10:31
6 is to Terms of Reference (iv), however some of the
7 evidence may be relevant to other Terms of Reference.

8
9 The existence of successful, fair and transparent
10 complaints process is of little practical value if 10:31
11 members of an organisation feel unable or unwilling to
12 invoke them or unsafe when doing so.

13
14 A formal process may appear appropriate on paper but
15 may fail in practice if the prevailing culture exists 10:31
16 and discourages complaints being made or penalises
17 those who make them or signals that complaints will not
18 be welcomed or believed or handled appropriately.

19
20 It is, therefore, appropriate at this early stage of 10:31
21 the Tribunal's public phase to examine the lived
22 experiences of those who allege that they suffered
23 abuse, but who did not make complaints in relation
24 thereto. It is necessary to explore their reason for
25 not complaining, as such evidence may go directly to 10:32
26 the question of culture. It is also important to hear
27 from those who believe that they were deterred from
28 making a complaint of abuse. What was communicated
29 through behaviour, through command structures, through

1 informal practices and through institutional response
2 or failures to respond when concerns were raised.

3
4 Of the 58 witnesses who will give evidence in the
5 course of this module of the Tribunal's hearings, 36 10:32
6 will be connected with events at the Army Apprentice
7 School, Devoy Barracks, Naas, in the period of
8 1989-1992.

9
10 The first of those witnesses is scheduled to give 10:32
11 evidence on 17th June 2026. It will be necessary to
12 preface that body of testimony with a short statement
13 outlining the nature of the evidence to be produced and
14 the potential significance of the evidence to the
15 Tribunal's investigation. 10:33

16
17 Six of the witnesses to give evidence in this module
18 are concerned with the prescription of Lariam, an
19 anti-malarial drug prescribed to members of the force
20 sent on certain overseas missions. 10:33

21
22 The Tribunal is aware that as of 2019, there were 225
23 proceedings instituted by members of the Defence Forces
24 in respect of the prescription of Lariam. Not one of
25 those litigants appears to have made a complaint to the 10:33
26 Defence Forces themselves availing of any of the formal
27 complaint processes available. The Tribunal seeks to
28 understand why that was so.
29

1 The Tribunal is not concerned with the efficacy of the
2 prescription of Lariam or its potential side effects
3 and is not concerned with the outcome of the
4 litigation, whether it be completed or pending.

10:34

5
6 For this module, the parties have applied for and been
7 granted legal representation include:

8
9 1. The Defence Forces represented by the Chief State
10 Solicitor;

10:34

11
12 2. The Minister for Defence represented by the Chief
13 State solicitor;

14
15 3. Women of Honour represented by Malcolmson Law
16 Solicitors;

10:34

17
18 4. Certain witnesses represented by Coleman Legal
19 Solicitors;

10:34

20
21 5. Permanent Defence Forces Representative Association
22 (PDFORRA) represented by O'Regan Little Solicitors;

23
24 6. A witness represented by O'Mara Geraghty McCourt
25 Solicitors; and

10:34

26
27 7. A witness represented by Seán Costello, Solicitor.

28
29 In this module a number of expert witnesses and Defence

1 Forces personnel will give evidence that extends beyond
2 the scope of this module. The expert witnesses will
3 provide evidence in relation to the complaints process
4 in the Defence Forces and the Defence Forces personnel
5 will provide evidence in relation to specific roles 10:35
6 and/or functions in the Defence Forces that are linked
7 to the complaints processes. These include: The
8 Provost Marshal and Director of the Military Police,
9 the Officer in Charge, Defence Forces Personnel Support
10 Service, the Director of the Medical Branch of the 10:35
11 Defence Forces, the Director of Inventory and
12 Commandant of the Infantry School, the Head Chaplain of
13 the Defence Forces and the Ombudsman of the Defence
14 Forces.

15
16 Transcripts of this evidence, and all evidence before
17 the Tribunal, will be published on the Tribunal
18 website. Individuals or groups who have not yet been
19 granted representation but which to cross-examine
20 expert witnesses and/or the Defence Forces personnel 10:35
21 may apply in writing to the Tribunal. Where
22 appropriate, the Tribunal will afford an opportunity
23 for a cross-examination at a later date.

24 25 FUTURE MODULES 10:35

26 The Tribunal will proceed to the hearing of its second
27 module in October 2026. This module will focus on
28 Terms of Reference (i) to (v).
29

1 Further information in relation to the second module
2 will be made available on the Tribunal's website in due
3 course.

4
5 EVIDENCE OF ABUSE

10:36

6 The Tribunal is not tasked with determining, nor has it
7 any power to determine, the merits of individual
8 complaints of abuse. However, for the reasons
9 explained earlier, it will hear evidence of alleged
10 abuse and its consequences.

10:36

11
12 The Tribunal recognises that hearing evidence of abuse
13 against alleged perpetrators in circumstances where the
14 Tribunal cannot make a finding as to whether the
15 allegations is well founded or not, could operate
16 unfairly, both as against the alleged perpetrator of
17 the abuse and the complainant making the allegation of
18 abuse.

10:36

19
20 The alleged perpetrator will be denied the opportunity
21 to vindicate his or her good name and reputation by a
22 finding from the Tribunal if the allegation was
23 unfounded. A complainant, subjected to vigorous
24 cross-examination to suggest that the complaint is
25 unfounded, will be denied the opportunity to vindicate
26 his or good name by having the complaint upheld.

10:37

10:37

27
28 In order therefore to ensure that fair procedures are
29 observed and to protect the constitutional rights of

1 those involved in the making of allegations of abuse,
2 the Tribunal intends to adopt the following procedures:

3
4 1. The names of alleged perpetrators of abuse will be
5 redacted from the booklets of documents circulated to 10:37
6 relevant parties for hearings before the Tribunal;

7
8 2. Witnesses before the Tribunal will not be permitted
9 to name any alleged perpetrators of abuse during oral
10 testimony; 10:37

11
12 3. The Tribunal will not name alleged perpetrators of
13 abuse either in the course of its hearings or in its
14 report to the Taoiseach;

15 10:38
16 4. Alleged perpetrators of abuse will not be permitted
17 to cross-examine a complainant with a view to
18 suggesting or establishing that the complaint of abuse
19 is unfounded. They will, however, be entitled to put a
20 denial of abuse, and, if appropriate, a short summary 10:38
21 of the basis for the denial;

22
23 5. In limited circumstances, alleged perpetrators of
24 abuse will be called to give evidence before the
25 Tribunal in respect of matters relevant to the 10:38
26 Tribunal's Terms of Reference, and such persons will be
27 given a pseudonym by which they will be referred and/or
28 addressed at all times and by all parties throughout
29 the course of the Tribunal's public hearings, and, if

1 it should arise, in the Tribunal's Report; and

2
3 6. In respect of alleged perpetrators of abuse, if the
4 identity of any such person is either deliberately or
5 inadvertently revealed in the course of Tribunal's 10:38
6 hearings, the Tribunal reserve the confidentiality of
7 such information, intends to impose reporting
8 restrictions on all members of the media, all media
9 organisations and any other person or persons,
10 directing that no report of the proceedings of that 10:39
11 particular day containing material likely to lead
12 members of the public to identify a person as an
13 alleged perpetrator of abuse, or likely to lead members
14 of the public to identify a person as a person against
15 whom a complaint of abuse is made, shall be published 10:39
16 in a written publication available to the public or
17 broadcast.

18
19 Judge, these proceedings are inquisitorial rather than
20 adversarial in nature. Witnesses who appear before 10:39
21 this Tribunal are the Tribunal's witnesses. Their
22 evidence will be led by counsel to the Tribunal who
23 bear primary responsibility for listing relevant facts,
24 test the evidence where that is necessary, and ensuring
25 that the Tribunal is placed in a position to make 10:39
26 informed findings within the limit of its mandate.

27
28 Those findings would be based primarily on the oral
29 evidence that's adduced before the Tribunal and the

1 extensive documentation that have been provided by way
2 of discovery by the Defence Forces and the Minister for
3 Defence.

4
5 There is no automatic right for any party to 10:40
6 cross-examine a witness. Applications to cross-examine
7 may be made where a person's right to his or her good
8 name is or is likely to be impugned by the evidence
9 given, or where the credibility of a witness is
10 genuinely in an issue, or where a person or a group has 10:40
11 an important interest in the evidence given.

12
13 The Tribunal is not determining disputes between
14 parties, nor is it seeking to make a case against any
15 individual or organisation. Its role is to inquire and 10:40
16 report.

17
18 The Tribunal also emphasises that full cooperation with
19 its work is essential. The effectiveness of any
20 Tribunal of Inquiry depends upon the willingness of 10:40
21 witnesses and parties to engage openly and honestly
22 with its processes. Where necessary, the Tribunal has
23 power to enforce compliance by appropriate orders but
24 it hopes that such measures will not be required.

25 10:41
26 The Tribunal will proceed methodically, fairly, and
27 independently, conscious of the seriousness of the
28 issues under examination, the experience of those who
29 have come forward and the public interest in relation

1 to the urgent matters of public importance on which
2 this Tribunal has been asked to report.

3 SOLE MEMBER: Thank you very much, Mr. Cush.

4 MR. CUSH: Judge, I think it's appropriate that you
5 take appearances. 10:41

6
7 APPEARANCES

8
9 REGISTRAR: Is there any appearance by or on behalf of
10 the Minister for Defence represented by the Chief State 10:41
11 Solicitors?

12 MR. MCGUINNESS: Judge, I appear for the Minister for
13 Defence and will introduce myself.

14 Diarmuid McGuinness, Senior Counsel, I'm instructed by
15 the Chief State Solicitor, by Ms. Sarah Maguire 10:41
16 Solicitor. And my team of counsel with me are Sinéad
17 McGrath, Senior Counsel, Ruth Mylotte BL and Karl
18 Shirran BL.

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

20 REGISTRAR: The Defence Forces represented by the Chief 10:42
21 State Solicitor's Office.

22 MR. McCANN: Yes. And, as you know, Chairperson, I'm
23 Patrick McCann.

24 SOLE MEMBER: Perhaps you might use your microphone,
25 Mr. McCann? 10:42

26 MR. McCANN: Sorry.

27 SOLE MEMBER: Thank you.

28 MR. McCANN: I don't know if you want me to stand or
29 not?

1 SOLE MEMBER: As you wish.

2 MR. McCANN: well, it is as you wish really, Chair.

3 SOLE MEMBER: well I think it might be easier, if
4 you're taking a witness perhaps you could stand, but
5 giving appearances that is fine. 10:42

6 MR. McCANN: All right. So anyway my name, as you
7 know, is Patrick McCann, I'm a Senior Counsel. And the
8 Defence Forces legal team comprises to my left,
9 Darren Lehane, Elizabeth Donovan, and Caroline Carney.
10 And we are instructed by the Chief State Solicitor's 10:42
11 Office. And the solicitors in particular from that
12 office who are attending on us today, and probably for
13 most of the Tribunal's work, will be Ronan Cotter and
14 Ciara Cloake.

15 SOLE MEMBER: Thank you, Mr. McCann. 10:42

16 REGISTRAR: witnesses represented by Coleman Legal.

17 MR. GORDON: Good morning, Judge. As you will be
18 aware, I'm instructed by Coleman Legal and I appear
19 with Gary Compton, Senior Counsel, Alan Brady,
20 Patrick Marron and Louis Masterson, Junior Counsels. 10:43
21 And, as the Tribunal will be aware, we represent some
22 110 former Officers or not Officers, members of the
23 Armed Forces who have engaged with this Tribunal. And
24 in this particular module, we represent 26 of those who
25 are about to give evidence in the course of this 10:43
26 module.

27 SOLE MEMBER: Thank you, Mr. Gordon.

28 REGISTRAR: The Women of Honour represented by
29 Malcolmson Law Solicitors.

1 SOLE MEMBER: Doesn't appear to be any attendance or
2 representation. Thank you.

3 REGISTRAR: Permanent Defence Force Representative
4 Association (PDFORRA) represented by O'Regan Little
5 Solicitors? 10:43

6 MR. D'ARCY: Judge, Kevin D'Arcy, Junior Counsel,
7 instructed by O'Regan Little in relation to the matter
8 currently. There may be additional legal members.
9 Fergus O'Regan, Solicitor, is attending on behalf of
10 O'Regan Little Solicitors. 10:44

11 SOLE MEMBER: Thank you very much.

12 REGISTRAR: An individual represented by O'Mara
13 Geraghty McCourt Solicitors.

14 MR. CONLON: Carthage Conlon, from O'Mara Geraghty
15 McCourt. Mark Harty SC and Breffni Gordon BL will be 10:44
16 joining me on the legal team.

17 REGISTRAR: An individual represented by Seán Costello
18 Solicitors.

19 MR. HOGAN: Good morning, Chair. Tom Hogan, Senior
20 Counsel. I appear with Mr. Paul McGarry, Senior 10:44
21 Counsel, and Mr. Padraic Lyons, instructed by Mr. Seán
22 Costello of Seán Costello Solicitors.

23 SOLE MEMBER: Thank you, Mr. Hogan. Thank you.

24

25 I think that takes us to the end of this part of the 10:44
26 proceedings for today. Mr. McGovern?

27 MR. MCGOVERN: Good morning, Judge, I should have said
28 that I appear with Mr. Michael Cush, and with Mr. Niall
29 Beirne, Senior Counsel, with Ms. Lalita Pillay,

1 Mr. Tim O'Hanlon and Ms. Áine Smyth, Junior Counsel,
2 instructed by Mr. John Nolan on behalf of the Tribunal.

3 SOLE MEMBER: Thank you very much, Mr. McGovern.
4

5 Okay, I think at this point we will take a short break 10:45
6 in order to allow for the first witness to be called.
7 If we say we will meet back here at 11 o'clock. Thank
8 you.
9

10 THE TRIBUNAL ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS: 10:45
11

12 SOLE MEMBER: Good morning.

13 MR. McGOVERN: Good morning.

14 MR. McGUINESS: I wonder might I just mention a matter
15 before Cpt. Bratli starts?

16 SOLE MEMBER: Indeed, Mr. McGuinness. Cpt. Bratli,
17 would you like to sit down for a moment and I will just
18 hear the application that Mr. McGuinness has to raise.
19 Yes, Mr. McGuinness?

20 MR. McGUINESS: We have, of course, received 11:04
21 Cpt. Bratli's initially assessment of the Complaint
22 Procedures. And yesterday we were served, and I'm not
23 making any complaint about the stage at which it was
24 served, a more detailed analysis which goes to the very
25 heart of all of the complaints procedures under inquiry 11:05
26 by the Tribunal.

27 SOLE MEMBER: Yes.

28 MR. McGUINESS: And it puts me in the position where I
29 have to seek instructions from the Department across a

1 large range of different departments on the content and
2 the analysis and the instructions that I would be given
3 in relation to those. I am going to be applying, and I
4 suppose this is the application, to defer my
5 cross-examination of Cpt. Bratli after he's finished 11:05
6 his evidence today until such other date as might be
7 suitable, if that meets with favour of the Tribunal.
8 SOLE MEMBER: Mr. McGuinness, thank you. Mr. McCann?
9 MR. McCANN: Chair, I make an application in similar
10 terms for similar reasons. Thank you very much, Chair. 11:05
11 SOLE MEMBER: Mr. Gordon?
12 MR. GORDON: And again I would make a similar
13 application. We received the material yesterday. We
14 may or may not wish to make some observations in due
15 course but I'm happy to defer it. 11:05
16 SOLE MEMBER: Absolutely. Well I understand the
17 position of the parties and that a supplemental report
18 was received late in the day and it was, of course,
19 circulated.
20 11:06
21 So, as you are all aware, it is a very important
22 objective on the part of the Tribunal to proceed as
23 promptly as possible, but at the same time to ensure
24 that fair procedures are observed. So I think it would
25 only be reasonable to grant the applications to defer 11:06
26 the cross-examination of the next witness. But I'm
27 happy that we actually proceed with the
28 evidence-in-chief. Thank you very much.
29

1
2 MR. KJELL ARNE BRATLI, HAVING BEEN SWORN, WAS DIRECTLY
3 EXAMINED BY MR. McGOVERN AS FOLLOWS:
4

5 1 Q. MR. McGOVERN: Good morning, Mr. Bratli. I think, like 11:07
6 many people who have been in the Defence Forces, I
7 think you have a slight hearing problem and I will do
8 my best to keep my voice up for you?

9 A. Thank you.

10 2 Q. I will just start with an introduction, if I may, that 11:07
11 you're a Norwegian citizen and a former member of the
12 Norwegian Defence Forces. Am I correct that one of the
13 distinguishing features of the Norwegian Defence Forces
14 is that you have conscription?

15 A. You are. 11:07

16 3 Q. And am I right that conscription applies to both men
17 and women equally?

18 A. It does, it does.

19 4 Q. And what age would people normally be conscripted into
20 the Defence Forces in Norway? 11:07

21 A. Around 19 years old.

22 5 Q. 29. You in fact I think joined at the age of 16, can
23 you tell us about that?

24 A. That is how it used to be, you can apply very early.
25 And this was, I was at a naval arm of the Home Guard 11:08
26 and it was a youth class. We trained during the summer
27 months, two months every summer. So I started out
28 there.

29 6 Q. So, in advance of the conscription process, you

1 actually volunteered and got in at the age of 16?

2 A. Absolutely.

3 7 Q. I think the normal length of conscription is, what, 18

4 months?

5 A. Today it is, yes. 11:08

6 8 Q. And you spent, in all, how many years in the Norwegian

7 Defence Forces?

8 A. On and off I would think close to 50, but on and off, I

9 was a citizen and a soldier.

10 9 Q. Thank you. You joined the Navy services rather than 11:09

11 the Defence Forces, the Army?

12 A. I joined the Navy.

13 10 Q. And you were promoted to Captain?

14 A. Yes.

15 11 Q. I think during the course of your career you were 11:09

16 employed in the Special Services?

17 A. I was.

18 12 Q. And indeed you served behind Soviet lines in

19 Afghanistan?

20 A. I won't comment too much on that but I read that on 11:09

21 Wikipedia!

22 13 Q. Between 1972 and '73, I think you were a representative

23 for Officer Cadets within the Norwegian Defence Forces?

24 A. I was.

25 14 Q. And I think between 1981 and 1991 you acted as a 11:09

26 military reporter?

27 A. I did.

28 15 Q. On what matters did you report?

29 A. That was both a kind of deployment and, of course, a

1 matter which was information gathering I would say.

2 16 Q. And am I right, Mr. Bratli, that between 1991 and 1993
3 you're a military editor?

4 A. I was.

5 17 Q. And I think you were responsible for the development of 11:10
6 the Navy Public Information Service?

7 A. I was.

8 18 Q. And, also, the NATO Defence Minister meetings you
9 reported on?

10 A. That was a special assignment from the Minister of 11:10
11 Defence, yes.

12 19 Q. You also played a role, I understand, in building
13 NATO's rapid response information teams?

14 A. I had the pleasure of doing that all right.

15 20 Q. Are you still doing that? 11:10

16 A. I'm doing still a lot in the defence community but not
17 that, no.

18 21 Q. In addition, you also played a role in the Allied Press
19 and Information Centre, which is APIC; A-P-I-C, is that
20 correct? 11:10

21 A. Yes.

22 22 Q. Between 2003 and 2006 you were a special adviser to the
23 President of the Norwegian Parliament?

24 A. Correct.

25 23 Q. On what matters were you advising? 11:11

26 A. Everything he asked for. He was a former minister of
27 defence also.

28 24 Q. And between 2006 and 2014 you were the Norwegian
29 Parliamentary Ombudsman with responsibility in

1 particular for the Defence Forces?

2 A. That's correct.

3 25 Q. Just so we understand the terminology, my understanding
4 is that in Norway the Ombudsman reports directly to
5 parliament? 11:11

6 A. He does.

7 26 Q. And it's for that reason you had the title
8 "Parliamentary Ombudsman"?

9 A. Yes.

10 27 Q. I think you served eight years as the Ombudsman? 11:11

11 A. I did.

12 28 Q. And during that time, you were a member of the Geneva
13 Centre for Democratic Control of the Armed Forces?

14 A. Yes.

15 29 Q. Otherwise known as DCAF; D-C-A-F? 11:11

16 A. Yes, and also ICOAF, which is the Information
17 Conferences of Ombudsman.

18 30 Q. In that capacity, in your involvement with DCAF, did
19 you ombudsmen from other jurisdictions?

20 A. Yes. 11:12

21 31 Q. Including Ireland and other countries?

22 A. We worked quite close with the European and NATO allies
23 and also had very close contact with different
24 ombudsmen in the near and Far East and in Africa.

25 32 Q. When your eight years of Parliamentary Ombudsman ended, 11:12
26 I think you spent a further four years on the Advisory
27 Board of DCAF?

28 A. Yes.

29 33 Q. Through that you have met ombudsmen and legal --

1 military representatives of many jurisdictions?

2 A. All the time in and on different conferences, yes.

3 34 Q. As a result of your meetings and your connections, have
4 you got knowledge of Defence Forces and how they
5 operate in other jurisdictions? 11:13

6 A. To some extent I would say yes.

7 35 Q. And, in particular, I think countries, Germany,
8 Austria, UK, Norway obviously, and Ireland?

9 A. Yes.

10 36 Q. Mr. Bratli, can I start with asking you to, if you 11:13
11 could, to identify the difference between military
12 employment and civil employment; is there, in your
13 view, a significant difference?

14 A. Both yes and no, I would say. Both yes and no. I have
15 to -- English is not my first language so I have to be 11:13
16 supporting of my own notes from time to time, sorry
17 about that.

18 37 Q. No problem.

19 A. Thank you.

20 38 Q. Well, let's take it step by step. Why do you say it is 11:13
21 similar?

22 A. Yes, it is similar. It's different. I mean, the
23 environment usually it's military is you are both a
24 soldier and a citizen. There are obvious differences.
25 The core of the military, it impresses different 11:14
26 fundamental values; loyalty, duty, selfless service,
27 honour, integrity, personal courage, you can name a
28 lot, and those the guidance for soldiers to ensure the
29 discipline, I would say. But it also evolves around

1 the hierarchy, specialised programmes, and it's a tight
2 community. And the brother in arms mentality, and the
3 war ethics, the war hero ethics is quite strong. At
4 large is very good. This is not a criticism of you,
5 it's very good. But it's different. 11:15

6
7 Another difference is, if you're, if you take a
8 complaints situation, for a military and for an officer
9 enlisted, it's, I mean, there's no easy physical exit
10 and no easy social exit. And you are still working in 11:15
11 the environment which the harm occurred.

12
13 In the civilian life it's different. It's much easier.
14 You can apply for another job, you can be in another
15 social environment. So there are similarities but, 11:15
16 absolutely, there's a difference. It's a strong sense
17 of loyalty, a strong sense of camaraderie. I use that
18 as a positive word, not negative.

19
20 But, all that, it also leads to the type of community 11:16
21 that sometimes you will close your eyes for things that
22 you shouldn't close your eyes for. You have your
23 comrades from your academy, from your training, from
24 your unit, you live tight together. In operations, you
25 are really a tight unit, a small unit. Small, group of 11:16
26 people, and that also reflects how you were acting. I
27 would say that is the main thing about the military
28 environment. Sorry, my voice.

29 39 Q. Traditionally the main ethos of any Defence Forces

1 would be obedience, chain of command, discipline?

2 A. Absolutely.

3 40 Q. Is that a core in all Defence Forces throughout the
4 world?

5 A. Absolutely. 11:17

6 41 Q. And does that cause any difficulties in terms of
7 dealing with complaints of abuse?

8 A. It can be. It can, not necessarily, but it can.

9 42 Q. Is there a tension, shall I say, between on the one
10 hand t,he need for oversight and accountability and on 11:17
11 the other, the culture and attitudes that prevail
12 within a Defence Force?

13 A. Definitely, yes. Definitely.

14 43 Q. Would you like to talk to us about that?

15 A. Oh, I really have to rethink on that one. I am going 11:17
16 to have to come back to that one.

17 44 Q. Very well. You have contrasted -- sorry, you have
18 looked at the different complaints process that exist
19 within the Irish Defence Forces, isn't that so?

20 A. Yeah. 11:17

21 45 Q. And you have, in the second report that you prepared,
22 the detailed comments on the seven complaints
23 processes; would you like to bring us through those
24 complaints processes one by one and give us your view
25 on how they apply and operate within the Irish Defence 11:18
26 Forces? And, where you can, contrast them with other
27 countries or other jurisdictions. Can we start with
28 the no. 1 process which is the Redress of Wrongs?

29 A. Yes. So, first, I would say that my observation is

1 that the test of adequacy, the general, is not as much
2 procedural as it is in practical. So my opinion is the
3 system in practise provide personnel that suffered harm
4 with an accessible, independent and effective means of
5 seeking justice. That was my main question when I 11:18
6 looked into this. And most things for me are
7 calibrated around that question.

8
9 So --

10 MR. McGOVERN: Can I say, Judge, that Mr. Bratli's 11:19
11 report is Part 8, page 4488, if it's necessary to refer
12 to it, but I just say that, I think Mr. Bratli will
13 talk to it.

14 SOLE MEMBER: Thank you, Mr. McGovern.

15 THE WITNESS: If I also may say that, that was written 11:19
16 as my notes to support me, and if I am I to be prepare
17 it in a better way, I would of course make footnotes
18 and everything in it. So you have to excuse me for
19 that, this thing was meant for me. But now I know that
20 everyone has read it, and I will speak to it, and I 11:19
21 stand by what I have said.

22 46 Q. MR. McGOVERN: So the Redress of wrongs process,
23 Mr. Bratli --

24 A. Yes.

25 47 Q. -- have you examined the documentation that pertains to 11:19
26 that system?

27 A. I say I examined in the sense that you I have read
28 through it.

29 48 Q. Yes.

1 A. I'm not too detailed, I'm trying to see the broad
2 perspective and the long history.

3 49 Q. The overview?

4 A. Yeah, definitely the overview. I can go through the
5 document on a --

11:20

6 50 Q. Well, please, if you would?

7 A. So if we start a little up here over the complaints,
8 yeah, on the seven complaints processes. They are
9 definitely, and what you have now in the paper is quite
10 a long and substantial but I take you through in a
11 shorter way, I think.

11:20

12 51 Q. Thank you.

13 A. For the Process No. 1, definitely the oldest process,
14 it was rooted in military law that predates the Defence
15 Act 1954 itself. And as far I see, this is the
16 foundation on which everything else was built.

11:21

17
18 Under the system, any member could, with a grievance,
19 submit a written complaint through the chain of command
20 which is then investigated and adjudicated internally.
21 And as far as I can read, with the Chief of Staff at
22 the top of the process.

11:21

23
24 I would say common of that, for routine administrative
25 complaints, postings, pay, conditions of service, that
26 this process is appropriate.

11:21

27
28 For serious allegations of abuse, it is structurally
29 unsuited in my mind.

1 52 Q. why is that?
2 A. The Investigating Officer is drawn from within the same
3 organisation, and often the same unit, as the parties
4 involved. And, to me, that is not a good way of how
5 things work. And the chain of command both generates 11:22
6 and judges the complaints. That's probably my main
7 objective in this. There's no independent distance
8 which, in my mind again, I think it should be. I think
9 there should be others and there's not.
10
11 And, looking at it, a long period from '83 to the first 11:22
12 period then to 2005, as far as I know - I haven't read
13 everything - but quite extensive I would say, it looks
14 like this was the only formal mechanism available to
15 personnel in that period. 11:22
16
17 So, yeah. I would say it has structural limitations.
18 That's, in short.
19 53 Q. Was there any developments in that system?
20 A. Absolutely. And if you look at things from 1983 until 11:23
21 today, everything has developed in the right direction.
22 Not every case, but at large looking at what has
23 happened in all those years, the Irish Defence Forces,
24 the complaints system is in a better shape today than
25 it used to be. And it's -- yeah, we'll come back to 11:23
26 that.
27 54 Q. I think you say that in the period that the Tribunal is
28 looking into, that there was a shift, which created --
29 came with, was established under the Ombudsman which

1 now gives an internal -- external insight into the
2 process?

3 A. I would say that was probably the senior most
4 significant shift and most important thing that
5 happened in the complaints system in those 41 years. 11:24

6 55 Q. We'll come back to the Ombudsman later on under a
7 separate heading?

8 A. Yeah.

9 56 Q. But you believe that was the single thing that you can
10 identify that resulted in an evolution or a progression 11:24
11 of the Redress of wrong system?

12 A. I --

13 57 Q. The establishment of the Ombudsman?

14 A. I believe so. In Norway, we had the Ombudsman since
15 1952. I wasn't a soldier at that time. So this was a 11:24
16 part of the daily military life. And for some of the
17 countries that were, I would say late bloomers, with
18 ombudsmen, it was a significant change. They set a new
19 pace in the complaints system and I think they were
20 really, added value to the military. 11:25

21 58 Q. So the system was designed to deal with administrative
22 problems or grievances at a lower level promptly?

23 A. Yeah.

24 59 Q. And in that regard do you think it's efficient and
25 effective in dealing with those type of complaints? 11:25

26 A. Yeah.

27 60 Q. But if you get to more serious allegations, how does
28 that stand up? Is it capable of dealing with more
29 serious allegations as opposed to simple administrative

1 ones?

2 A. I wouldn't recommend it to deal with more serious
3 allegations, no.

4 61 Q. And why, in particular, is that so, Mr. Bratli?

5 A. First and foremost, because the format is not good 11:25
6 enough. With serious allegations, you have to find
7 another part, another way, to deal with it. There's a
8 system that, first and foremost, is to deal with the
9 daily, I would say, smaller things and with no distance
10 from the officer and the complaints, I cannot see that 11:26
11 this is a good system for anything else that the
12 smaller things or the daily things in...

13 62 Q. So the fact that it's based or rooted in the chain of
14 command and lacks independent oversight are the
15 limitations in your view? 11:26

16 A. Well, absolutely limitation and an expectation that an
17 officer are capable of dealing with everything from the
18 smallest to the most grave things, I have a difficulty
19 finding that officer, I have to confess that.

20 63 Q. In your view, does the system for Redress of Wrongs 11:27
21 lack confidence, is that something you're in a position
22 to comment on?

23 A. The...?

24 64 Q. Is there confidence in the system as it exists?

25 A. Then I have to say from what I read, from what I read 11:27
26 it seems to lack confidence.

27 65 Q. Can I ask you, when you're referring to what you have
28 read, can you tell us where or what you are reading or
29 where these sources are?

1 A. Different reports and newspaper articles and also, of
2 course, from ombudsman-to-ombudsman we are talking with
3 each other. And I would say that that's my impression
4 that it is not a lack of total confidence, that's not
5 what I'm talking about. But, I have to trust in the 11:28
6 system and, obviously, I would say in Ireland many does
7 not trust in the system for handling things as good as
8 should be. And I guess that is why there is a Tribunal
9 also.

10 66 Q. Have you read the Independent Review Group reports? 11:28
11 A. I have read through the full reports.

12 67 Q. Yes.
13 A. Maybe not thorough enough but I have read through, yes.

14 68 Q. The second process is unacceptable behaviour, which is
15 based on section 168 of the Defence Act? 11:28
16 A. Yes.

17 69 Q. And have you considered that process, Mr. Bratli?
18 A. Yes, and that was a very interesting one, I would say,
19 because it addressed what first did not; the bullying,
20 the harassment, sexual harassment, discrimination and 11:28
21 made it a distinct category of complaint. So that was
22 a new one and I think it was, I have to say, and I
23 think is about time, not coming too late, but late.
24 Not coming too late. Anyway, it came and I think that
25 was a very good one, the way of incorporating more 11:29
26 precise definitions, investigation procedures and also
27 the confidentiality provisions. That's very important.

28 70 Q. The procedure is set out in Article 7 Chapter 1. would
29 you like to comment on that structure?

1 A. what I would say, I think, is one of the problems is
2 that there's a gap between paper and practice. This is
3 nothing special for the Irish Armed Forces, you will
4 find that all over. And, as far as I see, the
5 revisions of the Chapter 1, it did not alter the 11:30
6 fundamental architecture. The chain of command
7 remained investigator. That's, as far as I can see,
8 one of the weaknesses in it. Officers at unit level
9 were expected to investigate sensitive and personal
10 misconduct involving colleagues and superiors with 11:30
11 impartiality. And that is not easy I can tell you,
12 that's not easy. And that's also a weakness.

13
14 The IRG report from 2023, when I read it I found that
15 they consistently failed to do so, that's their 11:30
16 opinion. Not because of personal dishonesty but
17 because of structural condition for independent
18 investigation was simply not present. This is
19 something I have read and I have a gut feeling that
20 they are in the correct line claiming, claiming that. 11:31
21

22 well, what we do know and what I also experienced as
23 ombudsman in Norway, where we have multilayers of
24 control functions, if there's also kind of material
25 salvation I would say. This right to preserve unit 11:31
26 cohesion, informal institutional pressure, all those
27 things, they are working. And it's a part of daily
28 life that they're -- I think you have to have another
29 architecture if you are doing that.

1 71 Q. Introducing a process on paper, does that automatically
2 result in a change in culture on the ground?
3 A. That is a far-reaching question you are asking. One
4 thing is trying to implement paper on and into the
5 structure and the other thing is how does it really 11:32
6 function? How is the practice? And I would say that
7 in the Armed Forces I think people are really
8 intentional. They are doing the best they can. No
9 doubt about that. But the lack of structure, the lack
10 of control, and also you are in a culture where you are 11:33
11 maybe not that interested in implementing everything
12 that's in the paper. I mean I have to speak for myself
13 in that and many things are written and you are doing
14 it, a job and the way I would say and you will find
15 that in most Defence Forces. 11:33

16 72 Q. The A7 Chapter 1 process was reviewed and amended in
17 both 2005 and 2015; in your view did that achieve what
18 it set out to do or did it fall short?
19 A. I think one of -- I have to look at some notes here.
20 Because I noticed something around there. Now it then 11:34
21 reads, if one thinks that is happening, everything is
22 coming in a way too late.

23 73 Q. Too late?
24 A. Everything you write is addressing what happened and
25 not what is happening at the same time or is going to 11:34
26 happen.
27
28 So, even if you have an evolution that things are
29 getting better and better, you are not fulfilling that,

1 it's a long process. So, in short, if I have to say
2 yes or no, I would say no. But leaning on that, that's
3 how it is and it's difficult. They are doing -- they
4 are doing the best they can and their ambitions, they
5 are good but not sufficient. 11:35

6 74 Q. At the end of that page, on the screen, you say that:
7
8 "The successive revisions of A7 Chapter 1 did not alter
9 the fundamental architecture of the process". 11:35

10
11 A. Yeah.

12 75 Q. "Complaints continued to be routed through the chain of
13 command, investigations remained the responsibility of
14 officers within the same organisational structure."
15 11:35

16 Is that an ongoing criticism of the process of
17 unacceptable behaviour?

18 A. Yeah. I'm not sure, I'm not sure but -- I'm not that
19 critical, I have to say. But, of course, the process
20 is ongoing all the time. 11:36

21 76 Q. But it's still rooted in the chain of command?
22 A. Yes.

23 77 Q. So, the next page you say the problem with that is
24 three specific risks: Firstly the proximity of the
25 Investigating Officers to the parties? 11:36

26 A. Yes.

27 78 Q. Secondly, the emphasis on resolving complaints at the
28 lowest level?
29 A. Yes.

1 79 Q. And, thirdly, the protection of complainants from
2 retaliation is difficult?

3 A. Yes.

4 80 Q. Are they problems that you have identified in that
5 complaints process, and to your, in your opinion do 11:36
6 those problems still remain?

7 A. I think I certainly can say that, this you can say for
8 all Armed Forces, you can identify the same thing in
9 all forces. And I haven't been that specific in the
10 case by case but in the broad sense, I would say, yes, 11:37
11 it's still the case.

12 81 Q. Is there anything else you wish to say, Mr. Bratli,
13 about the unacceptable behaviour on A7 Chapter 1,
14 before we move on to the Ombudsman?

15 A. No. I think we are in a time that there is a, what you 11:37
16 call it, zero tolerance, and you have to make the
17 architecture in a way that it can deal with that
18 actually. If things shall not happen you have to deal
19 with it shall not happen. And if it happens you have
20 to have an architecture that can deal with it. Today 11:38
21 I'm not sure that you can.

22 82 Q. You referenced the fact that there appears to be a
23 relatively low number of complaints and you say that
24 that should not be read as evidence of low prevalence
25 of misconduct? 11:38

26 A. I mean, it's a way of saying, okay -- also for the
27 Ombudsman, I read the annual report from the Irish
28 Ombudsman, compared to Norway, quite a few complaints,
29 while it's a smaller Defence Forces, okay, of course,

1 but there can be many reasons that they are not
2 complaining. One of the reasons, of course, is a fear
3 of retaliation, a fear of career. There are so many
4 things. And, of course, also fear of the social
5 environment you are living in as an officer, or an 11:39
6 enlisted unit. Yes.

7 83 Q. Thank you. Can we turn now to the third process and
8 that's the Ombudsman.

9 A. Yeah.

10 84 Q. And it was established by legislation in 2005 in 11:39
11 Ireland. By way of contrast, when was the Ombudsman
12 established in the Norwegian Defence Forces?

13 A. 1952.

14 85 Q. '52?

15 A. Yes. 11:39

16 86 Q. Do you have direct -- you obviously do have direct
17 involvement and knowledge of how that process worked in
18 Norway prior to it coming to Ireland in 2005, would you
19 like to tell us about that?

20 A. Well, I wrote the story on the Norwegian Ombudsman 50 11:40
21 years anniversary in 2002 and at that time we looked
22 into the different systems in all of Europe and, of
23 course, we discovered afterwards no ombudsman in
24 Ireland at the time. And so when it happened, I mean
25 this was again a big hurray, I would say, throughout 11:40
26 the ombudsman environment. I think as a structural
27 component, I'm talking about Norway and that would be
28 the same for Ireland, I think it was probably the best
29 framework at that time anyway, better framework in the

1 history of the complaints framework, I think that the
2 establishment of the Ombudsman was so significant.

3 87 Q. Why do you say that, Mr. Bratli, for what reason do you
4 say it was the single most important?

5 A. Because you have -- the one thing you start to have an 11:41
6 oversight that looks into the military, and that
7 defines, I would say, democratic thinking, if I can
8 call it that. And the other thing is for personnel
9 that you have an outside structure that you can
10 complain to -- 11:41

11 88 Q. External to the Defence Force?

12 A. -- even with its limitations, you have that. Sorry.

13 89 Q. Well the two important features you identified, one is
14 oversight, and, secondly, it's coming from, it's
15 external to the Defence Forces rather than read in 11:42
16 terms of the chain of command. Are there limitations
17 to the Ombudsman function in Ireland under the
18 legislation?

19 A. Absolutely, absolutely.

20 90 Q. Can you identify those for us? 11:42

21 A. I believe that your ombudsman has identified that many,
22 many times, the limitations. Limitations that you
23 cannot go back in time, which is a huge limitations for
24 complaints before 2005, that you have a complaints
25 structure on how many days and before you, and then on 11:42
26 the lowest level and in internal, before you can go to
27 the Ombudsman. Now, that has changed in the last
28 years, I know. Those are the two main limitations.
29

1 And the other, of course, is that it's the
2 perceivment, it's perceived as an independent
3 structure and it's still inside the Defence Forces
4 structure, inside the Department of Defence. That's
5 always a question I would believe also for people who 11:43
6 want to complain, is it independent enough?
7

8 And that is also a question that I believe, I mean is
9 it the DCAF system has always been a big part of
10 discussions of the different system, military, 11:43
11 Inspector General like, and Parliamentary Ombudsman,
12 ombudsman inside, or in the Defence Forces, to some
13 extent. That also is, I would say, a weakness in the
14 system, in my view. If you really want to be perceived
15 as independent, you're acting independent, you should 11:44
16 have another pathway, being in the oversight. Yeah.

17 91 Q. So are you talking about direct access to the Ombudsman
18 rather than having to go through the command structure?

19 A. That's always the question. I mean when we look at
20 internal, and take the good side of it all because 11:44
21 there has been I mean tremendous, good job in that, but
22 not for all cases, but a tremendous, good job.

23
24 I don't know the English expression but in Norway we
25 say donkey work, if that's -- I mean a lot of work, 11:44
26 investigation, a lot of work that that internal system
27 used to do, I believe that the workload on the
28 Ombudsman when he opened for direct accession, is
29 quite, quite heavier now than it used to be.

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I looked into the Irish Ombudsman after his declaration of direct access starting on some 10%, and now it's increased to 90%, and that tells me that people are coming forward anyway. And that's the good thing about it. Then they have a new belief, to some extent. 11:45

92 Q. And that came about as a result of the review or reinterpretation, if you like, of the legislation in 2005, the Ombudsman interpreted the legislation as allowing access to him after a certain period of time. 11:45
Do you think that resulted in an increase in the number of matters going to him?

A. No, not internally. That was the latest declaration that really made the flood. But then, again, there was an increase, definitely, from early on but a huge increase came later. But there was a new access and I think for many within the service it was important to have the opportunity to go directly to the Ombudsman. 11:46

As far as I know, and you're going back to 2005/2006, it was limited. I would say Poland and Ireland always kept an open door I would say. You could always talk to the Ombudsman about problems, not necessarily complain. 11:46

This is not something special for the Irish Defence Forces. We have also the internal procedures in Norway, working on the lowest level, but not with serious cases. Not with serious cases. Those are the

1 smaller things, administrative -- all the things you
2 actually -- all things in a civilian workplace, that
3 environment, you can solve locally. That's being
4 solved locally -- resolved locally. But the more ugly
5 stuff, if I can call it that, that is immediately going 11:47
6 to the Ombudsman, or in Norway also very rapidly to the
7 police and to the courts, the civilian courts.

8 93 Q. Under the Irish legislation, the Ombudsman makes
9 recommendations --

10 A. Yes. 11:47

11 94 Q. -- rather than findings?

12 A. Yes.

13 95 Q. Is that desirable or is that a shortcoming, in your
14 view?

15 A. I think it's very difficult if you have a situation in 11:47
16 a country where you shall obey the Ombudsman, in a
17 sense that if the Ombudsman has a decision, it has to
18 be followed. I think you don't find that in any
19 comparable system, not even in Norway. But in Norway,
20 because you have the direct access to the lawmaker, to 11:48
21 the parliament, an instruction. Now the law in Norway
22 has been renewed, I know it's different. But in my
23 time the instruction was like what the Ombudsman says
24 goes. And they really had to take that seriously. I
25 cannot recall any case that they did not actually -- 11:48
26 they followed.

27 96 Q. We've touched on this earlier, in Norway the Ombudsman
28 reports directly to parliament?

29 A. Yes.

1 97 Q. And you think that results in the Ombudsman's
2 decisions?
3 A. Are taken more seriously.
4 98 Q. More seriously and more likely to be followed?
5 A. Yeah, absolutely. And, of course, if you're working in 11:49
6 the military environment as an officer and you know
7 that the next thing that will happen is that you are
8 sitting in a parliamentary commission hearing because
9 you are not doing what is recommending to be the right
10 thing to do, you probably, I would say you probably. 11:49
11 will come around.
12 99 Q. So, in Ireland, the Ombudsman makes a recommendation
13 but there's no follow-up for that or no mechanism to
14 check whether those decisions or recommendations are
15 ever implemented? 11:49
16 A. In principle, no. In principle. But then, again, I
17 would say as far as I read the military in the Defence
18 Forces, they are really doing a good job. They are
19 really trying to do the right thing and they are -- and
20 this is also what I've heard from the three ombudsmen, 11:50
21 I have known the Irish Ombudsman. They are really
22 trying to do the right thing and it will not always be
23 that you are agreed upon everything, that's how it is.
24 But its structure, I think, is important and I would
25 prefer a really independent oversight, ombudsman 11:50
26 reporting to parliament, because that's where the law
27 is, that's where the money is and I think, also seen
28 from the personnel, it's... yeah, I think they will
29 feel more confident, more trust, put more trust in it.

1 100 Q. And can I ask you, Mr. Bratli, the jurisdiction of the
2 Ombudsman, as it exists at present in Ireland, where
3 complaints have to be referred, in Norway, as I
4 understand it, the Ombudsman has the right to initiate
5 procedures and inquiries himself, he doesn't have to 11:51
6 wait for a complaint to come?

7 A. No.

8 101 Q. Is that something that you think should be mirrored in
9 the Irish system?

10 A. I would say -- I'm not recommending anything but I 11:51
11 would say in any system I think that would be a good
12 thing. The initiative to make a service, yeah, I think
13 that's very important to be active because you are
14 understanding the right way if I said putting pressure
15 on, put the pressure on the military system. But I 11:51
16 think that it's that type of oversight that you have a
17 parliamentary control and committee because that's what
18 it is. Are in many ways, I would say a democratic
19 guiding hand for the military.

20 11:52
21 You see in Germany, in Austria, where there is an
22 Ombuds Committee, and in Sweden, but they are working
23 in a different way. And in Norway I think that you
24 have the initiative that you are looking into the
25 difficult things in the military structure is good, and 11:52
26 of course for the Chief of Defence and for the Minister
27 of Defence this is not always welcome and that's a part
28 of life. But then again parliament and politicians are
29 not always welcome either.

1 102 Q. So in other countries you are saying that the
2 Ombudsman, not alone does he deal - he or she as the
3 case may be - deal with complaints that are referred to
4 the Ombudsman's office but they also have an oversight
5 function to investigate matters on their own 11:53
6 initiative?

7 A. Yes.

8 103 Q. And do that, not just in the present, but go back in
9 time historically?

10 A. Absolutely. In my time my oldest case was from 1946, 11:53
11 complaints from 1946. So, and as you can all hear or
12 see, I'm almost deaf, I know that was a great thing, a
13 great case, in Ireland at one time. And in many cases
14 were complained about deafness, loss of hearing, as in
15 Ireland, in Norway dating back, and they could all be 11:53
16 handled by the Ombudsman. There is also an institute,
17 you know, where it's possible to get a conversation, an
18 economic conversation, directly from parliament, not
19 necessarily from the Government or the Department. And
20 a couple of times from the really old cases, that was 11:54
21 the case that was the case, that I recommended to
22 parliament that there would be a pay-out and then it
23 was paid from parliament and not through the
24 Government. It's, I would say, a smoothing process,
25 available to the Norwegian Ombudsman that very few 11:54
26 have.

27 104 Q. In your report, Mr. Bratli, you make the point that
28 Army deafness cases, for instance, or even tribunals of
29 this nature, they are necessary because there isn't any

1 other process available?

2 A. Yeah.

3 105 Q. That if you had an ombudsman with a wider reach, these
4 problems would be solved at an earlier stage rather
5 than go to external systems to try and find a result or 11:55
6 an outcome?

7 A. Absolutely. That's correct. And the format of
8 Tribunal is of course is unknown to Norway as well.

9 106 Q. Thank you. Can we turn now to no. 4, that's the
10 complaints about criminal offences? 11:55

11 A. Yeah.

12 107 Q. The basis of this is Section 169 of the Defence Act
13 which establishes the military justice system. Would
14 you like to talk to us about your views on that
15 process? 11:55

16 A. This is different. This is a different one from the
17 others I would say.

18 108 Q. why so?

19 A. Because it doesn't concern the administrative
20 grievances but the criminal conduct. 11:56

21 109 Q. Yes.

22 A. Sexual assault, rape, serious physical abuse and these
23 are criminal matters. As ombudsman, when we received
24 anything like this, it was we reviewed very rapidly and
25 always gave the advice to report to the police. That 11:56
26 is our system. I know it differs in Ireland but that
27 is our system.

28

29 As far as, again, what I am seeing and what I have

1 read, and I take the broad perspective, I don't think
2 that this is something you really can refer to through
3 the military channels, what is called the direct or
4 military prosecution, is that correct? I would prefer,
5 and that is very personal because the experience from 11:57
6 Norway is that we would immediately refer it to the
7 police.

8 110 Q. why, when you say "immediately refer to the police", do
9 you think they should be dealt with by the police?

10 A. Yes. 11:57

11 111 Q. Or they should continue to be dealt with internally by
12 the Defence Forces?

13 A. In our thinking it should be dealt with by criminal --
14 criminal actions should be dealt with by the police.
15 For us it's always about the civilian courts, the 11:57
16 civilian juridical system - I'm sorry. The law system
17 in Norway, it differs. I understand how it is here but
18 I prefer the system we have. Because it's cleaner in a
19 sense that there is -- and once you are given to the
20 people, to the person who has a complaint about a grave 11:58
21 situation, I believe it's -- I put my trust more in the
22 civil system here than actually in the military, I must
23 say.

24 112 Q. If an allegation of a serious sexual nature was made by
25 a member of the Defence Forces against another member 11:58
26 of the Defence Forces --

27 A. Yes.

28 113 Q. -- do you believe that should be handled exclusively by
29 the Gardaí, or the police, rather than the military?

1 A. I have to say that's the only system I know.

2 114 Q. Yes.

3 A. I'm not criticising the Irish system, I mean it is
4 different, but in my view I would stick to the
5 Norwegian system. And you will find that all over -- 11:59
6 there aren't too many countries, as far as I know, in
7 Western Europe that hold on to the system that it will
8 be dealt with internally.

9 115 Q. You may not be aware of this, Mr. Bratli, but there is
10 a military standing order, which says that in the case 11:59
11 of an event such as that, offence such as that, it
12 should be, there should be a consultation between the
13 military and the Gardaí as to how to proceed. And
14 whether that actually happens is another matter but
15 that that procedure is there in the standing order? 11:59

16 A. That would be my first question: Does it work? Does
17 it work? Is it good practice?

18 116 Q. The fact is there's a consultation, there should be a
19 consultation process, it doesn't always mean that that
20 is handled ultimately by the police, you believe it 11:59
21 should be automatic to go to the police?

22 A. That's a difficult question to ask but I would probably
23 advise anyway to rapidly go directly to the police.

24 117 Q. Rapidly?

25 A. Yeah. 12:00

26 118 Q. You identify a number of problems, or observations you
27 call them?

28 A. Yes.

29 119 Q. Which is on page 8 of your report, I'm not sure -- you

1 say firstly that it is, depend upon a willingness
2 within the chain of command to reorganise, or
3 recognise, sorry, an allegation of criminal character.

4 A. Yes.

5 120 Q. And, secondly, the relationship between the civil and 12:00
6 military justice is not clearly delineated. And,
7 thirdly, there's a formal process that frequently
8 experiences adversarial and ultimately unproductive.
9 Are they the limitations you see in retaining criminal
10 investigations within the military? 12:01

11 A. I think I would say so. I have to confess in this
12 chapter I also had some help from a former director
13 working for me as an ombudsman who is a lawyer and
14 identifying, so I had to lean a little on that. But
15 also what I read from the reports from the research 12:01
16 from the PHD which, for some reason, were taken off the
17 web, the online system some years ago. I would say I'm
18 not sure that it's productive enough, the system, as it
19 is today.

20 121 Q. Do you believe that every person who has suffered a 12:02
21 criminal offence should have recourse to the criminal
22 law?

23 A. Yeah.

24 122 Q. Thank you. Can we turn now to the fifth process and 12:02
25 that's the protected disclosures, Mr. Bratli. And
26 that's based on legislations, the Protected Disclosures
27 Act 2014. It's not technically part of a complaint
28 suffered by an individual, but it complained about a
29 process, is that correct?

1 A. I think this was one of the very important things that
2 happened. Again, a little late. And you have to find
3 a pathway that to care, and support and defend the
4 whistleblowers and the whistleblower protection act, if
5 I can call it that. 12:03

6 123 Q. Can we go back a moment, you said it was relevant and
7 an important development but it was late why do you say
8 it was late?

9 A. Compared to other countries. Compared to other
10 countries, the whistleblower protection. 12:03

11 124 Q. So can you assist us in other countries, when would
12 they have had protected disclosure legislation?

13 A. Mostly just at this side of the year 2000.

14 125 Q. 2000?

15 A. Yes. 12:03

16 126 Q. So the Irish legislation is about 14/15 years after
17 that, in general?

18 A. In general.

19 127 Q. Nonetheless, a welcome development?

20 A. Absolutely, absolutely. A necessary development, I
21 would say. 12:03

22 128 Q. In what way do you say it was necessary?

23 A. Well, I mean reporting wrongdoing, it's not easy in an
24 environment, a tight environment. On the contrary,
25 it's -- I believe that some almost felt that it would
26 be dangerous for, for life, but for their own career,
27 fear of retaliation. So the protection, that you have
28 a channel where you can safely report is so very
29 important for an openness or reporting things that are 12:04

1 dangerous, should not be, and this is not only
2 happening in Ireland, we have had the same with
3 different cases in Norway, with a too strong radar
4 which affected the fertility, many babies with -- born
5 with wrongs in many ways.

12:05

6
7 So I think the protection of people coming forward,
8 coming forward in a process that you know that you can,
9 it can be retaliated, and you had a fear of being
10 retaliated, in any version that is what the -- you need 12:05
11 that system to be safe for the reason above, for the
12 person telling, that she or he will retain the job,
13 will retain the status and that nothing wrong will
14 happen to them. I'm not saying that it happened to
15 them but the feeling that it can happen, that's a part 12:06
16 of self-censoring actually.

17
18 If you have to report in open, you will not report it.
19 And, of course, in the military you want them to report
20 it. In our society we want people to report wrong 12:06
21 things and we want to protect them. And that is why, I
22 think, this is so important for the whole society and
23 for the Armed Forces because in our position also
24 working with dangerous things. It's not only
25 chemicals, it's rays from radar, rays from this and 12:07
26 that. It's important that you have a channel where you
27 can actually report and redo the wrong thing, do the
28 right thing. That's the main thing, I believe, here.

29 129 Q. The protected disclosures process is something that

1 evolved in the civil law and was then imported into the
2 military culture of the Defence Forces?

3 A. Yeah.

4 130 Q. You say in your report, Mr. Bratli, that there are
5 several practicality limitations to that. 12:07

6 A. Yes.

7 131 Q. Firstly, that although the legislation provided for
8 legal protection for whistleblowers, it does not
9 address the informal social consequences of persons who
10 make reports. Secondly, within the Defence Forces, the 12:07
11 primary internal channel for protected disclosures
12 still remains within the organisation itself. And,
13 thirdly, something you've already referred to, that the
14 introduction of the process was late coming to Ireland
15 in comparison to other countries? 12:08

16 A. I'm sorry.

17 132 Q. The third one is that it was a late development,
18 arrival in Ireland, in comparison to other countries?

19 A. Yes.

20 133 Q. Yes. 12:08

21 A. Late but good.

22 134 Q. Late but good.

23 A. Yeah.

24 135 Q. No. 6, Mr. Bratli, you deal with accidents and injuries
25 at work and, in particular, in the environment of the 12:08
26 Defence Forces. And of particular relevance to the
27 Tribunal is the TOR (vii) which deals with complaints
28 about exposure to hazardous chemicals in the Casement
29 Aerodrome in Baldonnel.

1 A. Yes.

2 136 Q. Again, there's an overlap between the civil and the
3 military systems, in that this also brings into play
4 the health and safety at work legislation which would
5 apply across the board, not merely in the Defence 12:08
6 Forces? Do you wish to talk to us about that?

7 A. I think I almost have written too much about it. If I
8 may, sorry I have to rethink a little here, but if I
9 may say that what I think is notable with this process,
10 viewed alongside the others, is that the institutional 12:09
11 response to complaints about discharges, physical
12 conditions follow the same pattern as the response to
13 complaints about interpersonal administrative conduct,
14 into the matters made to internal management, resist to
15 -- their internal acknowledgement. 12:09
16

17 I think it's not the people but the system that has not
18 been good enough, has not been well functioning.

19 137 Q. And you say it wasn't good enough because there was a
20 reluctance to acknowledge the problem or the 12:10
21 seriousness of it?

22 A. I hope that it, I mean from what you know, you do not
23 acknowledge -- you don't see this, the seriousness.
24 And if it's something worse that you try to cover it
25 up, then it's another matter. But I have to reason to 12:10
26 state that.

27 138 Q. But those complaints or those processes for bringing
28 issues in a workplace, including the military, exist
29 but you believe that they're not always acted upon when

1 the complaint is made, would that be fair?

2 A. I would more put the question; is it acted upon
3 properly, sufficiently ,and immediately enough? To
4 draw the conclusion, I would not be sure. But to ask
5 the questions, I would be. 12:11

6 139 Q. The seventh process you deal with, Mr. Bratli, is
7 court-martials and there are three types of
8 court-martials set out in the Defence Forces Act in
9 1954. would you like to summarise those for us?

10 A. Yeah. The whole system of court-martial is, from my 12:12
11 generation and the generation after in the military
12 unknown, you know, it was abolished, as it has been in
13 many European countries. So, in this matter, the
14 comparison is not with my country, it's not with the
15 countries I know best, so you have to look to other 12:12
16 countries, actually, if you want to have some kind of
17 comparing.

18 140 Q. So, just to be clear, are you saying that in Norway
19 there is no court-martial process?

20 A. No. We have a disciplinary system, of course, but no 12:12
21 court-martial. It's been abolished. You have to go
22 back to the Second world war and immediate after then
23 we had, and then it was abolished, and it has only been
24 in time of war, not at all in other periods.

25 141 Q. You say that in Norway the court-martial system was 12:13
26 abolished after the Second world war, that's late
27 forties/early fifties?

28 A. But it was not before. It was an act during the Second
29 world war established then for that specific reason and

1 abolished. If there is, God forbid, there would be
2 another war, maybe it would be another discussion, but
3 then it would be alone established by parliament.

4 142 Q. For a temporary period only?
5 A. For a temporary period. 12:13

6 143 Q. A war?
7 A. Yeah.

8 144 Q. And in times of peace, do you see a need for a
9 court-martial system?
10 A. In terms of peace, in times of peace, I think i would 12:14
11 say we put our trust in the civilian court system.

12 145 Q. Okay. So earlier you spoke about serious sexual
13 offences being reported to the police immediately. So,
14 by way of contrast, in Norway, if you have any criminal
15 act, be it sexual or otherwise, it's dealt with by the 12:14
16 civil courts?
17 A. Yes.

18 146 Q. Exclusively?
19 A. Exclusively.

20 147 Q. Other than, you say, internal disciplinary matters? 12:14
21 A. Yeah.

22 148 Q. Can you give us an example, can you contrast a criminal
23 and a disciplinary matter?
24 A. The disciplinary matter, that is, you're coming too
25 late for standing, or things like that, that's really 12:14
26 the small things.

27 149 Q. Breach of regulations?
28 A. Definitely, definitely. Any serious thing would go to
29 the -- if it's on the criminal side, would go directly

1 to the police. That would be the recommendation always
2 in the military.

3 150 Q. And is the abolishment of abolition, sorry, of
4 court-martial processes, is that unique to Norway or is
5 that, how does that compare with other countries across 12:15
6 Europe, do they still retain a court-martial system?

7 A. No.

8 151 Q. No?

9 A. They don't. A few countries do, and I believe that
10 there are - I have a list of this but I cannot recall 12:15
11 it directly - I think there are, I mean with the
12 exclusion of Russia, I think you have eight countries
13 with court-martial, maybe nine in Europe, the rest have
14 abolished.

15 152 Q. And of the ones that continue to have the court-martial 12:15
16 can you recall any of those by way of insight?

17 A. Yeah. If you look at the abolishment in Germany, the
18 Nordic countries, the Baltic countries, the Irish
19 system is also slightly different, I mean it's not like
20 the system in the UK, which is a cleaner version of the 12:16
21 court-martial. You have the UK, you have Poland. If
22 you give me a break I would find that.

23 153 Q. Britain retains a court-martial system?

24 A. Yes.

25 154 Q. But slightly different to ours? 12:16

26 A. Yeah, they do.

27 155 Q. The Irish court-martial system is rooted in the Defence
28 Act of 1954 and there are three types of court-martial?

29 A. Yes.

1 156 Q. would you talk to us about each of those if you could,
2 Mr. Bratli?

3 A. well, what I did was, I looked into it, this is -- I
4 have to say this is -- what I'm -- really but the weak
5 side of it is the court-martial system because it's so 12:17
6 unfamiliar to us. So, this is mainly from what I can
7 read of the system, and --

8 157 Q. There's a summary court-martial for less serious
9 offences?

10 A. Yes. 12:17

11 158 Q. And that's a military judge sitting alone?

12 A. Yes.

13 159 Q. Then there's a limited court-martial, that's not a
14 standing body but it has to be convened, and it
15 consists of a military judge presiding on questions of 12:17
16 law and a court-martial board of at least three Defence
17 Force members deciding questions of fact. And then
18 finally there is a General Court-Martial, which again
19 is not a standing body but has to be convened, and it
20 has a judge and a board of at least five members. But 12:18
21 you have something to say, I believe, about the
22 composition of the Court-Martial Board?

23 A. Yeah. Again, my question would be: Have you reviewed
24 the system? Is this a system that is good? Is it
25 functioning for the Defence Forces in Ireland? And is 12:18
26 it good that you have a military judge, military
27 lawyers, is that a system that is functioning? Is this
28 good for the personnel? That is my main objective in
29 handling. And also the differences in the type of the

1 ranking from enlisted medium officers, senior, senior
2 officers, to me it's very strange. And I really
3 wanted -- I never read anything about the basis for it,
4 why it was established. And I haven't asked any
5 question about why it was established, anyone who 12:19
6 knows, but I guess there are people who knows things.
7 But is it? Is it composed in a good way for handling
8 those process? Is the military system such a
9 privileged thing, that you have to have a system
10 exclusively for a group of people in a broad society 12:20
11 where we also have a two-track approach to me, a
12 two-track approach for the civilian courts, the military
13 court. It really feels strange, I have to say that.

14 160 Q. You're looking primarily at the composition of the
15 Court-Martial Board and the fact that it's composed 12:20
16 almost exclusively of military personnel?

17 A. Yes.

18 161 Q. Who would, in any event, control the majority of it?

19 A. Yeah. But it's not up to me to abolish the
20 court-martial. Again, I'm glad. 12:20

21 162 Q. But you believe it's an historical accident, as it
22 were, that it's continued from the Second World War or
23 before?

24 A. Sorry?

25 163 Q. You believe the court-martial system is an historical 12:21
26 anachronism that has continued from a time of war,
27 world war?

28 A. When you have a system, the system has a kind a way to
29 uphold itself. It's more like, of course, it has a

1 function. But the core question will be: Is it really
2 functioning good enough? In a democratic, open society
3 is this the way we would like to have two systems of
4 course?

5 164 Q. In your report, Mr. Bratli, you identify a number of 12:21
6 factors, which you think have influenced the
7 development of the complaint processes within the
8 Defence Forces, but they're all external sources such
9 as the Army deafness, the Women of Honour, the IRG
10 reports, responding to things. It seems to be a core 12:22
11 criticism that the process reacts to things rather than
12 evolves to provide for contingencies?

13 A. Yes.

14 165 Q. Do you think that's an ongoing criticism; is that 12:22
15 continuing to be the situation?

16 A. I would say so. I can't say too much for the last two
17 years, but I believe that things are absolutely going
18 better. But, I mean, there's a contrast, there is a
19 central difference. When I state that Ireland reforms
20 with the crisis, I have to make that a slightly milder 12:23
21 in the sense that this is seen from the outside, of
22 course.

23
24 But looking at cases like the Clonan research, which I
25 believe was an eye opener for many, also for people 12:23
26 like me reading it, it was an eye opener, and to some
27 extent unbelievable. Is it really happening? I mean
28 that's one thing.
29

1 And then I have to confess that I brought the Army
2 Deafness litigation into this, it's another crisis.
3 It's one thing that is personal to me that I'm losing
4 my hearing. It is a very well-known case, that is one
5 of the cases that was brought around all the ombudsmen. 12:24
6 We all knew about the deafness case in Ireland. And
7 it's similar to all ombudsmen and all military forces
8 throughout the world, that is the case that we are
9 losing, many of us, we are losing our hearing. So
10 that's another crisis I would say. 12:24

11
12 As far as I see, I almost read that the Ombudsman Act
13 was a direct response to the deafness litigation case.
14 I cannot say that is 100% correct but that's how I read
15 it. 12:24

16
17 And then when I looked at the - and this is the wonder
18 of the digital world that you can look into television
19 and everything that is online - when we saw the Women
20 of Honour documentary, which is online, I would say 12:25
21 that I think I felt shocked, and I'm Norwegian. So, I
22 hope that you also felt shocked. I'm not taking any
23 side or stance in that case, that's not the problem.
24 But that's what I mean when I say it's crisis-driven
25 more than the coming through on Government researches 12:25
26 that you see there are response to things happening, in
27 all countries. In mine, crisis will be today media or
28 social media driven. Putting a pressure on the system
29 and we react and respond to that. But compared to

1 Norway, I think we have been much more active because
2 of the role that you can always take the initiative to
3 investigate. You are much more hands on before the
4 problem is really a big problem. That's why I put it
5 in this postulate, I would say. Sometimes, I mean, 12:26
6 even though that I use a very good translator, it's not
7 always precise from Norwegian to English. But I think
8 that's...

9 166 Q. At the end of your report, Mr. Bratli, you have five
10 observations. Would you like to tell us about your 12:27
11 observations on the system? The complaints processes
12 within the Irish Defence Forces?

13 A. Yes, I certainly can. Again, I tried to look at how
14 everything evolved in the processes during those many,
15 many years. And try not to look too much at the 12:27
16 inadequacy but much more on the adequacy of the
17 processes. And it's always -- I'm not talking about
18 persons or personnel, I'm not attacking that at all, I
19 think they are doing a splendid job. But the system, I
20 know I say that it's a systemic failure, and that is a 12:28
21 very strong postulate, and I think we have to put it in
22 the context that it also can be rather, rather mild.

23
24 I have this, the chain of command remain, that's in all
25 those processes it's always the personnel, the chain of 12:28
26 command. It's there, it's strong, but for when it --
27 while it's strong, it usually means that the structure
28 is weaker. I think you have to look at how best to
29 design and redesign. And, in all fairness, that is

1 also what I read from the Irish Defence Forces. They
2 have realised, they have developed, things are really
3 getting better. But in the end you have to look at no
4 the core and ask the question: Is it functioning good
5 enough, well enough?

12:29

6
7 Independence of the Ombudsman, the introduction of the
8 Ombudsman was also a really good thing, but then,
9 again, the limitations, the restrictions put on them,
10 the non-binding recommendations, I would say we're very 12:30
11 much in the DCAF system, the democratic control over
12 the Armed Forces and security forces and today called
13 security governance. We would have loved to see less
14 limitations, more power, so to speak from the
15 Ombudsman. Then again, then again I have to say that 12:30
16 talking with the three Ombudsmen, their cooperation
17 has, for most of the time, I would say, has been very
18 good. There was a period in 2002-2013 with Tom McCourt
19 when he was appointed, that was very difficult for him,
20 the one thing was being challenged because he was a 12:31
21 military judge, a colonel. That case went to the
22 Supreme Court.

23
24 The other thing which we reacted on, as ombudsmen
25 reacted strongly on, was that he was a part-time worker 12:31
26 three days a week with a limited budget and that is a
27 part of the system that you actually can in some ways,
28 in the fine ways, direct and limit what the office of
29 an ombudsman can do and not do. And that's also about

1 independence, of course. And that's why I call it
2 partiality independence and not total independence.
3 Then again we can always ask are you totally
4 independent, you have politicians from parliament
5 overlooking you. But that's another discussion and 12:32
6 I'm not going into that.

7
8 Then we have, as I said...

9 167 Q. Procedure and culture?

10 A. Yes. There's a gap. Definitely. That's -- I'm not 12:32
11 looking too much at the procedural adequacy but more at
12 the practical. That's the obvious one I'm looking at,
13 is it working, is it functioning in practice? That's
14 what I would like to see and definitely for any
15 personnel complaining, I would, I guess they would like 12:33
16 to resolve, have it resolved in practice, not in
17 procedure.

18
19 There is a gap, I mean one thing is what you read, what
20 is stated, what is written, and what actually is 12:33
21 happening on the ground. Boots on the ground they have
22 another life than what is written in the papers. That
23 is a very general but I think that is a part of it.

24
25 Formal procedures, of course, is very important. Very 12:33
26 important. But, again, they have to function and the
27 development has been positive.

28
29 what sometimes strikes me is that the Irish newspapers

1 or Irish media are not more hands-on on some of the
2 cases and interest. I mean I've subscribed to a couple
3 of Irish newspapers now for some 35, 40 years and in my
4 opinion should be more. That was anecdotal.

5 168 Q. So you say that changing things on paper, changing 12:34
6 procedure on paper doesn't always change things on the
7 ground?

8 A. Not necessarily.

9 169 Q. Lawyers make the distinction about de jure and de 12:34
10 facto, that's a continuing problem?

11 A. I think that's what history tells. And I think also
12 when you read the annual report from the Ombudsman,
13 that's also what you can read off of that.

14 170 Q. At the beginning, Mr. Bratli, we spoke about 12:35
15 conscription in the Norwegian Defence Forces. I think
16 you have an interesting observation to make on
17 conscription in the Defence Forces and how it can be
18 positive. Would you like to tell us about that?

19 A. Yeah. I've spoken about that many times. To me, it's 12:35
20 quite obvious that conscription, that family, so the
21 Norwegian society, are leasing their daughters and sons
22 to the Norwegian Defence Forces, has a democratic
23 impact on the Defence Forces. A democratic impact on
24 the parlance by regulations. These are, in my days we
25 were conscripted around 30 or 35,000 every year, today 12:36
26 it's around eight, 10,000, increasing because of a new
27 defence initiative. They are outspoken. They have
28 their own system which is also a very good system.
29 They have their own complaints system. They have their

1 own support system if there's, of the lowest level,
2 Redress of Wrong for a conscript or a soldier, he would
3 have support and help, I would say a trustee, from the
4 system that they have. They also have a direct access
5 to the Department. And, of course, they are allowed to 12:37
6 speak directly with the politicians, with Parliament,
7 with the Minister. It's in some ways a driving force
8 and it's bringing renewed, refreshed every year, and
9 they come from a not closed environment, an open
10 society, directly serving 12, and now 18 months, doing 12:37
11 a splendid job. At the same time, they have claims.
12 They know what they want. They do the job. But in
13 repaying they want barracks, they want to be treated
14 equally, treated decently. All of that, I believe,
15 together with having an Ombudsman from 1952 has been a 12:38
16 democratic force, a democratisation of the Norwegian
17 military system. I think you will find that in Austria
18 and Germany, you will find it, in many ways, working in
19 the same where we have conscripts, it's a really added
20 value for a democratic, more democratic structure. And 12:38
21 that we are also being, as officer I would say, more
22 laid back. More civilianised in the sense that the
23 hierarchy is lessened, it's a little looser with the
24 conscripts coming in.

25 171 Q. Thank you. Your detailed comments document was 12:38
26 intended, I think, as a speaking note for you and a
27 summary of your original full report but at the end of
28 that report, just for reference purposes, it's in
29 volume 7 or Book 7, page 4161, at the very end of that,

1 you conclude and can I read it to you, Mr. Bratli:

2
3 "In overall terms, it is my considered opinion that the
4 procedures in place within the Irish Defence Forces for
5 dealing with complaints of abuse between 1983 and 2004 12:39
6 were, for the greater part of that period, not fully
7 appropriate or adequate."
8

9 Is that your view?

10 A. That's my view. I'm not stating how strong that is, 12:39
11 it's not adequate but it's not fully adequate. It
12 could have been better, if that's a way to put it. It
13 could have been better.

14 MR. McGOVERN: Thank you.

15 SOLE MEMBER: Thank you, Mr. Bratli. Is there any 12:39
16 application to put any questions to Mr. Bratli from any
17 representative party here?

18 MR. D'ARCY: On behalf of PDFORRA we'll reserve our
19 position, along with the other parties, perhaps. There
20 may be no questions but perhaps it can be dealt with. 12:40

21 SOLE MEMBER: No questions for the moment on the part
22 of PDFORRA but you would like to reserve your position.
23 And no further applications.

24
25 I have one or two questions, Cpt. Bratli, that I would 12:40
26 like to put to you.

27
28 MR. KJELL ARNE BRATLI WAS QUESTIONED BY THE SOLE
29 MEMBER, AS FOLLOWS:

1

2 172 Q. SOLE MEMBER: You said when you were answering
3 Mr. McGovern in relation to questions about protected
4 disclosures as a form of complaint process, you said -
5 and I'm paraphrasing - but that we in the military we 12:40
6 want people to report and to do the right thing?

7 A. Yes.

8 173 Q. People of honour do the right thing. And you mentioned
9 that there is still problems with the protected
10 disclosure process because you say the culture of 12:40
11 loyalty and silence is precisely the environment in
12 which protected disclosures face the greatest
13 resistance.

14 A. Yes.

15 174 Q. Given that loyalty and cohesion are very important 12:41
16 values within a unit, within the military, from your
17 experience of other military systems, can you describe
18 what kind of measures could be adopted to ensure that
19 loyalty and cohesion are maintained on the one hand,
20 while simultaneously ensuring that personnel are 12:41
21 encouraged to report abuse? How do you achieve both
22 simultaneously, from your experience?

23 A. I would say it's also about definition of loyalty. One
24 is the loyalty you feel and the loyalty you have in the
25 chain of command, the loyalty to your superiors, to the 12:41
26 nation in the end, and the honour. I made some reports
27 as an ombudsman about this. It's the loyalty to the
28 people that are under you, to the society, that type of
29 loyalty. I think you have to create a culture with

1 that, where you are honouring that type of loyalty,
2 that you come forward with what you mean is wrong, what
3 you see as wrong, whatever it takes. And that is also
4 in the core, the backbone of being an officer is that
5 that is what they are teaching us. I mean there is a 12:42
6 chain of command, this is for the operational
7 structure. Operations, there is a chain of command.
8 For the problems that occurs, you're expected to
9 actually tell the truth, come with a warning. So, I
10 feel very strange, if I should be so self-censoring 12:43
11 that, I don't see that this is something -- this is
12 dangerous for my soldiers, this is dangerous for
13 someone else that I should not report it. To me, that
14 would be a totally wrong definition of loyalty. So,
15 you can keep the loyalty but then you have to have a 12:43
16 system that actually protects you and you have a system
17 that understands that type of loyalty. And you have to
18 have a system where the superior officer offers,
19 'Please tell us what's wrong. We will mend it.' I
20 mean, that is the type of culture I would like to see 12:44
21 in all Defence Forces. And there are -- I mean the
22 environment I worked as an ombudsman from Angola and
23 Kyrgyzstan to Ireland and United States, many
24 differences, but, also, the type of definition of
25 loyalty that you actually report it, you were asked to. 12:44
26 'If there is something wrong, come forward because then
27 we can do something about it.' And I hope that is -- I
28 don't know too much about the Irish Military, I met
29 them in peacekeeping operations, I met them a couple of

1 times when I served in the naval staff, and we had
2 meetings with the Irish Navy, naval arm. My experience
3 personally is that, you are a society of democratic
4 thinking, to call it that. And in many ways you are,
5 even if the systems are different, you are in many ways 12:45
6 very Norwegian. That's why we always feel so at home
7 coming to Ireland.

8
9 So when I read or when I -- not too much, when I hear
10 about cases going on and read articles and read the 12:45
11 review reports, I must say I'm appalled. It's very
12 strange because when things like that happen, the
13 loyalty is to the person that really has been harmed
14 than the wrongdoing person. And, again, I don't know
15 the exact cases but seeing - how would I say it - from 12:46
16 above in a bird perspective, I think that's the work in
17 the military culture the military has to work with and
18 they have to do something about that to get people
19 to -- I mean tell the truth, come forward. That is the
20 best thing you can do and nothing wrong will happen 12:46
21 you. Instead, you would give a medal for doing that,
22 if that answers your question.

23 175 Q. So it's, essentially, in terms of a measure, a
24 practical measure, your evidence is essentially it's
25 about education, it's about what is the formative 12:47
26 culture into which recruits are received? Is that the
27 principal measure that you can identify, it's
28 education?

29 A. That's a good interpretation.

1 176 Q. Sorry?

2 A. That's a good interpretation, yes. Absolutely a part
3 of it, yes.

4 177 Q. Okay. And then I have a question for you as well in
5 relation to section 169 of the Act, you were asked by 12:47
6 Mr. McGovern about complaints about criminal offences?

7 A. Yeah.

8 178 Q. And my understanding is you were saying that as
9 Ombudsman of Norway, if you came across serious cases
10 of criminal offences, you would automatically go to the 12:47
11 police, and my understanding is you said in Norway it
12 should be dealt with by the police. Could I ask you;
13 if a fracas were to break out late at night outside a
14 barracks, drink had been taken and two people got into
15 a fight, say you've got two servicemen get into a fight 12:48
16 and there's a physical assault, if that came before
17 you, in your experience in Norway or from your
18 experience as ombudsman, is that something that you
19 would say would automatically go to the police, it's a
20 criminal offence to assault a person and is that 12:48
21 something that you would not deal with in the military?

22 A. I would say not automatically and it would not be the
23 Ombudsman. The advice would be to the person to go to
24 the police. It's not ombudsman doing that, that is the
25 person. That would be my advice. Not in any case, in 12:48
26 many cases this is -- of course, if this happens it
27 would be dealt with by the Military Police, and then
28 you could have, probably, a complaint dealing with the
29 internal system. In Norway, probably, they would go

1 directly to the Ombudsman. If you see that this is a
2 case that in a best way, in a better way could be
3 resolved, but if it's on the criminal, we wouldn't deal
4 with that. Our advice --

5 179 Q. The Military Police, are you saying - I just to be 12:49
6 clear - that in the Norwegian system, if a complaint is
7 made that, you know, two guys got into a fracas, fists
8 were thrown and there were injuries on both sides, are
9 you saying that wouldn't be dealt with in the Norwegian
10 system under disciplinary issues, it would go to the 12:49
11 Military Police for an investigation, are you saying
12 that would automatically go to the --

13 A. No, not automatically.

14 180 Q. It wouldn't automatically?

15 A. No. 12:49

16 181 Q. So the Military Police within the Norwegian system
17 would have a role to play?

18 A. Absolutely. would start there and it would be dealt
19 with disciplinarily. Then, again, if I was attacked I
20 would feel that this is a terrible thing, much more 12:50
21 than a disciplinary action being done, being taken, and
22 I would like to go to the Ombudsman. This is probably
23 a case that could be difficult for the Ombudsman to
24 resolve. So his advice would be for that person, that
25 this is a case for the police. 12:50

26 182 Q. That's if one of the two people involved in the fracas
27 made a complaint to the Ombudsman?

28 A. Yes. Yeah.

29 183 Q. But if the two people involved didn't make a complaint,

1 would the matter be resolved by way of a Military
2 Police investigation within the Armed Forces, within
3 the Defence Forces?

4 A. I would guess so, yes. I would guess so. That, also,
5 has to do with the gravity of the situation. If it was 12:50
6 a minor, medium or very grave and grave thing. So it's
7 difficult to say one or the other but the Ombudsman, on
8 his own action, would not go to the police, but he
9 would probably advise the person or persons going to
10 the police, if that is a grave complaint. 12:51

11 184 Q. And then, finally, I just want to ask you about sources
12 because you answered a question Mr. McGovern put to you
13 when you spoke about your information had come from
14 newspapers, from articles, from reports and I think you
15 mentioned the Independent Review Group's report. I'm 12:51
16 not sure if you're aware that the first recommendation
17 of the Independent Review Group was to establish a
18 fact-finding mission because, by its own admission, the
19 IRG did not partake in fact-finding in their engagement
20 with any individual complainant. Is that something 12:52
21 you're aware of and would it colour your perception to
22 know that it wasn't a fact-finding mission and they
23 didn't test the evidence as such? would that change
24 your evidence or view?

25 A. I don't think so, no. 12:52

26 185 Q. why or why not?

27 A. In the last few months I've read a compressed history
28 of 41 years. It's much more the long breaching there
29 that has coloured me than the actual report, the first

1 one from Alan O'Reilly, colouring, yes, maybe, but more
2 or less, I would think I put it in the drawer for
3 information, raw data. I would guess what I'm saying
4 is a mixture from those 41 years and, of course, from
5 the document and I would say from -- some of the 12:53
6 documents they are almost like the Bible, I would say,
7 to read very much. You can read it through but not
8 thoroughly and too thoroughly in any way. No, I
9 wouldn't see that that coloured. I mean fact-finding,
10 yes, absolutely, but it comes down to personnel to 12:53
11 persons in the end. And more that I have compared very
12 much with what I've read to other countries, other
13 systems, I guess that's the main colouring I made,
14 yeah. That's my own background mostly, I would say.

15 186 Q. So your observations on the culture within the Defence 12:54
16 Forces, that's the subject of this inquiry, am I
17 correct in saying that that culture, in your
18 experience, would be one shared across other military
19 environments, other military contexts, both the
20 positive and the negative? 12:54

21 A. Yes. I believe that any officer would recognise very
22 much of the culture, very much of the system, almost in
23 any western European country, I have to say that, yes.

24 SOLE MEMBER: Thank you very much, Cpt. Bratli. You do
25 realise -- 12:55

26 MR. McGOVERN: There is one matter, Judge, I'm grateful
27 to my colleagues for bringing it to my attention.

28

29 MR. KJELL ARNE BRATLI WAS FURTHER DIRECTLY-EXAMINED, BY

1 MR. McGOVERN AS FOLLOWS:

2

3 187 Q. MR. McGOVERN: Mr. Bratli, in the course of your
4 evidence you referred to the fact that you'd written a
5 history of the Norwegian Ombudsman between 1952 and 12:55
6 2002?

7 A. Yeah.

8 188 Q. I was wondering is a copy of that history available in
9 English?

10 A. I don't think so but I think that can be translated, if 12:55
11 you would like.

12 MR. McGOVERN: I'm obliged.

13 SOLE MEMBER: Thank you very much. Cpt. Bratli, you
14 will be aware that applications were made on behalf of
15 the representatives of several parties to put questions 12:55
16 to you. I appreciate the fact there was no objection
17 to your evidence going forward today because we are
18 under time pressure and the second report came in
19 relatively recently. So, it will be important that
20 people who have questions for you get an opportunity to 12:55
21 put them to you and the Tribunal team will be in touch
22 with you in due course in relation to organising an
23 opportunity to do so.

24 THE WITNESS: Absolutely.

25 SOLE MEMBER: And I trust that you will come back for 12:56
26 that.

27 THE WITNESS: Yes.

28 SOLE MEMBER: Thank you very much.

29

1 It remains only then for me to thank the parties and
2 thank the legal representatives and all who facilitated
3 today's hearing. And, of course, thank you,
4 Cpt. Bratli, the first witness to this Tribunal of
5 Inquiry. We will meet tomorrow morning at 10:30. 12:56
6 Thank you.

7 MR. McGOVERN: Sorry, Judge, there was a notification
8 on the website whether some of the media wish to make
9 an application. I don't know whether there is anyone
10 present. 12:56

11 SOLE MEMBER: That's right. Sorry, may I ask you
12 please just to remain for one moment. Thank you for
13 reminding me, Mr. McGovern.

14
15 There was a notice placed on the website in relation to 12:56
16 certain applications that are pending from a number of
17 individuals for their evidence to be heard otherwise
18 than fully in public. And as you will be aware, there
19 is a possibility, there's provision in the law to allow
20 a tribunal to exclude the public or any portion of the 12:56
21 public in certain circumstances. People were invited,
22 the public, the press, members of the media to make any
23 submission on the fact that the Tribunal intended to
24 grant orders, in limited circumstances, where the
25 statutory test has been met, and submissions were 12:57
26 invited by 5:00 p.m. yesterday evening.

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28 The Tribunal hasn't received any submissions on that
29 point and I just said I would deal with it today. So

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with no submissions having been received, you will be notified in due course of orders that are made in relation to people whose evidence are heard otherwise than fully in public. Thank you again for the reminder.

12:57

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