

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 MONDAY, 13TH JULY 2026 - DAY 23

23

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1 THE TRIBUNAL RESUMED ON MONDAY, 13TH JULY 2026, AS
2 FOLLOWS:

3
4 SOLE MEMBER: Good morning, everybody. Mr. O'Hanlon.
5 MR. O'HANLON: Good morning, Judge. May it please you. 10:33
6 The first witness today is Mr. Robert Scarrott.
7 Mr. Scarrott.

8
9 MR. ROBERT SCARROTT, HAVING BEEN SWORN, WAS DIRECTLY
10 EXAMINED BY MR. O'HANLON AS FOLLOWS: 10:33

11
12 1 Q. MR. O'HANLON: Thank you for joining us today,
13 Mr. Scarrott. Before we proceed, I must remind you
14 that the Tribunal is investigating the effectiveness of
15 the complaints processes and the culture within the
16 Defence Forces in relation to complaints of abuse. The
17 Tribunal is not permitted to make findings in relation
18 to the well-foundedness of complaints of abuse. And,
19 for that reason, you are required to refrain from
20 disclosing the names of any alleged perpetrators in
21 your evidence today. Where it is necessary to refer to
22 such individuals, you must do so by using their rank or
23 the pseudonym given to them by the Tribunal. Do you
24 understand this?

25 A. I do. 10:34

26 2 Q. Please take your time in responding to my questions and
27 if you could kindly direct your answers to the Judge.

28
29 Mr. Scarrott, you provided a statement to the Tribunal

1 in March 2026 and you attended for an interview with
2 Counsel to the Tribunal, is that right?

3 A. That is correct.

4 MR. O'HANLON: Judge, Mr. Scarrott's statement to the
5 Tribunal can be found at page 3114 of the booklet and 10:34
6 his interview is at page 3116.

7 SOLE MEMBER: Thank you.

8 3 Q. MR. O'HANLON: Mr. Scarrott, in terms of your
9 background; prior to joining the Defence Forces you
10 were in the Merchant Navy as a cadet, is that right? 10:34

11 A. That's correct.

12 4 Q. Can you explain that to the Tribunal, please?

13 A. I joined the Merchant Navy as a cadet, engineering
14 cadet. It's a four-year apprenticeship. I joined the
15 P&O company, steamship company. Ehm -- yeah. 10:35

16 5 Q. And you finished up as an engineer in 1981, is that
17 correct?

18 A. I finished up as a second engineer on the ships in
19 1981, yeah.

20 6 Q. And you joined the Naval Service as a direct entry 10:35
21 lieutenant in 1981, is that correct?

22 A. Correct.

23 7 Q. Can you explain to the Tribunal what a "direct entrant"
24 is?

25 A. It would be -- well, the usual entry at that time into 10:35
26 the Naval Service was as a cadet, ehm, from inhouse
27 from within Ireland. Ehm, and they would attend The
28 Curragh and pass out and be commissioned. And then
29 they would start the normal career in the Naval

1 Service.

2
3 As a direct entry, we came in directly from outside the
4 Defence Forces, eh, bringing with us a maturity, I
5 suppose, and an education and training that was a 10:36
6 short, shortcuts through the -- from the Defence Forces
7 processes.

8 8 Q. And during the years 1981 to 2014, Mr. Scarrott, you
9 had a long and successful career in the Defence Forces;
10 am I correct that you were promoted from lieutenant to 10:36
11 lieutenant commander in 1993?

12 A. Eh, no, it was before that. Ehm... I'd say it was
13 about 1990.

14 9 Q. And you were promoted to commander then in the early
15 noughties, is that correct? 10:37

16 A. I was promoted to commander, I think, in 1999 or 2000,
17 yeah.

18 10 Q. And then, finally, you were promoted to the Captain of
19 the Naval Service?

20 A. I was. 10:37

21 11 Q. In or around 2010?

22 A. In 2010.

23 12 Q. And then you retired as a captain in 2014, is that
24 right?

25 A. I did. 10:37

26 13 Q. In terms of your professional background and
27 experience; am I correct that your qualifications
28 include studies in marine engineering, social science,
29 natural sciences and shipyard management?

1 A. Correct.

2 14 Q. During your military career, you also undertook a
3 number of professional courses?

4 A. I did.

5 15 Q. Including a course in grievance and disciplinary 10:37
6 procedures in 1984?

7 A. I did.

8 16 Q. Is that a course you chose to do or was it a mandatory
9 course?

10 A. No, it wasn't mandatory. At that time I was a 10:38
11 workshops officer in the naval dockyard in Haulbowline
12 and my line manager saw fit to send me to this course
13 with the IPA which, I think, was the Irish Institute of
14 Public --

15 17 Q. Administration? 10:38

16 A. -- Administration, yeah, in Dublin.

17 18 Q. How long was that course?

18 A. I think it was about a week. Three days maybe.

19 19 Q. Can you tell the Tribunal what it entailed?

20 A. Ehm, procedures to follow, the law that applies and, 10:38
21 ehm, skills to be attained when working with civilian
22 employees in a naval dockyard.

23 20 Q. You held a variety of appointments in Ireland and
24 overseas, onshore and offshore during your time in the
25 Defence Forces? 10:39

26 A. I did.

27 21 Q. But the focus of today is a period in 1992; at that
28 time you were an officer in charge of the Technical
29 Training School in the Naval Depot, is that correct?

1 A. I was, yeah. I was in charge of the tech training bay.
2 Tech training school, yes.

3 22 Q. And what rank were you at that time, Mr. Scarrott?
4 A. I was a lieutenant commander.

5 23 Q. And that's based in Haulbowline, is that correct? 10:39
6 A. That's based in Haulbowline, yeah, in the depot, yeah.

7 24 Q. Can you describe to the Tribunal the responsibilities
8 of the OIC of the Technical Training School?
9 A. Well the Naval Service required technicians through
10 from officers through to NCOs through to ordinary 10:39
11 rates, and my task in the tech training bay was to
12 ensure that they followed a programme of training that,
13 ultimately, ended in qualification and experience to
14 enable them to serve as engineering personnel in the
15 Naval Service. 10:40

16 25 Q. Then in terms of apprentices, Mr. Scarrott; am I
17 correct that the naval apprenticeship programme was
18 approximately four years and the first three years of
19 that programme were spent in the Army Apprentice School
20 with the final year being spent in Haulbowline? 10:40
21 A. We had two streams; we had a stream which, ehm, where
22 the apprentices came from inhouse, i.e. they were
23 brought in from the Naval Service and they followed the
24 FÁS apprentice training scheme in Cork Institute of
25 Technology. 10:40
26
27 The other stream was Army apprentices -- sorry,
28 apprentices from the Army Apprentice School and they
29 were designated for the Naval Service at the end of

1 their apprenticeship, their three-year apprenticeship.
2 26 Q. And the Army apprentices in the Army Apprentice School,
3 they would spend their time in Devoy Barracks but if
4 they were not on leave they would spend their time in
5 Haulbowline? 10:41
6 A. Correct, yeah. Usually in the summer recess they had a
7 couple of weeks to spare so they were posted down to,
8 or attached down to the naval base and there we,
9 usually every summer, during the apprenticeship and
10 there we gave them familiarisation training, basically, 10:41
11 introduced them to ships, to the navy culture, to the
12 rank system, ehm, to the machinery they were testing,
13 to, ehm...
14 27 Q. You said in your statement, Mr. Scarrott, that as part
15 of your role as OIC, you would occasionally visit Devoy 10:41
16 Barracks?
17 A. That's correct.
18 28 Q. How occasionally would that be?
19 A. Very occasionally. Ehm, I suppose, roughly once or
20 twice a year. 10:42
21 29 Q. Can you describe the nature of those visits?
22 A. Eh, it was -- I focused on the technical training, ehm,
23 and with respect to how they were following the
24 syllabus, ehm, their progress, their individual
25 progress towards getting their City & Guilds 10:42
26 apprenticeship certificate. And also if they wanted to
27 request to see me for any matter to do with their
28 career.
29 30 Q. As you are aware, Mr. Scarrott, a number of the former

1 members of the 34th Platoon have given evidence to the
2 Tribunal. Among those witnesses were two naval
3 apprentices, Seamus Boyle and Gerard Guinan. The
4 Tribunal has heard that petty officers within the Naval
5 Service were making informal enquiries of apprentices 10:43
6 concerning their experiences in the Army Apprentice
7 School. Are you aware of that evidence?

8 A. I was aware that there was conversations between the
9 apprentices and the instructors in the TT Bay. It was
10 informal and it seemed to, well it shocked the NCOs, 10:43
11 the instructors, to the extent that they either came to
12 see me directly or maybe it was through the warrant
13 officer, who came to me that there were some
14 apprentices with some, ehm, eh, unfortunate experiences
15 in Naas. 10:43

16 31 Q. Just for the benefit of the Tribunal, Mr. Scarrott, am
17 I correct in saying that a petty officer is an NCO and
18 a warrant officer, then, is the most senior NCO within
19 the Naval Service?

20 A. Correct. 10:44

21 32 Q. Can you explain the detail of the allegations that were
22 made or brought to your attention by the warrant
23 officer?

24 A. Well, essentially, it was abuse and some bullying that
25 had occurred during their time in Naas, culminating in 10:44
26 the death of an apprentice.

27 33 Q. And after hearing of those stories, did you speak to
28 the apprentices?

29 A. Yeah, so, ehm, the -- I got to hear of this through

1 general conversation with the warrant and the NCOs
2 instructors. And I wanted to learn more about it, so I
3 got the four apprentices that were in our workshops at
4 the time to come in to see me and I interviewed them
5 individually on their experience in Naas. 10:44

6 34 Q. And do you recall the mistreatment they'd described to
7 you?

8 A. Eh, cigarette butts being stubbed out. Ehm, withdrawal
9 of leave passes. Ehm, and bullying, basically.

10 35 Q. Can you recall when that was, Mr. Scarrott? 10:45

11 A. When the interviews?

12 36 Q. Yes. What year?

13 A. 1992. I possibly think that they were -- it was after
14 the apprentices had passed out of Naas and were
15 formally starting their naval training to get them to 10:45
16 sea as ERAS.

17 37 Q. And having heard those accounts from the apprentices,
18 did you have concerns regarding the welfare and
19 wellbeing of apprentices in the Army Apprentice School?

20 A. I did. Specifically the naval apprentices but the 10:45
21 apprentices on the whole, yeah.

22 38 Q. I think you wrote a report, Mr. Scarrott, is that
23 right?

24 A. I did.

25 39 Q. Do you recall the contents of that report? 10:46

26 A. I don't recall it. But, eh, I did write the report and
27 it probably outlines the, ehm, the context of the, what
28 I'd heard from the two apprentices or the four
29 apprentices and, ehm, eh, I was concerned at the time

1 that probably it wasn't still happening and it wasn't
2 happening to our apprentices.

3 40 Q. To whom was that report submitted?

4 A. It would have gone up to my commanding officer, who was
5 OC Depot Commander, the Officer Commanding the Depot, 10:46
6 the Tech Training Bay was part of the depot.

7 41 Q. And did you hear anything in response to your report?

8 A. I did not. Nothing.

9 42 Q. You said at interview that following your report, there
10 were some steps taken or some measures taken -- 10:47

11 A. Yes.

12 43 Q. -- you thought that a naval NCO was sent to the Army
13 Apprentice School?

14 A. Yes. Subsequent to that, I'm not sure I was accurate
15 there. I attended The Curragh on my own course 10:47
16 subsequent to that and I think I might have got
17 confused that that NCO was attached to my course. So
18 I'm a bit confused over that.

19 44 Q. But you made sure to attend the Army Apprentice School
20 yourself more frequently, is that right? 10:47

21 A. I did, yeah.

22 45 Q. In relation to the Defence Force Regulations,
23 Mr. Scarrott, at interview you said:

24

25 "They aren't easy to read, they're awkward." 10:47

26

27 You compared them to the company rules within the
28 Merchant Navy?

29 A. Mmm.

1 46 Q. Can you describe the challenges of the DFRs to the
2 Tribunal, please?

3 A. Lengthy, ehm, sometimes, ehm, very difficult to read,
4 as in the terminology wasn't easy. Ehm, and, very
5 difficult to find out specifically what you wanted to 10:48
6 know.

7 47 Q. You served in the Defence Forces in 1981 to 2014,
8 retired at the rank of captain?

9 A. Yeah.

10 48 Q. You did a course in grievance and disciplinary 10:48
11 procedures?

12 A. Yeah.

13 49 Q. Can you describe to the Tribunal, what your impression
14 of the evolution of the complaints processes in the
15 Defence Forces was during the period you served? 10:48

16 A. Well, personally, in the Naval Service I saw a huge
17 change over during the '90s. Ehm, and I think it was
18 in the wider Defence Forces as well. Ehm, we had a
19 personal management system instituted in the Naval
20 Service with a lot more family support. Ehm, I recall 10:49
21 that our concern at that time was retention. So, ehm,
22 we developed a patrol plan, so people's attachment to
23 sea-going duties was much more predictable and easier
24 on the family and for planning purposes within the
25 family. So, yeah, there was vast improvements in the 10:49
26 way we managed personnel.

27 50 Q. And prior to those improvements, Mr. Scarrott, would
28 you say that the complaints processes in the Defence
29 Forces were fit for purpose?

1 A. They were there, ehm, and there were procedures to be
2 followed. Ehm, can you explain "fit for purpose," fit
3 for purpose at the time or...?
4 51 Q. At the time?
5 A. At the time they worked. 10:50
6 52 Q. The Tribunal is also investigating whether there is a
7 culture that discouraged the making of complaints of
8 abuse; can I ask for your opinion in that regard,
9 Mr. Scarrott?
10 A. I have no experience of, eh, hearing of or any 10:50
11 discouragement of complaints.
12 53 Q. And in relation to training, Mr. Scarrott, do you
13 recall receiving any training on how to make a
14 complaint of abuse in the Defence Forces?
15 A. I do. I do. 10:50
16 54 Q. Do you recall when that was?
17 A. I did a -- when I was first introduced into the Naval
18 Service in 1981, ehm, I did a, they called it a
19 saluting course but basically it was an introduction
20 into the processes of the Naval Service, including 10:50
21 small arms drills, range practises, eh, the Defence
22 Act, ehm, and processes to follow for, as an officer.
23 55 Q. Do you recall what rank the individuals who provided
24 that training were?
25 A. Mostly they were NCOs. 10:51
26 56 Q. Did you ever receive training on how to handle a
27 complaint of abuse?
28 A. I did.
29 57 Q. When was that?

1 A. I would say it was probably started at that time.

2 58 Q. And did you receive training throughout, you've
3 described the evolution and the improvements that were
4 made?

5 A. There was always elements of Redress of wrongs, how to 10:51
6 make a complaint, what to do with that, the process to
7 follow, yes, there was, yeah.

8 MR. O'HANLON: Thank you very much, Mr. Scarrott. Some
9 of my colleagues may have some questions for you.

10 10:51

11 MR. ROBERT SCARROTT, WAS CROSS-EXAMINED BY MS. CARNEY
12 AS FOLLOWS:

13

14 59 Q. MS. CARNEY: Good morning, Mr. Scarrott. I just have a
15 couple of brief questions. First of all, in respect of 10:52
16 paragraph 7 of your statement, this is at page 3115, I
17 think you note and I just want to record this that
18 there is no allegations of wrongdoing as made against
19 you, Mr. Scarrott.

20 10:52

21 Just moving on to paragraph 9 of your statement, again
22 page 3115, you state that:

23

24 "This was not how we did things in the Naval Service."

25 10:52

26 And what you agree with that statement, Mr. Scarrott?
27 In respect of the allegations that were coming to you
28 from the apprentices; would you agree that what you
29 heard was not how things were done in the Naval Service

1 A. Correct, yeah.

2 60 Q. And, in fact, Mr. Scarrott, I think a couple of members
3 of the naval apprentices from the 34th Platoon have
4 given evidence and they have spoken in complimentary
5 terms about their time in Haulbowline. Mr. Seamus 10:52
6 Boyle, said in interview at page 1891, that:
7
8 "It was Heaven down there, we had a great time and
9 people were treated with respect."
10 10:53
11 would you agree that people were treated with respect
12 in Haulbowline?
13 A. I would.

14 61 Q. And, Mr. Scarrott, would it be fair to say, then, that
15 the allegations that you were hearing from the 10:53
16 apprentices of the 34th Platoon, that they were not
17 representative of Naval Service at that time?
18 A. No.

19 62 Q. And then if I can ask you to step beyond that then,
20 what you heard again from the Naval Service of the 10:53
21 34th Platoon, through what you observed, would you say
22 that that was representative of the Defence Forces, as
23 a whole, at that time?
24 A. Ehm, can I just read that?

25 63 Q. I can rephrase it, Mr. Scarrott, if that assists? 10:53
26 A. If you would, please.

27 64 Q. So, the naval apprentices of the 34th Platoon came to
28 you with a number of allegations regarding Devoy
29 Barracks; would you say that the kind of stories you

1 were hearing from the naval apprentices, were they
2 representative of the Defence Forces as a whole at that
3 time? Were you hearing those stories from other parts
4 of the Defence Forces?

5 A. No. No. 10:54

6 65 Q. Thank you, Mr. Scarrott.

7

8 Just in response to a question from Mr. O'Hanlon, you
9 said that, after you submitted your report up the chain
10 of command, you didn't receive a response; would you 10:54
11 have expected to receive a response to your report?

12 A. No, no, I wouldn't. Not really. No. No.

13 66 Q. And why would that be?

14 A. Well, once you send off a report, it's generally gone.
15 It's gone up the line. 10:54

16 67 Q. And then just finally, Mr. Scarrott, you mentioned in
17 your interview, at page 3216, that there was a change
18 in the platoon commander in Devoy Barracks. Would you
19 have met the initial platoon commander?

20 A. I don't think I did, no. 10:55

21 68 Q. And do you recall anything about the replacement
22 platoon commander?

23 A. Eh, other than he introduced himself as the new platoon
24 commander, yeah.

25 69 Q. And do you recall who that individual was? 10:55

26 A. Do you want a name?

27 70 Q. If you can recall his name, of the replacement platoon
28 commander?

29 A. I think it was a Lt. Ryan.

1 71 Q. So you had an awareness that there had been a change in
2 Devoy Barracks?
3 A. I was aware there had been a change, yeah.
4 72 Q. And I think you stated at page 3130, of your interview,
5 that you never received any more complaints in respect 10:55
6 of Naas, is that correct?
7 A. That's correct, yeah.
8 MS. CARNEY: Thank you, Mr. Scarrott.
9 SOLE MEMBER: Thank you, Ms. Carney.
10 MR. LYONS: I don't have any questions, Chair. 10:55
11
12 MR. ROBERT SCARROTT, WAS CROSS-EXAMINED BY MR. BRADY AS
13 FOLLOWS:
14
15 73 Q. MR. BRADY: Judge, just a couple of questions. Mr. 10:55
16 Scarrott, my name is Alan Brady and I'm a barrister who
17 represents a number of former apprentices of the
18 34th Apprentice Class. I just have a few questions to
19 ask you and one was a follow-up from a question from my
20 colleague. 10:56
21
22 Given the seriousness of the matters in your report,
23 allegations of abuse against apprentices and I know you
24 have said generally you wouldn't expect to receive a
25 response to a report. Did you feel this was something 10:56
26 that you should have received a response to or did you
27 ever follow up?
28 A. I didn't follow it up. Ehm, I didn't see any need to.
29 Ehm, it was an allegation, ehm, and it was an

1 allegation against a formation that was outside my
2 command, my corps and my command. Ehm, so it was very
3 sensitive, I suppose. Ehm, I didn't know -- I
4 subsequently learnt from the amount of evidence,
5 written evidence, that there was investigations going 10:57
6 on at the time. So, ehm, at that time I didn't know
7 there was investigations going on but I didn't follow
8 up.

9 74 Q. Do you think it would have assisted both the
10 apprentices, who had made the allegations, and, also, 10:57
11 the Naval Service, who were sending apprentices to the
12 Army Apprentice School to have received a response and
13 to get some comfort from the fact that something had
14 been done in relation to this?

15 A. No. I attended the Army Apprentice School myself, ehm, 10:57
16 and I was aware of the allegations that were made and I
17 saw no evidence that they were continuing.

18 75 Q. But even just from a transparency point of view, that
19 if somebody has a grievance, they report it up the
20 line; would you accept that it's important for them to, 10:58
21 at some point, be told that this has been dealt with or
22 it's been taken on board or we have received your
23 complaint and we've taken steps to address it?

24 A. It wasn't a grievance. What I heard was, ehm, a strong
25 feeling of resentment. I didn't hear a -- a grievance, 10:58
26 as I understand it, is can be a formal complaint or a
27 protest or a strong feeling of resentment and it was
28 certainly that. So I didn't consider it as being a
29 grievance per se or a formal complaint or a protest, I

1 just saw it as a minor or a strong feeling of
2 resentment. That's what I came away from the
3 interviews with, as I recall.

4 76 Q. Can I just highlight paragraph 9 of your statement,
5 that's at page 3115 of the booklet. You said: 10:59
6
7 "I became aware from naval apprentices of malpractice
8 in the NAS. I recall hearing stories involving the
9 force eating of cigarette butts, cancelled leave,
10 forced late night parades and a suicide." 10:59
11

12 Can I put it to you that they would be above normal
13 grievances. They're quite shocking allegations?

14 A. I was shocked. I was shocked, yes.

15 77 Q. So, would you think it helpful in instances like that 10:59
16 where someone has brought forward those complaints or
17 made you aware of them, that there would be some
18 transparency in the system that they would know that at
19 least steps were taken to enquire in to them?

20 A. Ehm, I think I did say in my statement I had the 11:00
21 impression that they were just glad to tell the story
22 and move on.

23 78 Q. Can I ask you, I know you said that you interviewed the
24 four apprentices individually. When you were
25 interviewing them, was that -- was it an informal 11:00
26 interview or would they have come into your office and
27 stood at attention. Or what way can you remember did
28 it take? Was it an informal?

29 A. I very rarely conduct interviews with people standing

1 at attention. It defeats the purpose of the interview.
2 So it would have been, what you say, an informal
3 interview. It was in my office and I did call them in
4 individually, yes.

5 79 Q. And why would you do something like this more 11:00
6 informally than inform, because you like to think you
7 would put the person more at ease and they would feel
8 more comfortable telling their story to you given the
9 differences in ranks?

10 A. Correct. 11:01

11 MR. BRADY: Thank you, Mr. Scarrott.

12 SOLE MEMBER: Thank you, Mr. Brady. Ms. McGrath.

13
14 MR. ROBERT SCARROTT, WAS CROSS-EXAMINED BY MS. McGRATH
15 AS FOLLOWS: 11:01

16
17 80 Q. MS. McGRATH: Thank you, Sole Member. Good morning,
18 Mr. Scarrott, my name is Sinead McGrath and I'm counsel
19 for the Minister for Defence. I just have one or two
20 short questions to ask you, Mr. Scarrott. 11:01

21
22 Just at the outset there of your statement and in your
23 evidence this morning you talked about doing a
24 grievance and disciplinary procedures course at the IPA
25 in 1984, is that correct? 11:01

26 A. That's correct.

27 81 Q. This was early days, really, in the grievance and
28 disciplinary process which, you know, ten years later
29 was substantially upgraded. But back in 1984, was

1 that -- can I just ask you, was that something which
2 was common or standard? Did lots of people from the
3 Navy do these types of courses or the Army in general?
4 Do you remember was it novel for you to go or was this
5 standard? 11:02

6 A. It certainly wasn't standard, eh, it was novel for me
7 because I don't think it was repeated again. Nobody
8 else did that course.

9 82 Q. And you mean none of your colleagues or nobody that you
10 worked with? 11:02

11 A. Correct.

12 83 Q. So was this just something that you uniquely did?

13 A. I think it was, yes.

14 84 Q. Okay. And why was that? Was that because of your
15 workshop officer role? 11:02

16 A. Yes.

17 85 Q. Okay. Okay. Just going in then to the context of why
18 we're here and the allegations of the apprentices,
19 you've been asked by everybody about the conversations
20 you had with the apprentices. And in your evidence to 11:02
21 Mr. O'Hanlon this morning you described them as
22 conversations and you described them as informal, isn't
23 that right?

24 A. Correct.

25 86 Q. Okay. Now, with regard to the apprentices, certainly 11:02
26 two of them who have given evidence, Mr. Guinan and
27 Mr. Boyle, they described things getting very formal.
28 They used the word "formal" and coming into your office
29 and sitting down. So they saw it as a formal process;

1 do you accept that?

2 A. well, if they do then I failed because I consider

3 formal interviews to be more or less non-productive,

4 it's usually one way.

5 87 Q. Okay. And you had done your course on grievances and 11:03

6 disciplinary procedures and did this inform how you

7 approached the matter or how you were going to talk to

8 these apprentices?

9 A. It did, yes.

10 88 Q. Okay. 11:03

11 A. It certainly influenced me, yeah.

12 89 Q. Okay. And you've been asked here this morning about

13 the report that you did. And, in particular, you were

14 asked in your interview by Mr. Beirne, and I'll just

15 get the language, he said: 11:04

16

17 "Do you remember, did you make any recommendations in

18 the report? Did you recommend anything to be done? Do

19 you remember?"

20 11:04

21 And you replied:

22

23 "I would be pretty sure it was a report on these

24 incidents and that they should be investigated."

25 11:04

26 Now, you were asked about this report, again, earlier

27 this morning and you said you don't recall it but you

28 outlined the context of what you'd heard. Can I just

29 ask you, in relation to the report; you may not

1 remember but did you name names? Did you outline names
2 of apprentices? Did you outline names of persons in
3 respect of whom allegations had been made?
4 A. I don't remember.
5 90 Q. Okay. 11:04
6 A. Because I haven't seen that report since.
7 91 Q. Okay. And I think there has been an order for
8 discovery in respect of that report made by the
9 Tribunal and the report was not located, is that right?
10 A. I don't know. 11:04
11 92 Q. Okay. Now, you say that you heard nothing in response
12 and it was put to you, on behalf of the Defence Forces
13 this morning, would you have expected a response and
14 you said:
15 11:05
16 "Not really, once you send a report."
17
18 Your words were:
19
20 "It's generally done." 11:05
21
22 Is that right?
23 A. Well, it's in process, yes.
24 93 Q. Okay. And you say it went up the line and that was the
25 last of your involvement, effectively? 11:05
26 A. Correct.
27 94 Q. Okay. And in relation to those apprentices that had
28 come to you and you had gone into your confidence or
29 you had taken them into your confidence, was anything

1 put in place, in Haulbowline, for dealing with those
2 apprentices or support systems or anything like that as
3 to how they were going to process what had happened to
4 them or going forward? Do you remember any actions
5 taken by you or superior officers?

11:05

6 A. No, they continued their training.

7 95 Q. And can I ask you, also, with regard to, again, I think
8 it was Mr. Guinan who was asked in his evidence:

9
10 "Did you know of what the result of your interview with
11 Mr. Scarrott was?" 11:06

12
13 And he says:

14
15 "No, no, I didn't."

11:06

16
17 And, also, there was another apprentice who he hasn't
18 given evidence but he did give an interview to the
19 Tribunal and he was asked the same question:

20
21 "Did you ever hear anything back?"

11:06

22
23 And both of them have said:

24
25 "No."

11:06

26
27 And I think that is your position, that you heard
28 nothing back on your report and you didn't go back to
29 the apprentices with any further update or any

1 information, is that right?

2 A. That's right.

3 96 Q. Now, I think, at the time, do you think -- and the
4 Tribunal is looking at the effectiveness of complaining
5 or bringing issues to the table; what's your view on 11:07
6 that now, looking back, not going back to the
7 apprentices, or not being in a position to update them
8 as to what is happening or anything to that effect?
9 would you take a different approach now? Do you think
10 you might have done things differently? 11:07

11 A. I think, perhaps, now I would probably have followed it
12 up. But if you've got nothing to tell the apprentices
13 then you've got nothing to tell the apprentices. So...
14 yeah, nowadays, I think, it would probably be correct
15 to follow it up. 11:07

16 97 Q. And with regard to saying, you know, "following it up",
17 is this with a view to providing feedback to these
18 individuals or telling them of an outcome?

19 A. Yes.

20 98 Q. Is that your position? 11:07

21 A. Yeah.

22 MS. McGRATH: Thank you, Mr. Scarrott.
23 SOLE MEMBER: Thank you, Ms. McGrath.

24

25 MR. SCARROTT WAS QUESTIONED BY THE SOLE MEMBER, AS 11:08
26 FOLLOWS:
27

28 99 Q. SOLE MEMBER: Mr. Scarrott, good morning. Could I
29 clarify one thing please, in your direct evidence to

1 the Tribunal you were reporting on the allegations you
2 had heard and you said:
3
4 "Cigarette butts stubbed out."
5 11:08
6 And Mr. Brady later took you through what you said in
7 your statement which was:
8
9 "The allegations concerning the forced eating of
10 cigarette butts."
11 11:08
12 A. That too, yeah.
13 100 Q. Is that the allegation you heard, you're confirming
14 that in your oral testimony?
15 A. I am, yes.
16 101 Q. Thank you, thank you. On a practical measure; you
17 explained there were two streams of recruits, as it
18 were, into the Naval Service. Is that correct?
19 A. Apprentices.
20 102 Q. Apprentices, yes.
21 A. Yeah.
22 103 Q. And that one stream had apprentices coming from inhouse
23 and they followed the FÁS training scheme?
24 A. Correct.
25 104 Q. And the other came from the Army Apprentice School and
26 they were designated for the Naval Service?
27 11:08
28 A. Mmm.
29 105 Q. So, my understanding is clear; did the apprentices know
upon entry to the Army Apprentice School, that they
were designated, or were they trained as fitters or

1 carpenters or whatever but not knowing where they would
2 end up?

3 A. Eh, I think they were designated from their interview.

4 106 Q. From their interview, thank you.

5 A. Yeah, that's what I think happened. 11:09

6 107 Q. I want to ask you a question in relation to some of the
7 answers you've given to questions raised by counsel.
8 when you say you heard nothing back and today you
9 probably would follow it up; can I ask you a question
10 coming from the other side. You were not the 11:09
11 complainant in this case, you were reporting what you
12 heard, so you weren't the individual who had suffered
13 the members that was alleged.
14

15 In contrast to then, would, and I know that there are 11:09
16 very clear procedures for complainants or there are
17 procedures that exist today that didn't exist then in
18 terms of managing complaints. But as a person who had
19 simply made a report rather than being a complainant
20 yourself, would you expect today that you would hear 11:10
21 something back? And I appreciate it's a while since
22 you were in the Naval Service but by the time would you
23 have expected that they would come back to you?

24 A. I think the Defence Forces changed and I think I would
25 expect to follow it up, yeah. 11:10

26 108 Q. I am asking though from the prospective of the person
27 to whom you had made the report?

28 A. Yeah.

29 109 Q. You would expect the person by the time you were

1 leaving to have come back to you?
2 A. I do, yeah.
3 110 Q. Thank you. And then, finally, you were asked a
4 question by Mr. O'Hanlon:
5
6 "Were the complaints processes fit for purpose?"
7
8 And you asked a question:
9
10 "What do you mean by that?"
11
12 You said prior to the training and all that came in,
13 you said:
14
15 "The complaints processes were there."
16
17 That was your answer. And you said:
18
19 "At the time they worked."
20
21 Now, in terms of addressing whether the complaints
22 processes were fit for purpose, can you help me to
23 understand what you mean when you say:
24
25 "Well at the time they worked"?
26
27 111 A. Sorry, I've lost you.
28 Q. Okay. My apologies. You were asked a question by
29 Mr. O'Hanlon:

1 "Were the complaints processes fit for purpose?"
2 A. At that time?
3 112 Q. Yes. You said at that time. You said:
4
5 "The complaints processes were there, at the time they 11:11
6 worked."
7
8 Can you give me some examples or some evidence from
9 your own experience of how the complaints processes
10 worked at that time? And I'm talking about the time 11:11
11 the allegations were made, the time that you heard
12 these things.
13 A. That would probably be the only time I'd ever heard of
14 a situation which required those procedures.
15 113 Q. And the procedures in place at the time, what 11:12
16 procedures are you, do you have in mind when you talk
17 about those procedures? This is back in 1990 and 1991
18 and 1992, so we're not dealing with the introduction of
19 A7 in '96, so what procedures are you talking about
20 when you say: 11:12
21
22 "This was the only instance"?
23 A. Well, there were Redress of Wrongs was the main --
24 114 Q. Yes.
25 A. -- the primary procedure which I was aware of. 11:12
26 115 Q. Yes.
27 A. And that was very much, eh -- that was happening all
28 the time. There was always redresses of wrongs going
29 on.

1 116 Q. And, in your recollection, and if you don't know you
2 can say so, but in your understanding and recollection,
3 would the Redress of Wrongs procedure have been used
4 for a wrong of this nature, the nature alleged?
5 A. No. The Redress of Wrongs procedure, which I am 11:13
6 familiar with is that the complainant is with you and
7 he's following a formal process where the complaint is
8 formal eh, and specific, and focused on a certain
9 incident.
10 117 Q. And would the incidents, in your experience, have been 11:13
11 incidents of the nature described by the apprentices,
12 to you?
13 A. No. No.
14 SOLE MEMBER: Thank you, very much, Mr. Scarrott, for
15 your help here today. Thank you. Are we ready for the 11:13
16 next witness?
17 MR. McGOVERN: Yes.
18 SOLE MEMBER: Thank you, Mr. McGovern.
19 MR. McGOVERN: Thank you, Judge. The next witness is
20 Mr. William Enright. Mr. Enright, please. 11:13
21
22 MR. WILLIAM ENRIGHT, HAVING BEEN SWORN, WAS DIRECTLY
23 EXAMINED BY MR. McGOVERN AS FOLLOWS:
24
25 118 Q. MR. McGOVERN: Good morning, Mr. Enright. Thank you 11:14
26 for coming to the Tribunal.
27 A. Morning.
28 119 Q. If you could address your answers to the Judge, that
29 would be helpful. Can I remind you, first of all,

1 Mr. Enright, that the Tribunal is investigating the
2 effectiveness of the complaints processes and the
3 culture within the Defence Forces in relation to
4 complaints of abuse. The Tribunal is not permitted to
5 make findings in relation to the well-foundedness of
6 complaints of abuse and, for that reason, you are
7 required to refrain from disclosing the names of any
8 alleged perpetrators in your evidence today. Where it
9 is necessary to refer to such individuals, you must do
10 so by using their rank or the pseudonym which has been
11 given to them by the Tribunal. Do you understand that?

12 A. Yes.

13 120 Q. Thank you very much, Mr. Enright. Judge, Mr. Enright
14 attended for one interview only and that can be found
15 at page 8064 of the book. 11:15

16 SOLE MEMBER: Thank you.

17 121 Q. MR. McGOVERN: By way of introduction, Mr. Enright, I
18 think you originally enlisted in the Defence Forces as
19 a cadet in November of 1975, is that correct?

20 A. That's correct. 11:15

21 122 Q. And, I think, that in April 1986 you were promoted to
22 the rank of captain?

23 A. Correct.

24 123 Q. And in June, I think specifically on 8th June of 1987
25 you were appointed as the Company Commander in Devoy 11:16
26 Barracks, Naas?

27 A. That's correct.

28 124 Q. And that's where, as we know, the Army Apprentice
29 School was based.

1
2 In August, you may not be aware of the date, but in
3 August of '89, 2nd Lt. B was appointed Platoon
4 Commander of the 34th Apprentice School. Do you
5 remember him coming to the barracks at that time? 11:16
6 A. I do, yes.
7 125 Q. In a statement I will open more fully later on, Mr.
8 Enright, you say that:
9
10 "During the period." 11:16
11
12 You were there and he was there, that's yourself and
13 2nd Lt. B.
14
15 "...would engage closely on a day-to-day basis"; was 11:16
16 that correct?
17 A. That's correct, yes.
18 126 Q. Can I ask you -- I referred you to this at the
19 interview, Mr. Enright, and I just want to put it to
20 you to establish your state of knowledge, we're aware, 11:16
21 at this stage, of the Tribunal, that between November
22 '89 and May of 1990 that eight allegations of abuse
23 were made against 2nd Lt. B. They involve four
24 allegations made by Mr. Traynor and four allegations by
25 three other apprentices in relation to cigarettes and 11:17
26 haircutting and so on. Were you aware of those at the
27 time?
28 A. No.
29 127 Q. Can you explain to us, Mr. Enright, why, if you were

1 the Company Commander and you were on a day-to-day
2 communication with the 2nd lieutenant, how come you
3 were unaware that these things were taking place?

4 A. I've read a number of transcripts in relation to
5 apprentices and it appears that in almost every 11:17
6 situation the apprentices were very reluctant to, ehm,
7 to make any kind of complaint to any authority at all.
8 So, eh, I'm not quite sure how, eh, the complaints were
9 actually transmitted but they certainly weren't
10 transmitted via myself. 11:18

11 128 Q. Were you aware, between November '89 and May '90 of any
12 investigations into 2nd Lt. B?

13 A. No.

14 129 Q. All right. In October 1990, we know, and, indeed, I
15 think 2nd Lt. B has conceded this himself, that he was 11:18
16 paraded by the then GOC who I believe was Mr. [REDACTED],
17 GOC [REDACTED]; were you aware of that at the time?

18 A. No, I wasn't. And, ehm, you know, a 2nd lieutenant
19 being paraded in front of the GOC is a -- it's a big
20 deal. 11:18

21 130 Q. Yes.

22 A. And I can't actually recall or remember that happening.

23 131 Q. As you say, another officer would be a big deal, if it
24 was an apprentice I could understand you not being
25 aware of that, but two officers, or an officer very 11:19
26 close to you, both in rank and on a day-to-day basis,
27 you were unaware that he had been paraded in October
28 1990?

29 A. I'll put it this way; I've no recollection of it

1 happening.

2 132 Q. All right. On 16th January 1991, I think Cmdt. Coffey
3 replaced you as company commander, is that correct?

4 A. That is correct, yes.

5 133 Q. But although Cmdt. Coffey took over the role of company 11:19
6 commander, I think you remained in Devoy as his
7 Second-in-Command?

8 A. That's correct, yes.

9 134 Q. So, you were still there on a day-to-day basis?

10 A. Yes. 11:19

11 135 Q. On 11th May of 1991, Mr. Enright, Damien Traynor, one
12 of the apprentices in the 34th, had a breakdown; when
13 did you learn of that?

14 A. I can't, actually, remember exactly when I learnt of
15 that. Probably around that particular time. 11:20

16 136 Q. All right. We have heard evidence that, both from
17 Mr. Traynor himself about the events surrounding it and
18 also from his parents, that they came to Devoy Barracks
19 over the weekend of 11th and 12th May of 1991; were you
20 there in the barracks at that time? 11:20

21 A. Was I stationed in the barracks at that time? Yes.

22 137 Q. Would you have been present in the barracks when they
23 came?

24 A. Ehm, yes, eh, I would have. You, actually -- I know
25 that counsel showed me a letter, during the interview 11:20
26 last week, ehm, I hadn't seen that letter beforehand
27 but I think it refers to me as meeting Mr. and
28 Mrs. Traynor at the time.

29 138 Q. Yes.

1 A. And I think that was a Sunday.

2 139 Q. The document you've just mentioned, Mr. Enright, is at
3 page 2719 of the booklet and it's the document which
4 has been own opened many times, at this stage, Judge.
5 It's the application for discharge by purchase of
6 Mr. Traynor, sent by OC Hayes to GOC Wall, dated 16th
7 May 1991. And the passage to which Mr. Enright refers
8 can be found at the end of page 2 of that, subparagraph
9 (e). It's talking about Mr. and Mrs. Traynor. And
10 talks about they heard of a situation and visited the
11 barracks on 12th May. That would have been the Sunday.

13 "They were met by Captain [blank] 2IC."

15 Do you accept that that's a reference to you,
16 Mr. Enright?

17 A. Yes, I do.

18 140 Q. That would have been just a day after Mr. Traynor's
19 breakdown. Can you describe his condition when you met
20 him on that day?

21 A. When I met Mr. Traynor?

22 141 Q. Yes.

23 A. I can't. I have no recollection of that.

24 MR. McCANN: Sorry, Judge.

25 SOLE MEMBER: Mr. McCann.

26 MR. McCANN: I am absolutely aware and Mr. McGovern is
27 entirely right to say that we, as in all the people in
28 this room have seen the document at 2719, many, many
29 times and are relatively familiar with it. But I'm not

1 certain that my witness is and I think it would be only
2 fair to him that it should be put up. That's all.
3 SOLE MEMBER: Absolutely. Would you mind, please,
4 putting up the document in relation to the application
5 of Mr. Traynor's discharge. 11:22

6 142 Q. MR. McGOVERN: It starts at 2719 to the end of the
7 second page 2720. The document itself, Mr. Enright, is
8 not immediately relevant to you. I just want to
9 confirm that you met Mr. and Mrs. Traynor and indeed
10 Mr. Damien Traynor, on Sunday, 12th May 1991, do you 11:22
11 remember that?

12 A. I can't actually remember it but if it is written down
13 I have absolutely no issue with saying that I was
14 there.

15 143 Q. All right. 11:23

16 A. But I can't actually remember the -- the meeting
17 itself.

18 144 Q. Just to be clear about this, don't worry about the
19 document, we're only concerned with what you yourself
20 recollect of the occasion. Have you any recollection 11:23
21 of meeting either Damien Traynor or his parents on the
22 day after Damien's breakdown?

23 A. Eh, no, I don't.

24 145 Q. Right. Right. Are you aware or were you aware, at
25 that stage, that Mr. Traynor was going to buy himself 11:23
26 out of the Defence Forces?

27 A. I must have been aware of that, yes.

28 146 Q. Did you discuss either with Mr. Traynor or his parents,
29 that process or the cost?

1 A. I don't think so.

2 147 Q. Are you aware that the Traynor's parents paid money for
3 their son to leave the Defence Forces?

4 A. Yes, obviously I've read the transcripts in the last
5 week, so I'm aware of that, yes. 11:24

6 148 Q. Have you any recollection of receiving money from
7 Mr. and Mrs. Traynor on the Monday; that would have
8 been the 13th?

9 A. No. That wouldn't have been my responsibility. I
10 think that would have been the adjutant or the 11:24
11 Commanding Officer's responsibility.

12 149 Q. All right. Can I refer you to page 2726. Is that a
13 document you have seen before, Mr. Enright?

14 A. Yes. I have seen it in the last week.

15 150 Q. Yes and do you recall seeing it before last week? 11:24

16 A. Ehm, as in can I remember going back to 1990/91?

17 151 Q. Yes.

18 A. Yes, I suppose so. Obviously I saw it last week.

19 152 Q. Yes.

20 A. It's a document that I will stand over, yes. 11:25

21 153 Q. When you saw the document last week, did it refresh
22 your memory in any way?

23 A. Obviously, it did.

24 154 Q. Right. Can we start with the simple things. At the
25 bottom of the page there's a blanked out signature: 11:25
26
27 "Captain..."
28
29 And underneath:

1 "2IC, Company, LX9."
2
3 I think is the code given to Devoy Barracks. would
4 your signature have been in that box?
5 A. Yes. 11:25
6 155 Q. Fine. And at paragraph 2 it repeats or sets out the
7 quotation that I put to you earlier, Mr. Enright, that
8 yourself and R2:
9
10 "...2nd Lt. B and myself worked close together on a 11:25
11 day-to-day basis."
12
13 But can I ask you about the dates; November '89 to June
14 1990; first of all, who asked you to prepare this
15 document, can you recall? 11:26
16 A. I can't recall.
17 156 Q. Or do you recall the circumstances in which you were
18 asked to prepare it?
19 A. Ehm, well, obviously, it was to do with
20 Aptce. Traynor's discharge. 11:26
21 157 Q. Yeah, more specifically than that, the title on the top
22 is:
23
24 "Allegations against 2 Lt."
25 11:26
26 A. Right, okay.
27 158 Q. So, this document is prepared not so much in relation
28 to Mr. Traynor's discharge --
29 A. Yes.

1 159 Q. -- but in relation to allegations against 2nd
2 lieutenant?
3 A. No, I accept that.
4 160 Q. All right and it's dated 15th May 1991, isn't that
5 correct? 11:26
6 A. That's correct.
7 161 Q. So that was some three days after you met Mr. Traynor
8 and his parents?
9 MR. McCANN: No, no, sorry, that's not what he said.
10 It's just not what he said. He has no recollection, no 11:26
11 recollection of meeting Mr. Traynor's parents, though
12 he accepts it's written in the document. And he's not
13 admitted and he has no recollection of meeting
14 Mr. Traynor. That's the state of the evidence, in my
15 recollection which, of course, is open to correction. 11:27
16 SOLE MEMBER: I understood, yes, go ahead, Mr.
17 McGovern.
18 MR. McGOVERN: what the witness said was that he
19 accepted he did meet them but he had no recollection of
20 the event itself. 11:27
21 MR. McCANN: He accepted he met Mr. and Mrs. Traynor,
22 the parents. Not Mr. Traynor. In my understanding of
23 the evidence, as it stands.
24 SOLE MEMBER: He said it's a document I'll stand over,
25 it refreshed my memory. 11:27
26 MR. McCANN: Absolutely.
27 SOLE MEMBER: Perhaps we can ask the witness again.
28 when you say it's a document you stand over --
29 MR. McCANN: He should have the document, Judge.

1 SOLE MEMBER: Absolutely.

2 MR. McCANN: The earlier document, where he says he met

3 Mr. and Mrs. Traynor, the parents.

4 SOLE MEMBER: Yes.

5 MR. McCANN: At 2720. It is just important that we're 11:27

6 not sliding from meeting one set of people to meeting

7 three different people. I'm not sure that anything

8 turns on it but I'm cautious.

9 SOLE MEMBER: Thank you, Mr. McCann.

10 162 Q. MR. McGOVERN: Can we go back to page 2720. Just read 11:27

11 paragraph (e), do you see that there in front of you,

12 Mr. Enright?

13 A. Sorry, which paragraph?

14 163 Q. Paragraph (e)?

15 A. (e) for echo? 11:28

16 164 Q. Yeah (e) for echo, yeah.

17

18 "His parents, who heard of the situation, visited Devoy

19 on 12th May."

20 11:28

21 That would have been the Sunday.

22

23 "They were met by captain 2IC."

24

25 You accept is you: 11:28

26

27 "Company commander, who explained the situation to

28 them. They said they were worried over

29 Aptce. Traynor's continuing service in the Defence

1 Forces as he was unhappy. They would prefer if he
2 could leave as soon as possible. They understood he
3 would have to be charged for the damage he had caused
4 and would come back the next day to discuss his future.
5 They met [blank] Aptce. Traynor who was of a similar 11:28
6 mind."
7
8 Does that jog your memory in any way, Mr. Enright?
9 A. No, it doesn't actually. I just cannot remember the
10 circumstances there. I just can't. 11:28
11 165 Q. So you have no recollection of meeting either Mr. and
12 Mrs. Traynor or their son, Damien?
13 A. Yes. I just cannot recall that.
14 166 Q. All right. Now, can we go back to the document I was
15 asking you about -- 11:29
16 MR. McCANN: And I might also add. I can either add
17 these matters or I can't. I don't understand whether
18 Mr. McGovern is objecting to me making an objection, is
19 that the case?
20 SOLE MEMBER: Mr. McCann, what is your objection? 11:29
21 MR. McCANN: Is Mr. McGovern saying that Mr. Traynor
22 said, I can't recall this, that he met this witness?
23 And if so, that should be put to him. Again, if
24 anything turns on this...
25 SOLE MEMBER: Mr. McGovern, I didn't hear Mr. McGovern 11:29
26 to say that Mr. Traynor said it. Mr. McGovern, what is
27 it that you were putting to this witness?
28 MR. McGOVERN: I simply asked Mr. Enright had he any
29 recollection of meeting Mr. and Mrs. Traynor, firstly.

1 And secondly, whether he had any recollection of
2 meeting Damien Traynor and his answer to that is he
3 doesn't.

4 MR. McCANN: well, then we're all happy.

5 SOLE MEMBER: Thank you. Did you want to add 11:30
6 something?

7 THE WITNESS: Eh, eh, no. I'm happy enough with that
8 exchange. Ehm, like, I just cannot recall, actually,
9 meeting the Traynors.

10 167 Q. MR. McGOVERN: And when you say "the Traynors", do you 11:30
11 mean all three of them?

12 A. well, I think Aptce. Traynor was -- was in the barracks
13 at the time. I can't recall meeting Mr. and
14 Mrs. Traynor.

15 SOLE MEMBER: Do you recall meeting Aptce. Traynor? 11:30

16 THE WITNESS: No, I can't recall that particular day
17 and meeting Mr. Traynor or Aptce. Traynor. I just --
18 I've no recollection of that particular day.

19 168 Q. MR. McGOVERN: The document, at page 2726, Mr. Enright, 11:31
20 can we have a look at that, please. I think you had
21 told us a few moments ago that you saw this document
22 recently and I asked you did you remember it at the
23 time or seeing it recently, did it jog your memory, is
24 that correct? And I drew your attention to the fact
25 that the title is headed "Allegations Against 2nd 11:31
26 Lt. B." It doesn't purport to deal with allegations by
27 Mr. Traynor, but it's dealing with or at least the
28 title suggests that it's dealing with allegations
29 against the 2nd lieutenant, isn't that so?

1 A. That's correct, yeah.

2 169 Q. And I drew your attention to the fact that it's dated
3 15th May of 1991, which would have been just a matter
4 of days after you met the Traynors, Mr. and
5 Mrs. certainly? 11:31

6 A. Correct.

7 170 Q. Yeah. And I was asking you about the statement that I
8 drew your attention to previously, that yourself and
9 the 2nd lieutenant worked close together on a
10 day-to-day basis. And that's prefaced by giving a 11:31
11 period of time from November '89 to June 1990; do you
12 see that?

13 A. I see that, yes.

14 171 Q. Right. Now, can I ask you; do you know who asked you
15 to prepare this document? 11:32

16 A. I don't. I could speculate but I don't.

17 172 Q. All right.

18 A. But if you want me to...

19 173 Q. No, I'm not asking you to speculate. Have you any
20 recollection as to why the dates November '89 to June 11:32
21 '90 were chosen; was that your choice or was that
22 something you were asked to do?

23 A. Ehm, I'd say it was something I was asked to do to
24 cover a particular timeframe from November '89 to June
25 '90. 11:32

26 174 Q. Do you know why that period was chosen?

27 A. Well, when you interviewed me last week you, ehm, you
28 produced this chronological order of events.

29 175 Q. Yes.

1 A. And you kind of, were suggesting to me that, ehm --
2 first of all, you said to me, eh, you know, have a look
3 at that document, right?

4 176 Q. Mm-hmm.

5 A. So I was looking at that document. And then you were 11:33
6 talking about the timeframe here.

7 177 Q. Yes.

8 A. And you were kind of suggesting to me, you know, was
9 that a, ehm, possibly a typo or should it have been an
10 earlier date or whatever. 11:33

11 178 Q. Mmm.

12 A. And I think I said, well, it could have been or it was,
13 or whatever, I mean you can look up the exact wording
14 of what I said.

15 179 Q. Yes. 11:33

16 A. But on, you know, I've had a few days to, ehm, look at
17 this closely, and, ehm, obviously, I think it refers to
18 the chronological order of the handwritten notes, which
19 I know nothing about, by the way.

20 180 Q. That's fine. But just to recap; you were appointed 11:33
21 company commander in June of '87, isn't that right?

22 A. Correct.

23 181 Q. And 2 Lt. B arrived in August 1989?

24 A. Yes.

25 182 Q. But the period that you're commenting on starts in 11:34
26 November '89?

27 A. Yes.

28 183 Q. And it ends in June 1990?

29 A. Yes.

1 184 Q. We know that 2nd Lt. B left Devoy in June '91 rather
2 than '90, isn't that correct?
3 A. That's correct, I think, yeah.
4 185 Q. So the period November '89 to June 1990, that's more or
5 less the exact period of the chronological list of 11:34
6 complaints which is set out in the handwritten document
7 that I showed you?
8 A. That's right, yes. So that was my point.
9 186 Q. So that's what you were being asked to comment on?
10 A. Well, all I can say -- 11:34
11 SOLE MEMBER: Maybe you would pose that as a question,
12 you would pose that as a question, please,
13 Mr. McGovern. Is that what you were asked?
14 187 Q. MR. McGOVERN: You wrote a document on 15th May 1991?
15 A. Mm-hmm. 11:35
16 188 Q. You're covering a period November '89 to June '90,
17 isn't that correct?
18 A. Correct.
19 189 Q. Yeah. And that is the start -- the start date is the
20 same date as the start of the eight allegations and the 11:35
21 end date, June 1990, is a month after the last of those
22 eight allegations, isn't that what you're now aware of,
23 Mr. Enright?
24 A. Yes.
25 190 Q. Right. 11:35
26 A. But I was only aware of that, eh, when I had to -- or
27 when I kind of studied the chronological paperwork
28 afterwards.
29 191 Q. Indeed.

1 A. I wasn't aware of it when, eh, Mr. McGovern was
2 questioning me last week.

3 192 Q. All right. So, would it be fair to say that this
4 document was your response to those eight allegations?

5 A. Ehm... 11:35

6 SOLE MEMBER: Mr. McCann, I would like you to let the
7 witness answer that question, please.

8 THE WITNESS: Can you repeat that question?

9 193 Q. MR. MCGOVERN: Yeah. Would it be fair and reasonable
10 to suggest to you, Mr. Enright, that this document is 11:36
11 your response to the eight allegations that were set
12 out in the chronological sequence of abuse alleged
13 against 2nd Lt. B?

14 A. Ehm, let me put it this way; I think I was asked to,
15 ehm, cover the period, November '89 to June '90, by 11:36
16 somebody and that's what I did.

17 194 Q. All right.

18 A. Because I've absolutely no recollection of the, eh,
19 handwritten chronological order.

20 195 Q. Right. Can I ask you, Mr. Enright, as the heading in 11:36
21 the document suggests, deal with allegations against
22 2nd Lt. B. Why is it there's no mention of those
23 allegations in your statement?

24 A. Because I wasn't aware of any allegations.

25 196 Q. You weren't aware of any allegations. So you were 11:37
26 simply asked to comment on a period of time without
27 being aware of the allegations; is that what you're
28 saying?

29 A. Yes.

1 197 Q. Right. You mention Mr. Traynor and you said that:
2 "I would treat any allegations made by this apprentice
3 with deep suspicion."
4
5 If you're unaware of the allegations, why were you 11:37
6 referring to allegations made by Mr. Traynor?
7 A. Sorry, could you repeat that again?
8 198 Q. Would you look at paragraph 3.
9 A. 3, right, okay.
10 199 Q. Do you see that: 11:37
11
12 "With regard to Aptce. Traynor's allegations, I would
13 first have to state that I would treat any allegations
14 made by this apprentice with deep suspicion."
15 11:37
16 A. Yes.
17 200 Q. If you're saying to the Tribunal, Mr. Enright, and
18 correct me if I'm wrong, my understanding is you say
19 you were unaware of any allegations, you were simply
20 asked to comment on a period of time. If that was the 11:38
21 case, why do you then go on to talk about allegations
22 made by Mr. Traynor?
23 A. Well, obviously, you know, certain allegations were,
24 I'm not quite sure were they made to me but I wasn't
25 aware of any allegations. But maybe somebody said to 11:38
26 me, eh, "Aptce. Traynor has made allegations", but I
27 wasn't aware of the allegations.
28 201 Q. You weren't aware of them. But you'd treat them with
29 suspicion, whatever they were?

1 A. Is that a question?

2 202 Q. It is, yes. That's what you say. You said you'd treat
3 any allegations --

4 A. Yes.

5 203 Q. -- with deep suspicion? 11:38

6 A. Yes.

7 204 Q. Did you make another statement, Mr. Enright? Do you
8 remember making a second one?

9 A. A second statement?

10 205 Q. Yes. 11:39

11 A. About?

12 206 Q. About Mr. Traynor and 2nd Lt. B?

13 A. Well, I think there was -- was this in relation to a
14 Civil Bill?

15 207 Q. Yeah, that's the one. Do you remember that? Perhaps 11:39
16 Ms. Heavey could draw that up. It's 2485. Is that the
17 document to which you just referred a moment ago?

18 A. It is, yes.

19 208 Q. You mentioned yourself before we brought it up that it
20 involved a Civil Bill. What's your understanding of a 11:39
21 civil bill, Mr. Enright?

22 A. My understanding is that he was taking a civil action
23 against the Minister in relation to something or other.

24 209 Q. All right. And we know, it's not immediately pertinent
25 to this witness, Judge, but we do know on 9th December 11:40
26 1991, Mr. Traynor issued Circuit Court proceedings in
27 Naas Circuit Court and the Civil Bill that Mr. Traynor
28 gave us is at page 2445. That's not immediately
29 relevant, apart from the date of 9th December. So, on

1 9th December 1991, Mr. Traynor commences proceedings in
2 the Circuit Court by Civil Bill and the document is
3 headed:

4
5 "Civil Bill: D. Traynor."

11:40

6
7 And are you aware that this was a report prepared to be
8 sent to the Chief State Solicitor's Office in relation
9 to that litigation?

10 A. Yes, I suppose I was, yes.

11:40

11 210 Q. All right. And, again, at the bottom, is that signed
12 by you, Mr. Enright?

13 A. Eh, yes, I presume it is.

14 211 Q. Again, what was your knowledge, at this stage, in
15 October '92, of allegations against the 2nd lieutenant?

11:40

16 A. Ehm, in October 1992, I was actually, ehm, not in the
17 Army Apprentice School anymore, I was in the 3rd
18 Battalion in The Curragh.

19
20 Like, my overall understanding of the allegations is
21 that I wasn't aware of the allegations.

11:41

22 212 Q. Can I just draw your attention, if I may, Mr. Enright,
23 to a passage in the middle of that page?

24 A. Yeah.

25 213 Q. Yeah. It starts:

11:41

26
27 "From having discussions with his Platoon NCOs, company
28 sergeant, platoon commander and OC, it was quite clear
29 that my opinion of Aptce. Traynor was shared by all of

1 his direct superiors."
2
3 So, isn't it correct that you were having discussions
4 with people in relation to these allegations?
5 A. No, I think I was having discussions in relation to 11:42
6 the, ehm, conduct of Aptce. Traynor.
7 214 Q. Yeah.
8 A. I wasn't discussing any allegations.
9 215 Q. But you were having discussions?
10 A. I was having discussions with his Platoon NCOs, Company 11:42
11 Sergeant, Platoon Commander. It was quite clear that
12 in my opinion Traynor was, this was shared by all his
13 superiors. This was about Aptce. Traynor's, you know,
14 general conduct in the Army Apprentice School.
15 216 Q. Indeed. But the question I'm putting to you is that 11:42
16 you were having discussions with all of these people,
17 the platoon NCOs, the Company Sergeant, the Platoon
18 Commander and the Officer Commanding. You were having
19 discussions with them, on a continuing basis; wasn't
20 that so? 11:42
21 A. Yes.
22 217 Q. All right. You told us earlier that you had been
23 dealing with 2nd Lt. B on a day-to-day basis while you
24 were in Devoy?
25 A. That's correct. 11:43
26 218 Q. Can I ask you; what did you think this Civil Bill that
27 was issued was all about?
28 A. I don't know. I mean, I was, ehm, away from Naas at
29 the time. I reckon -- I think maybe it was about him,

1 eh, leaving Naas and the way he left Naas from the
2 point of view of possibly you could nearly say, you
3 know, that he was forced or he felt he was forced to
4 effect his discharge by purchase. You know, it could
5 have been something around that particular, eh, topic. 11:43

6 219 Q. So, if Mr. Traynor had saw fit to bring proceedings
7 against the Defence Forces, wasn't it obvious that he
8 was making allegations?

9 A. Well, again, conjecture or speculation, but I knew that
10 Aptce. Traynor, you know, left the Army Apprentice 11:44
11 School, ehm, by discharge.

12 220 Q. Mmm.

13 A. Ehm, so I wasn't exactly sure of, eh, the action he was
14 taking in relation to the Civil Bill.

15 221 Q. All right. 11:44

16 A. I didn't know.

17 222 Q. As a result of the previous document we looked at of
18 15th May, which is headed "Allegations Against 2nd
19 Lieutenant."
20 11:44

21 Weren't you aware since 15th May that allegations were
22 being made depend 2nd Lt. B, specifically by
23 Mr. Traynor?

24 A. Yes, you know there were allegations made but I wasn't
25 quite -- I don't know, I didn't give it great thought, 11:44
26 the Civil Bill. I was just asked to give a statement.

27 223 Q. Okay. So, the statement you were given, that's set out
28 here at page 2485. It mentions Mr. Traynor. Can you
29 help me, is there any mention in there of 2nd Lt. B?

1 A. This is the letter I'm looking at now, is it?
2 224 Q. Dated 16th October?
3 A. 16th October, no.
4 225 Q. Can you find any reference to 2nd Lt. B in there. Draw
5 my attention to it, please, in case I have missed it? 11:45
6 A. I don't think so. Ehm...
7 226 Q. Can you help us, Mr. Enright; you were aware that
8 allegations were being made against 2nd lieutenant.
9 You had written a document in May of '91, specifically
10 in relation to those, now you're being asked to give a 11:45
11 further document in relation to the litigation. And
12 yet you don't make any mention of the 2nd lieutenant?
13 A. No, I don't. I make -- obviously, this is a civil
14 action taken by Aptce. Traynor, so obviously I
15 mentioned Traynor in a number of areas there. And I 11:46
16 state, I said:
17
18 "I wish to state in the strongest terms that I always
19 treated Aptce. Traynor in the fairest manner on at
20 least on one occasion against my better judgement I 11:46
21 gave him the benefit of the doubt over a matter of
22 discipline. This can be corroborated by entry on
23 01/02/90 by platoon commander in Traynor's personal
24 record."
25 11:46
26 227 Q. All right. I accept that and that's commendable of you
27 to mention that, both in the statement and here today.
28 But if you're being asked to comment on the litigation
29 and allegations -- sorry, if you're asked to comment on

1 the litigation, it seems strange to me that you
2 wouldn't, at all, refer to the 2nd lieutenant and the
3 allegations Mr. Traynor was making against him.

4 A. Eh I'm not quite sure, ehm, you know, I was asked to
5 respond to the Civil Bill, ehm. All I can say is what 11:47
6 is written down there, you know. I have no other
7 knowledge of it. Obviously, ehm, I'm well aware now of
8 the allegations that were made against 2nd Lt. B and I
9 completely abhor those acts and I'd like that to be
10 kind of -- I'd like that to be formally said here by 11:47
11 myself.

12 MR. McGOVERN: Thank you, Mr. Enright. You might
13 answer my Friends.

14 SOLE MEMBER: Thank you, Mr. McGovern. Mr. McCann.

15
16 MR. WILLIAM ENRIGHT WAS CROSS-EXAMINED BY MR. McCANN AS
17 FOLLOWS:
18

19 228 Q. MR. McCANN: Mr. Enright, I think you had a concern
20 about the transcript on... let me get this right now, 11:48
21 maybe Ms. Heavey might bring up Day 20 and page 54
22 maybe that's -- Q200. This is the evidence of
23 Cmdt. Coffey. And I think your concern, Mr. Enright,
24 is just the way the questions are asked, I'm not making
25 any complaint about the questions being asked but the 11:48
26 way they came up. It's possible that somebody who
27 wasn't as aware as they should be, might confuse you
28 for Cpt. F. You might just explain to the Judge what
29 your concern there is, looking at Q200. Do you see it?

1 A. Oh, yeah.

2 SOLE MEMBER: Perhaps you would read the question,
3 please, into the record and then the answer so we all
4 know what you're talking about.

5 229 Q. MR. McCANN: Absolutely. So this is, again, this is 11:49
6 Day 20, it's Mr. Coffey being examined by Mr. O'Hanlon
7 and the questions just go as follows:
8
9 "Q. That captain that had been the Company Commander,
10 he remained in the Army Apprentice School as your 11:49
11 Second-in-Command?"
12
13 And that would be you, is that right?

14 A. Correct.

15 230 Q. Yeah. And then: 11:49
16
17 "A. He was my Second-in-Command, that is correct."
18
19 Mr. Coffey is referring to you there, isn't that
20 correct? 11:49
21 A. Correct.

22 231 Q. And then Mr. O'Hanlon, and to be clear I'm not making
23 any complaint:
24
25 "At interview Cpt. F described the Army Apprentice 11:49
26 School as..."
27
28 And you want to make it clear to the Sole Member that
29 Mr. O'Hanlon has moved on now and he's talking about a

1 different person and a different captain, isn't that
2 right?

3 A. Correct, yes.

4 SOLE MEMBER: I think Mr. O'Hanlon referred to Cpt. F.
5 MR. McCANN: He did. It's just the way it is captain 11:50
6 and then Mr. O'Hanlon comes on to Cpt. F, again I am
7 making no complaint about --

8 SOLE MEMBER: I thought it was commandant. I thought
9 at line 10 he is referring to Company Commander,
10 commandant, yes. So it's initially -- 11:50

11 MR. McCANN: That captain who had been the Company
12 Commander, so that's rank and position.

13 SOLE MEMBER: Coffey, yes.

14 232 Q. MR. McCANN: Exactly. But just to be clear, this
15 Cpt. Enright is the Captain at Q200 and is not the 11:50
16 Captain at Q201, isn't that correct?

17 A. Correct, yes.

18 233 Q. Just in terms, you've gone through at some -- just,
19 were you --

20 SOLE MEMBER: I am sorry, can I take you back to the 11:50
21 clarification because it's not clear to me.

22 MR. McCANN: All right.

23 SOLE MEMBER: why would -- if you said that the -- Q200
24 the Captain is Cpt. Enright.

25 MR. McCANN: Yes, Q200, that captain, that had been the 11:51
26 company commander, he remained in the Army Apprentice
27 School as your Second-in-Command.

28 SOLE MEMBER: That's Cpt. Enright. Yes.

29 MR. McCANN: That's Cpt. Enright.

1 SOLE MEMBER: Yes.

2 MR. McCANN: And then --

3 SOLE MEMBER: He moves on to Cpt. F, yes.

4 MR. McCANN: But just Cpt. Enright was concerned that
5 if you read "Captain, Captain, Captain" and then it 11:51
6 says "Cpt. F", you might still think you were thinking
7 about the same captain and you're not.

8 SOLE MEMBER: We're not.

9 234 Q. MR. McCANN: All right. Mr. Enright, Mr. McGovern
10 asked you about the picking of the time in, I think it 11:51
11 was November 1989 into May 1990, if I have got that
12 right after all the complaints I made, I better get it
13 right, from November 1989 into -- sorry, just bear with
14 me for one second. Yes, if we look at page 2726. Yes,
15 at the third last sentence in paragraph 2 it says: 11:52
16
17 "During the period November 1989 to June 1990 2nd
18 lieutenant."
19
20 who we are calling Lt. B: 11:52
21
22 "And myself worked closely together."
23
24 And you're being asked about that time period and the
25 selection of that time period, isn't that right? 11:52
26 A. Yes, that's correct.

27 235 Q. And you referred to a document you had been shown,
28 which, I think, the evidence has that it was a document
29 prepared by Lt. Col. Hayes and it's at page 2865 and

1 2864 and 2865. And you hadn't seen -- am I right in
2 thinking you only saw that document, for the first
3 time, in preparation for your evidence before the
4 Tribunal, is that right?

5 A. That's correct. I mean, I've only been, ehm, aware of 11:53
6 all this for about a week.

7 236 Q. Yes.

8 A. You know, so, ehm... yeah, that's right.

9 237 Q. And do you have any comment to make or can you assist
10 the Tribunal, when it's suggested that your selection 11:53
11 of the time period depends on a document that, in your
12 own evidence, that you have never seen?

13 MR. McGOVERN: Judge, I did not suggest the witness had
14 chose that time scale.

15 SOLE MEMBER: Could you speak through the microphone. 11:53

16 MR. MCGOVERN: Sorry, Judge, I did not put it to Mr.
17 Enright that he chose that time scale, I asked, simply
18 drew his attention to the fact that that is what he was
19 commenting on.

20 SOLE MEMBER: Yes. 11:53

21 238 Q. MR. McCANN: And, then --

22 SOLE MEMBER: Can we just be clear, Mr. McCann, the
23 document we're talking about is the handwritten
24 chronology --

25 MR. McCANN: Yes. 11:53

26 SOLE MEMBER: -- by OC Hayes --

27 MR. McCANN: Exactly.

28 SOLE MEMBER: -- where there's a list of allegations --

29 MR. McCANN: Yes.

1 SOLE MEMBER: -- made. Four of which are in respect of
2 Mr. Traynor and other allegations are in relation --
3 MR. McCANN: Yes.
4 SOLE MEMBER: -- to Aptce. Lenaghan and so forth. So
5 you are saying, is it your evidence, that you never saw 11:54
6 that document before a week ago, is that right?
7 THE WITNESS: Correct.
8 SOLE MEMBER: Right.
9 239 Q. MR. McCANN: And, therefore, do you have any comment on
10 whether the dates could have been selected by you based 11:54
11 on your then knowledge of this document, going back to
12 1990/1991?
13 A. Sorry, could you repeat that question again?
14 240 Q. If your evidence to the Tribunal is that you didn't see
15 this document until a week ago? 11:54
16 A. Yes.
17 241 Q. Could it have been in your mind when you wrote your
18 report 35 years ago?
19 A. Possibly.
20 242 Q. Right. Okay. 11:54
21 A. Yeah, possibly.
22 243 Q. Well, I think -- well...
23 SOLE MEMBER: It may be --
24 MR. McCANN: It's a logical possibility.
25 SOLE MEMBER: Well earlier on I understood the witness 11:54
26 to say that he had no knowledge of the allegations and
27 then he corrected, he can't remember.
28 MR. McCANN: Yes.
29 SOLE MEMBER: Is it the case that you may have seen

1 this document, this chronology of allegations and that
2 you're responding to it, or is it the case that you're
3 sure you never saw them and you don't know why those
4 dates are picked?

5 THE WITNESS: well, insofar as I can be truthful. 11:55

6 SOLE MEMBER: Yes.

7 THE WITNESS: I never saw that document. You know,
8 that would be my first explanation.

9 SOLE MEMBER: And then can you help us understand why
10 you think you were commenting on the specific period 11:55
11 covered by that document?

12 THE WITNESS: well, when I looked at the chronology,
13 when I had, you know, time to look at documents, ehm, I
14 discovered that it was from, you know, November '89 to
15 whatever it was, June, '90. 11:55

16 SOLE MEMBER: Yes.

17 THE WITNESS: And then I said to myself, 'Oh, you know,
18 maybe I was asked to cover that particular time.'

19 SOLE MEMBER: That particular time?

20 THE WITNESS: Yes. 11:55

21 SOLE MEMBER: why? I do need to find out, this is a
22 fact-finding Inquiry, Mr. McCann.

23 MR. McCANN: Absolutely, Sole Member.

24 SOLE MEMBER: Please help me understand now why that
25 specific period, which covers the period listed in the 11:56
26 allegations, why now you tell the Tribunal you think
27 you were covering that period?

28 THE WITNESS: well, the only reason I'm doing that is,
29 is that I can, you know, I looked at the chronology and

1 then I looked at, you know, the dates that I was
2 covering.

3 SOLE MEMBER: Yes.

4 THE WITNESS: And then I was just putting, you know,
5 one and one, you know, makes two. But I have 11:56
6 absolutely no, ehm, knowledge of that, you know.

7 SOLE MEMBER: No knowledge or no recollection?

8 THE WITNESS: No recollection, sorry, no recollection.

9 244 Q. MR. McCANN: And that's to be clear, no recollection of
10 the handwritten document? 11:56

11 A. Absolutely, no recollection of the handwritten
12 document.

13 245 Q. And your evidence to the Sole Member is, is it surmise
14 or inference or interpretation that the dates could
15 have been selected based on that document? 11:56

16 A. Yes, you know.

17 246 Q. Yes. And, again, is it your recollection that you
18 picked the dates or did somebody else pick the dates or
19 do you not recall one way or the other?

20 A. Well, I certainly didn't pick the dates. 11:57

21 MR. McCANN: All right.

22 SOLE MEMBER: You didn't pick them?

23 THE WITNESS: Yeah.

24 247 Q. MR. McCANN: And then just to understand the document
25 which came into existence following the Civil Bill. 11:57
26 Were you sent the Civil Bill or do you remember seeing
27 the Civil Bill for Mr. Traynor at the time?

28 A. No, I don't. As I've said, I had left the Army
29 Apprentice School at that stage. Ehm, I was in The

1 Curragh. So I have no recollection of how that, eh, is
2 generated.

3 248 Q. And do you have any recollection of what documents were
4 before you when you -- what documents were on your desk
5 when you wrote this document, this is the document at 11:57
6 2485. Ms. Heavey might bring it up to assist you. So,
7 if we just look at paragraph 1:
8
9 "Ref letter from Ms..."
10 11:58

11 Again, we don't know who that is. But do you think, do
12 you have any recollection of what was included in the
13 letter, if anything?

14 A. No. I can't remember. I have no idea.

15 249 Q. So, to understand -- does it follow that to understand 11:58
16 what this -- what the context for this response, you'd
17 in fact have to see the letter. And maybe that is in
18 the Tribunal papers, I just can't recall. But to see
19 what you're replying to, you'd have to see the letter,
20 wouldn't you? 11:58

21 A. Yeah, I presume so. Yes, definitely.

22 MR. McCANN: Thanks very much, Cpt. Enright.
23

24 MR. WILLIAM ENRIGHT WAS CROSS-EXAMINED BY MR. McGARRY
25 AS FOLLOWS: 11:58
26

27 250 Q. MR. McGARRY: Just one matter very briefly. Mr.
28 Enright, Paul McGarry is my name and I am one of the
29 counsel representing 2 Lt. B and I just have one

1 matter. If we can leave that document on the screen.
2 Mr. McGovern, I think, said to you or suggested to you
3 that there was no reference, at all, to 2 Lt. B in that
4 document. And I'm just looking at it and in the middle
5 of paragraph 4 you say: 11:59
6
7 "From having discussions with his platoon NCOs, Company
8 Sergeant, Platoon Commander and OC."
9
10 Is "platoon commander" there not a reference to 2 11:59
11 Lt. B? Do you see in the middle of the statement?
12 A. I see it, yes.
13 251 Q. "From having discussions with his..."
14
15 It looks like: 11:59
16
17 "Platoon NCOs, Company Sergeant" --
18
19 A. "Platoon NCOs, Company Sergeant, Platoon Commander and
20 OC." 11:59
21 252 Q. "It was quite clear that my opinion of Aptce. Traynor
22 was shared by all his direct superiors."
23
24 Is that not a reference to discussions that you had had
25 with 2 Lt. B? 11:59
26 A. Yes. I mean, I'd discussions, as I said, with his
27 Platoon NCOs, Company Sergeant, Platoon Commander and
28 OC.
29 253 Q. And you state further down that that's corroborated by

1 the entry, again, by the Platoon Commander in his
2 personal record. And, again, I think that is also
3 reference, isn't it, to 2 Lt. B?
4 A. Yeah.
5 254 Q. Isn't that right? 12:00
6 A. Is that -- is that entry available to the Tribunal?
7 MR. McGARRY: It is.
8 SOLE MEMBER: Which entry do you refer to, Mr. Enright?
9 THE WITNESS: When I say:
10 12:00
11 "I gave him the benefit of the doubt over a matter of
12 discipline. This can be corroborated by entry of
13 1/2/90 by Platoon Commander in Aptce. Traynor's
14 personal record."
15 12:00
16 I'm just wondering is that available?
17 255 Q. MR. McGARRY: It is in the papers before the Tribunal.
18 But that is a reference contrary to what Mr. McGovern
19 suggested to you, that is a reference also to 2 Lt. B,
20 isn't it? 12:00
21 A. Yes, yes.
22 256 Q. When you put in the word "Platoon Commander"?
23 A. Yes, yes.
24 257 Q. Thank you.
25 A. That's correct. 12:00
26 SOLE MEMBER: Thank you. Mr. Brady.
27
28
29

1 MR. WILLIAM ENRIGHT WAS CROSS-EXAMINED BY MR. BRADY AS
2 FOLLOWS:

3
4 258 Q. MR. BRADY: Good morning, Mr. Enright. My name is Alan
5 Brady, I'm a barrister representing a number of former 12:01
6 members of the 34th Apprentice Class. A couple of
7 questions you might be able to assist the Tribunal
8 with. Could I bring up page 2726 again. Just one
9 thing I wanted to clarify from your letter.

10
11 You say on paragraph 2:

12
13 "2 Lt. R1."

14
15 That's 2 Lt. B:

16
17 "Was posted to the [blank] company in August 1989.
18 From the beginning I found 2 Lt. B to be the most
19 enthusiastic and dedicated officer who gave willingly
20 of his spare time to all company activities. From 12:01
21 November '89, 2 Lt. B was the only platoon commander in
22 the company as the other two platoon commanders were
23 attached to the university of [blank] attending a third
24 level course."

25
26 Can you just assist the Tribunal; from November '89
27 until what period were the other two platoon commanders
28 away, can you remember?

29 A. Eh, I can't remember off the top of my head, to be

1 honest.

2 259 Q. So, 2 Lt. B was, he was, essentially, covering the
3 three platoons, was he?

4 A. He was, yes. Yes.

5 260 Q. And would there have been any other officers, I suppose 12:02
6 you're the Company Commander, I just want to get this
7 straight, you're the Company Commander and he's the
8 Platoon Commander over the three platoons; was there
9 any other officers assisting you or him?

10 A. No, I... no. No, I remember that, yes. The other two 12:02
11 officers were in university.

12 261 Q. And, I suppose, as company commander it's fair to say
13 that your role is multifaceted, you're obviously the
14 day-to-day running of the company but, I suppose, one
15 of those roles is to make sure that the apprentices are 12:03
16 being treated in a correct manner; would you agree?

17 A. Yes.

18 262 Q. And, again, as company commander, you're in the direct
19 chain of command, whereas matters going up and down
20 maybe any allegations or any disciplinary matters would 12:03
21 have to come through you as CO. So if there was
22 matters being brought up, say, for example, an NCO had
23 not shown up for duty on a certain day, that what be
24 brought up the chain of command, it might go through
25 the Platoon Sergeant to the Platoon Officer and then to 12:03
26 you, would that be correct?

27 A. Yeah, that would be correct.

28 263 Q. And the other way around; if there was, say that
29 complaint had went on further, you decided, well, this

1 is a matter whereby this has to go to the CO for
2 further disciplinary matters, you'd send it up the
3 chain, would you?

4 A. Yes. Yes, I would.

5 264 Q. And then conversely, if the CO had decided that this 12:04
6 NCO had to be paraded, that it would filter back down
7 through you?

8 A. Yes, there's a chain of command.

9 265 Q. Can I bring you to the chronology of complaints. That
10 written document that's at 2864. If we could just put 12:04
11 that up on the screen in front of you again, please.
12 You'll see it's a two-page document and there's entries
13 it and this is a document that was prepared by
14 Lt. Col. Hayes and it's got from November '89 to May or
15 September/October 1990 on the second page. And these 12:05
16 are all allegations or complaints against 2 Lt. B.
17 This was all a period that you were company commander,
18 isn't that correct?

19 A. Correct.

20 266 Q. And if you can go to entry no. 9, please. And you'll 12:05
21 see that there was, it says:
22
23 "September/October 1990."
24
25 And it says: 12:05
26
27 "During appeal to GO..."
28
29 I'm not sure if there's something missing there:

1 "...by apprentices..."
2
3 And then it's blanked out:
4
5 "...against their proposed discharge [blank] apprentice 12:05
6 made allegations re nos 1 and 8."
7
8 Sorry that could be 1 to 8 or 1 and 8:
9
10 "Also produced a photo of No. 1 apprentices [blank] 12:06
11 supported him and LT Col. was also present."
12
13 On the entry beside it where it's entitled:
14
15 "Comment..." 12:06
16
17 And it says:
18
19 "2LT4..."
20 12:06
21 which is 2 Lt. B:
22
23 "...paraded by the GOC subsequently and spoken to as to
24 his conduct."
25 12:06
26 Your evidence is that you are not aware of this
27 happening?
28 A. That's my evidence, yes. I have no recollection of
29 that happening at all.

1 267 Q. would you have not expected to be made aware of this as
2 the Company Commander?

3 A. I would have.

4 268 Q. I mean, how would 2 Lt. B have been made aware that he
5 was to go before the GOC? Surely that would have 12:06
6 filtered through you?

7 A. Absolutely. I mean, in the last week I, you know, I
8 had access to a number of documents and I was, eh,
9 very, very surprised when I came across a document
10 from -- it was an Army Form 451 which is a confidential 12:07
11 report for an officer and it was for 2nd Lt. B. And,
12 ehm, it confirmed that he had been paraded by the GOC
13 and that was -- I can, I can say that that was the
14 first time, I think, I knew that.

15 269 Q. And you've seen some of the allegations in this 12:07
16 document about cigarette butts being placed in the
17 mouth. I mean they're quite shocking allegations,
18 aren't they?

19 A. Absolutely shocking.

20 270 Q. And as company commander with -- with the 12:07
21 responsibility of all these apprentices, I have two
22 questions for you; would you have expected to have been
23 interviewed or a statement taken or asked to comment or
24 assist in the enquiry into these complaints by the GOC?

25 A. Well, as company commander I would have, if I was aware 12:08
26 of them, yes.

27 271 Q. But you weren't?

28 A. No. I can honestly say that I wasn't aware of these
29 allegations.

1 272 Q. And then, secondly -- sorry. Sorry, go on ahead.
2 A. Sorry -- ehm, as I said, when I read, eh, some of the
3 transcripts, especially from apprentices, I think the
4 majority of them were saying that, you know, the reason
5 that they couldn't, ehm, inform on the chain of command 12:08
6 or they couldn't inform their superiors, is that they
7 feared the repercussions. They felt that it might
8 affect their career. They might have been discharged
9 from the Apprentice School. So, ehm, I mean that was
10 shocking, I have to say that was shocking. Eh... 12:09
11 273 Q. I mean, you'd probably agree that their concerns were
12 borne out by the fact that even the Company Commander
13 wasn't made aware of these allegations?
14 A. Yes.
15 274 Q. And, I mean, you'd be equally surprised that... sorry, 12:09
16 I cut across you. Did you have something else you
17 wanted to say?
18 A. No, what I was going to say is that 2nd Lt. B, eh, was
19 paraded in front of the GOC and, ehm, I think these
20 allegations were, eh, were brought up. And as a result 12:09
21 of that, then, ehm, you know, he was retained, eh,
22 within the Army Apprentice School. But I can honestly
23 say that I wasn't aware of these allegations and I have
24 no recollection of, eh, 2nd Lt. B being paraded by the
25 GOC. 12:10
26 275 Q. As company commander, is it your view that you should
27 have been made aware of the parading before the GOC and
28 the outcome of that, given your responsibility for the
29 company under you?

1 A. Yes.
2 MR. BRADY: Thank you.
3 SOLE MEMBER: Thank you, Mr. Brady. Ms. Mylotte.
4
5 MR. WILLIAM ENRIGHT WAS CROSS-EXAMINED BY MS. MYLOTTE 12:10
6 AS FOLLOWS:
7
8 276 Q. MS. MYLOTTE: Good afternoon, Mr. Enright, my name is
9 Ruth Mylotte, I am counsel for the Minister for
10 Defence. I just have really one area to question you 12:10
11 about, if you don't mind.
12
13 we had opened before the Tribunal this morning, I
14 suppose two letters or statements you have given. You
15 gave one on 15th May 1991 and, thereafter, I think, 12:11
16 another statement in the context of litigation on 16th
17 October 1992.
18
19 Now, the GOC wall gave evidence before the Tribunal on
20 Friday last and he indicated, albeit separately in 12:11
21 respect of an application for discharge by
22 Aptce. Traynor, that it was his view that a letter that
23 was written by OC Hayes to the GOC wall, at the time,
24 and I'm going to open that very briefly, in the letter,
25 2719 of the booklets. That's a letter of 16th May 1991 12:11
26 and, as I said, that letter was written by OC Hayes in
27 the context of an application for discharge by
28 Aptce. Traynor.
29

1 But, GOC wall gave evidence on Friday that it was his
2 view that that letter, in effect, bent over backwards
3 to paint Aptce. Traynor in a bad light and to absolve 2
4 Lt. B. So, to be fair, in order so that you can be
5 made aware of that letter, as I mentioned, it is a 12:12
6 letter of 16th May 1991, titled "Application for
7 Discharge by Purchase Aptce. Damien Traynor."

8
9 And you will see it is to the General Officer
10 Commanding, Curragh Command. I would like to draw your 12:12
11 attention specifically to the date, 16th May 1991. If
12 I could bring you paragraph 10 and paragraph 11 of that
13 letter. I will read them to you, Mr. Enright. It
14 says:

15 12:12
16 "The allegations made by Aptce. Traynor were
17 investigated as fully as possible. Statements from
18 [blank] who might have been witnesses were taken as
19 were statements from 2 Lt. B and Sergeant [blank]."

20 12:12
21 And this paragraph, paragraph 11:

22
23 "Letters were also submitted by the present company
24 commander."

25 12:12
26 And again that's blanked out.

27
28 "And the company commander at the time of the alleged
29 incidents, now 2IC Coy Captain."

1
2 That would be yourself, Mr. Enright, wouldn't it?
3
4 A. That is correct, yes.
5 277 Q. And is that the context that you gave the letter of 12:13
6 15th May 1991?
7 A. That would be correct, yes.
8 278 Q. What were you told, we have heard already this morning,
9 that that is a letter titled "Allegations 2nd Lt. B."
10 So what were you told before writing a letter because 12:13
11 it is being referred to here in this letter, in this
12 application for discharge?
13 A. Well, it's 35 years ago, I just can't remember exactly
14 the, eh, what I was told. You know, I can't -- I can't
15 remember exactly. 12:13
16 279 Q. But I have to put it to you that it's likely that you
17 were told about allegations relating to 2nd Lt. B,
18 seeing as your letter is titled "Allegation 2nd
19 Lieutenant"?
20 A. Yes. I mean, you know, the heading is "Allegations." 12:13
21 280 Q. Mm-hmm.
22 A. But the content or what I said in the letter, ehm, I
23 would stand by. I wasn't aware of any allegations
24 against 2nd Lt. B at that stage.
25 281 Q. Can I ask you then, finally, Mr. Enright, was there 12:14
26 attempts by members in the Defence Forces to paint
27 Aptce. Damien Traynor in a bad light and to absolve 2nd
28 Lt. B, to your knowledge?
29 A. No, I wouldn't agree with that. Ehm, I mean, I think

1 Aptce. Traynor did have a difficult time in the Army
2 Apprentice School in Naas. Ehm but no, I would refute
3 that.
4 282 Q. Thank you very much. One minute, please. [Short
5 pause]. 12:14
6
7 Mr. McGuinness draws my attention to page 2774, if
8 Ms. Heavey could open that, please. And to
9 paragraph 10 of that report. If Ms. Heavey wouldn't
10 mind scrolling down to the date, the date is below 12:15
11 that, it is 4th August 1992, sorry, Mr. McGuinness
12 draws my attention to that is the letter, I believe,
13 you were asked to respond to. Paragraph 10, if you
14 could open paragraph 10.
15 SOLE MEMBER: Could we please move the microphone 12:15
16 closer to you, please, Ms. Mylotte.
17 283 Q. MS. MYLOTTE: I can, of course.
18
19 "What precisely was the function of the officer Lt..."
20 12:15
21 And then that is 2 Lt. B.
22
23 "...named in the proceedings in relation to the
24 apprentice class?"
25 12:15
26 I think that might be the letter that you were
27 responding to, in the context of the litigation, is
28 that correct? Does that assist at all?
29 A. Sorry, can you kind of repeat what you're saying there?

1 284 Q. If I bring you to that paragraph 10, if I open that for
2 you:

3

4 "What precisely was the function of the officer
5 (lieutenant.)"

12:16

6

7 And that's 2nd Lt. B:

8

9 "...named in the proceedings in relation to the
10 apprentice class."

12:16

11

12 And then it says:

13

14 "What other officers would have been involved with the
15 class? Have they any observations on the matter? Were 12:16
16 they aware of any problems with the class? Were they
17 aware of the allegations being made by apprentice."

18

19 And that would be, I presume, Mr. Traynor:

20

12:16

21 "Similar enquiries should be made of any senior NCOs
22 with involvement in the school and Aptce -- and his
23 class, in particular, Aptce. C."

24

25 which would be Traynor.

12:16

26

27 And, sorry, I think that is, as Mr. McGuinness draws my
28 attention to, that's the paragraph at page 2485. If we
29 open that next, that you were responding to, I

1 understand. Is that of assistance, Mr. Enright, to
2 you, if you see the date, reference letter from
3 Ms. [Blank] of 4th August 1992?
4 A. The previous document you showed me there.
5 285 Q. Yes. 12:17
6 A. Where had that come from or who was that from, the
7 handwritten?
8 286 Q. If we open that page again.
9 SOLE MEMBER: If we go to the top of the letter,
10 please, maybe, and we will see the context in which the 12:17
11 letter is written.
12 MR. McCANN: 2772.
13 287 Q. MS. MYLOTTE: 2772. I think it says:
14
15 "Please see CSSO of 20/7/1992." 12:17
16
17 It's a response, I think, yeah. OIC, Officer in Charge
18 and then obviously it's a handwritten note. It must
19 be, Mr. Enright, according to the index I have before
20 me, which titles that response to the CSSO's letter of 12:18
21 20/7/1992, dated 4th August 1992.
22
23 Yeah, I think it is an instruction to the officer in
24 charge, in respect of a request from the CSSO for
25 information. And I think your statement that you 12:18
26 furnished was in response to that, Mr. Enright; does
27 that assist your recollection at all?
28 A. It doesn't, to be honest with you.
29 288 Q. You've no recollection of the context around giving

1 your statement in October 1992, 16th October 1992?

2 A. I don't, really, no, no.

3 MS. MYLOTTE: Okay. Thank you very much, Mr. Enright.

4 SOLE MEMBER: Thank you.

5 12:19

6 MR. WILLIAM ENRIGHT WAS QUESTIONED BY THE SOLE MEMBER

7 AS FOLLOWS:

8
9 289 Q. SOLE MEMBER: Ms. Mylotte just recalled what General
10 Officer Commanding Wall, who gave evidence the other 12:19
11 day, he said that the application for the discharge of
12 Aptce. Traynor bent over backwards to paint the
13 apprentice in a bad light and to exonerate 2 Lt. B, 2nd
14 Lt. B. And you just answered there that you didn't
15 agree with that and you said Aptce. Traynor had a 12:19
16 difficult time in the Army Apprentice School. How do
17 you remember, so well, that Aptce. Traynor had a
18 difficult time in the school but you don't remember any
19 of the allegations that were made which were part of
20 his discharge? 12:19

21 A. Well, you know, in the military, ehm, if you are, eh,
22 you're subject to military law and Aptce. Traynor had a
23 number of, ehm, disciplinary issues when he was an
24 apprentice. So, they would have been recorded and, eh,
25 dealt with, ehm, when he was an apprentice. So, I was 12:20
26 obviously aware of those.

27 290 Q. And so, too, as I understand it, if a person is paraded
28 before the General Officer Commanding, so, too, would
29 2nd Lt. B. So I'm asking you; how do you remember the

1 difficulties Aptce. Traynor had but you have difficulty
2 remembering the allegations of another person who was
3 subordinate to you?

4 A. Yes; ehm, well, first of all let me say I totally
5 condemn and I'm appalled at the conduct of 2nd Lt. B. 12:20
6 But I wasn't aware of these allegations.

7 291 Q. But can you help me to explain how you were aware of
8 the conduct of the young Aptce. Traynor but you weren't
9 aware of somebody who was superior in rank to him and
10 subordinate in rank to you, against whom serious 12:21
11 allegations had been made?

12 A. Well, serious allegations were made against, eh, 2nd
13 Lt. B. Now, how those allegations arose, ehm, they
14 certainly didn't come through me.

15 292 Q. But they arose in the context of the conduct, which you 12:21
16 do recall, of Aptce. Traynor, but you remember his
17 conduct but you don't remember --

18 A. Because I was dealing with Aptce. Traynor's conduct as
19 a company commander.

20 293 Q. So you remember dealing with Aptce. Traynor's conduct? 12:22
21 A. Well, from reading the transcripts and from --

22 294 Q. No, I'm asking you, Mr. Enright; do you remember
23 dealing with Aptce. Traynor's conduct? Because earlier
24 you disagreed with what General Officer Commanding Wall
25 said, when he said the application for Mr. Traynor's 12:22
26 discharge seemed to be bending over backwards to
27 paint Mr. Traynor in a bad light and to exonerate 2nd
28 Lt. B. And you came back and said, you didn't agree
29 with that, that Aptce. Traynor had a difficult time in

1 the Army Apprentice School?

2 A. Yes.

3 295 Q. So you remember Aptce. Traynor having a difficult time
4 in the Army Apprentice School and that's your evidence
5 as to why you disagree with the General Officer 12:22
6 Commanding Wall?

7 A. Can I ask you, Sole Member --

8 296 Q. No, I'd like you to answer the question; how is that
9 you remember, so well, the conduct, or you remember the
10 conduct of Aptce. Traynor but you don't remember the 12:23
11 allegations against somebody superior to him in rank,
12 subordinate to you in rank, and in respect of which the
13 allegations arose out of the consequences of
14 Mr. Traynor's conduct? The two were in the very
15 same -- the allegations were in the very same 12:23
16 application for discharge. How do you remember
17 Aptce. Traynor's conduct but you don't remember the
18 allegations --

19 A. Sorry, the application for discharge, was that a
20 document -- 12:23

21 297 Q. It's been opened to you, I think, twice this morning.
22 It's the document which Officer Commanding Hayes
23 forwarded to General Officer Commanding Wall, in The
24 Curragh, after the application for discharge by
25 purchase, or in the context of that being processed. 12:23
26 And General Officer Commanding Wall, as Ms. Mylotte
27 reminded you earlier or told you earlier, he said,
28 looking at that document:
29

1 "It looks like it was bending over backwards to paint
2 Mr. Traynor in a bad light and to exonerate 2nd Lt. B."
3
4 And I'm asking you now; you are the Commanding Officer;
5 how do you remember the conduct of the apprentice and 12:24
6 you don't remember the conduct of his superior, against
7 whom he was making allegations, connected with that
8 conduct?
9 A. As I said, I was dealing with Aptce. Traynor, eh, from
10 a disciplinary point of view, eh, on a number of 12:24
11 occasions. But I knew nothing about the allegations
12 against 2nd Lt. B.
13 298 Q. But would you agree, you would have to be dealing with
14 him, if your superior in rank to him, if they go
15 through the chain of command? 12:24
16 A. Yes, obviously I would be dealing with them. But I
17 wasn't aware of them.
18 299 Q. You weren't aware of them but you were dealing with
19 them?
20 A. I was dealing with? 12:25
21 300 Q. The allegations against 2nd Lt. B, allegations, serious
22 allegations against him, he's subordinate to you, the
23 allegations would have to go up the chain of command
24 and I'm just struggling to understand how you recall
25 the conduct of the apprentice but you don't recall the 12:25
26 alleged conduct of another subordinate to you, who was
27 an officer?
28 A. I wasn't made aware of the allegations against 2nd
29 Lt. B.

1 301 Q. Even though those allegations, if I understood your
2 evidence earlier, would have to go through you, up
3 through the chain of command?
4 A. Yes, they would. But I wasn't -- I wasn't aware of the
5 allegations against 2nd Lt. B. 12:25
6 302 Q. So, let me get this straight, are you saying to the
7 Tribunal that you were superior in rank to 2nd Lt. B,
8 that in the normal course of events, in the military,
9 matters go up the chain of command and down the chain
10 of command; yes? 12:26
11 A. Correct.
12 303 Q. Serious allegations have been made against an officer,
13 subordinate in rank to you, and you would, in the
14 normal course of events, process those, you'd pass them
15 up the chain of command? 12:26
16 A. Correct.
17 304 Q. So, how do you -- how do you remember the conduct of an
18 apprentice who had made allegations against this
19 officer, and you remember that conduct, but you don't
20 remember the allegations against the officer. You 12:26
21 don't remember, as far as I can see from your evidence,
22 any of the allegations that had been made?
23 A. I was only aware of the allegations that were made,
24 ehm, you know, when -- when -- when this, eh, Tribunal,
25 eh, commenced. And -- I wasn't aware of any 12:26
26 allegations -- if I had received allegations in
27 relation to 2nd Lt. B, I would have acted on those
28 allegations because I would have considered those
29 allegations in a very, very serious matter, being a

1 very serious, eh, matter.
2 MR. McCANN: Just Sole Member --
3 SOLE MEMBER: Yes.
4 MR. McCANN: -- to assist everybody, hopefully. You'll
5 recall, Sole Member, the evidence was that the 12:27
6 allegation of cigarette in ears, cigarette --
7 consumption of cigarettes, coerced, putting cigarettes
8 in the mouth and the hair-cutting, those came to the
9 attention of the then GOC, not --
10 SOLE MEMBER: I appreciate that, yes. 12:27
11 MR. McCANN: Not Brig. Gen. Wall --
12 SOLE MEMBER: Yes, yes.
13 MR. McCANN: -- at an interview between Aptce. 70 and
14 72 --
15 SOLE MEMBER: On the Redress of Wrongs, yes. 12:27
16 MR. McCANN: So, as I understand this witness's
17 evidence, is that he wasn't made aware of that
18 interaction and the parading that resulted from that.
19 SOLE MEMBER: And I'm asking how could he not be aware
20 of it, if they had to go through the chain of command? 12:28
21 MR. McCANN: It didn't come down. It didn't go up
22 through him and didn't come down to him is his point.
23 As I understand his evidence and he's critical -- he's
24 critical of his superiors. That's my understanding.
25 305 Q. SOLE MEMBER: Is it your evidence that you were kept 12:28
26 out of the loop that somehow the chain of command
27 wasn't followed in this particular instance of the
28 earlier incidents of cigarettes --
29 A. Exactly.

1 306 Q. -- consumption?
2 A. Exactly, yes, that's my evidence.
3 307 Q. That the chain of command was broken in those
4 circumstances?
5 A. Yes because I wasn't aware. If I had been aware I 12:28
6 would have taken immediate action. I mean, you know,
7 if you take the example of the cigarette, I mean, that
8 is absolute appalling behaviour and I was absolutely
9 appalled when I read it. And I knew nothing about it.
10 308 Q. Well, the meeting that is referenced in the application 12:29
11 for discharge, the meeting that is referenced between
12 you and Aptce. Traynor's parents, you accept that the
13 Second-in-Command in that application is you, the
14 reference to the Second-in-Command is you, it was
15 paragraph 7? 12:29
16 A. Right.
17 309 Q. And you say, and correct me if I'm wrong, you have no
18 recollection of meeting the parents, is that right?
19 A. Correct, yes.
20 310 Q. And you have no recollection of meeting Aptce. Traynor? 12:29
21 A. No, I just can't remember.
22 311 Q. And how often, in your military career, Mr. Enright,
23 would you have encountered a situation, and it may be
24 very often, I don't know, but how often in your
25 military career would you have encountered a situation 12:29
26 where an apprentice's parents would drive a long
27 distance, on a Sunday, seek to remove their son from
28 the Army Apprentice School, be told that couldn't
29 happen, drive back to where they came from, a long

1 distance between Naas and Monaghan, and return the next
2 day with £2,000 in cash to purchase his discharge, in
3 circumstances where they were distressed by what they
4 had seen? How often would that have happened to you in
5 your military career? 12:30

6 A. Ehm, I'm not quite sure. I doubt if -- if it happened.

7 312 Q. If it ever happened?

8 A. If it ever happened.

9 313 Q. So this would be the only time, in your military
10 career, that you would have encountered something like 12:30
11 that?

12 A. I think so, yes. I think that's fair to say.

13 314 Q. And still you don't remember it?

14 A. I can't actually remember it and I'm being honest, I
15 just can't remember the actual circumstances. 12:30

16 SOLE MEMBER: Thank you, Mr. Enright.

17

18 The Tribunal will rise and we'll meet again at
19 2:00 p.m.

20 12:30

21 THE TRIBUNAL ADJOURNED FOR LUNCH AND CONTINUED AS
22 FOLLOWS:

23

24 SOLE MEMBER: Good afternoon.

25 13:48

26 INTRODUCTORY REMARKS BY THE SOLE MEMBER

27

28 SOLE MEMBER: Now, this hearing this afternoon is
29 concerned with a question that has been on my mind and

1 to which I have given some consideration for some time.
2 You will recall that a notice was published last month,
3 on the Tribunal's website, wherein it was set out that
4 the Tribunal had received requests on behalf of a
5 number of persons that it would consider making an
6 order for costs at the end of the first module.

14:03

7
8 Now, we are coming to the end of that module, we
9 anticipate that we should be finished by Wednesday of
10 this week, and in those circumstances, the Tribunal is
11 minded to consider whether it has the power to make an
12 interim order at the end of this module, in
13 circumstances where it is not anticipated that the
14 final report of the Tribunal will be published.

14:03

15
16 Now, six parties, who are legally represented, have
17 filed submissions with the Tribunal and I'm very
18 grateful to the parties who have made submissions. And
19 it's clear that there are two lines or two directions
20 in which those submissions go.

14:03

14:04

21
22 The parties, themselves, will be aware of the position
23 which they themselves urge upon the Tribunal. And
24 today I would like the parties to maybe present a very
25 brief synopsis of the position your client is adopting,
26 but in circumstances where you know that I have read
27 and considered the submissions that have been made.
28 And I would ask that you focus attention or that you,
29 at least, bear in mind two particular matters when you

14:04

1 are making your points to the Tribunal.

2
3 And the first point is the fact that the witnesses
4 heard in this module are not scheduled to appear again
5 before the Tribunal and it's not envisaged that they 14:04
6 will be giving any further evidence to the Tribunal at
7 a later stage.

8
9 And, secondly, the fact that, rather unusually, this
10 Tribunal has been concerned with hearing a body of 14:05
11 evidence in respect of which it has now no power to
12 determine the well-foundedness or otherwise of that
13 evidence.

14
15 That being so, and acknowledging that the Tribunal can 14:05
16 only make orders for costs, once it has made findings
17 and I think the case law is clear that those findings
18 cannot be the substantive findings of the Tribunal, the
19 following questions arise from the written submissions,
20 and I would ask the parties to consider them. 14:05

21
22 In the particular circumstances of this Tribunal, what
23 matters might be encompassed within the phrase "all
24 other relevant matters," as used in Section 6(1) of the
25 Tribunals of (Inquiry) (Evidence) Act 1979 and might be 14:06
26 said to have not yet arisen or be apparent to the
27 Tribunal at this point.

28
29 And, secondly, it is suggested that the Terms of

1 Reference of this -- that because the Terms of
2 Reference of this Tribunal do not explicitly envisage
3 interim reports or interim findings, that the Tribunal
4 is, in fact, precluded from making such interim reports
5 or interim findings.

14:06

6
7 So, with those questions in mind, and conscious of the
8 fact that the case law is clear that the finding that
9 the Tribunal must make, when making an award of costs,
10 cannot be a finding in respect of the substantive
11 matters, but must be a finding as to cooperation of
12 conduct, what is there to rebut the presumption that a
13 party who has cooperated, and who hasn't engaged in
14 conduct which would be misleading, what is there to
15 rebut the presumption that that party is entitled to
16 the recovery of costs? And if that is so, why can't
17 the order be made at this stage of the Tribunal's
18 proceedings, when the module is over and it's not
19 envisaged recalling any of the witnesses who gave
20 evidence?

14:06

14:07

14:07

21
22 I would propose that those who wish to address the
23 Tribunal, on the questions that have been published on
24 the website, and for the avoidance of doubt I'll
25 reiterate what those questions are:

14:07

26
27 "Those to whom grants of legal representation have been
28 made are invited to make submissions to the Tribunal on
29 whether:

1
2 1. Findings as to conduct could permissibly be made by
3 the Tribunal at the end of this phase of public
4 hearings, and in advance of the provision of its final
5 report; and

14:08

6
7 2. If it is permissible, as a matter of law for the
8 Tribunal to make such findings, whether it would be
9 appropriate for the Tribunal to proceed to determine
10 applications for interim orders as to costs in respect
11 of the first module on the basis of such findings."

14:08

12
13 Now, they're the questions I've asked the parties to
14 address. I would propose that those who are in favour
15 or who have answered those two questions, in the
16 affirmative, might go first. And those who have
17 difficulties with the questions, or who answered those
18 questions negatively, that they might be given their
19 turn after we've heard the parties.

14:08

20
21 So, with that in mind, is there any person who would
22 wish to address the Tribunal on those questions?
23 Mr. Gordon.

14:08

24 MR. GORDON: Good afternoon, Chairman.

25 SOLE MEMBER: Could I ask you to move the microphone as
26 close as possible to you. Thank you.

14:08

27 MR. GORDON: I'm going to develop what's in our
28 submissions, just a little bit, and I'm mindful of the
29 questions that you have posed in the last few minutes

1 and I hope I will address them in a way that you find
2 satisfactory.

3 SOLE MEMBER: Thank you.

4
5 SUBMISSION BY MR. GORDON:

14:09

6
7 MR. GORDON: I think it's worth starting with what
8 isn't in Section 6, because two of the parties here
9 this afternoon seem to suggest, in their submissions,
10 that it's not open to the Tribunal to do anything about 14:09
11 the costs of parties such as mine, until the report has
12 been done. That's a very stark submission. It means
13 that for my 123 clients, 23 of whom were giving
14 evidence in this module, they will wait until 2029,
15 probably, before they can actually begin to recover 14:10
16 their costs. That's clearly unsatisfactory. It's
17 clearly not fair. It's clearly a breach of the esteem
18 which my clients have endured throughout this Tribunal
19 in every other way since it began.

20 14:10
21 I said on an earlier occasion, respect is the keyword
22 in this Tribunal. But, of course, respect comes in all
23 kinds of shapes and sizes and bits and pieces. We talk
24 about equality of arms and everything else. But
25 respect also means, that those who are volunteering 14:10
26 themselves to come here, come here with confidence that
27 their legal expenses will be discharged, not some years
28 in the future but now.

1 Coleman Legal is a firm that has employed a number of
2 solicitors, a number of backup staff. We have two
3 senior and three juniors. The number of clients is
4 large. I can't think of any reason why it is that
5 remuneration, for that work, should be postponed for
6 some years.

14:11

7
8 But that's the moral aspect of it. Let's go back to
9 the legal aspect of it.

10
11 And as I said, what's most important about Section 6 is
12 that it does not, in itself, place a prohibition on the
13 power of the Tribunal in relation to costs. If it was
14 the intention of the Oireachtas, that the question of
15 costs could only be addressed when the report was
16 ready, why didn't it say that? It's not in the
17 section.

14:11

14:12

18
19 And, of course, it's not in the section for a very,
20 very good reason. And that is the section is designed
21 to encompass a range of different types of public
22 tribunal, a range of different levels of antagonism or
23 combat, shall we say, between the parties, of different
24 issues. And, so, what the Tribunal should do in any
25 given case is within the scope and the prerogative of
26 the Tribunal.

14:12

14:12

27
28 Section 6, if I just get out Section 6, I'm looking at
29 the Tribunal's own publication in relation to this

1 issue. But if I can just come back to the wording.

2
3 "Where a tribunal or if the Tribunal consists of more
4 than one member, the Chairperson of the Tribunal is of
5 the opinion that having regard to the findings of the
6 Tribunal..." 14:13

7
8 And we understand from Mr. Justice McCarthy, in that
9 well-known case, that "findings" does not mean the
10 final decisions of the Tribunal. 14:13

11
12 "... and all other relevant matters, including the
13 terms of the resolution passed by each house of the
14 Oireachtas relating to the establishment of the
15 Tribunal..." 14:13

16
17 And I stop there. So, an important factor is what's
18 this Tribunal all about? And, of course, if we turn to
19 Statutory Instrument 304/2024, we see that the
20 Oireachtas decided upon the Terms of Reference of this
21 Tribunal, which was embodied in that Statutory
22 Instrument. 14:14

23
24 And we see, if I can move to page 3, one of the primary
25 obligations or objectives: 14:14

26
27 "Establish whether the complaints process in the
28 Defence Forces in relation to complaints of abuse were
29 appropriate and fit for purpose.

1 Establish whether the complaints processes in the
2 Defence Forces in relation to complaints of abuse were
3 followed.

4
5 Consider and report on the response and outcome of
6 complaints of abuse and to identify any systemic
7 failures in the complaints processes.

14:14

8
9 Investigate whether complaints of abuse were actively
10 deterred or whether there was a culture that
11 discouraged the making of complaints of abuse."

14:15

12
13 And it goes on in that fashion.

14
15 Then it further resolved, and you have already
16 mentioned this because it is important, at (i)(d):

14:15

17
18 "In the context of its investigation into the Terms of
19 Reference, may permit evidence of abuse and the
20 consequences of abuse to be led, but the Tribunal is
21 precluded from investigating into or making findings of
22 fact upon any matters that would have established in a
23 court of law would be criminal in nature."

14:15

24
25 So, what do we see here? We see a tribunal that, in
26 effect, cannot function without the cooperation of
27 people like my clients, without their voluntary
28 engagement with the Tribunal.

14:15

1 This is not a tribunal that could work on any coercive
2 basis. The entire premise of the Tribunal is to the
3 contrary. And that's a significant factor among the
4 factors that the Tribunal must bear in mind when
5 looking at what to do under Section 6.

14:16

6
7 There wouldn't be a tribunal if my clients and the
8 others represented here today didn't come forward. And
9 they came forward, confident that the Government had
10 set up a forum which would fairly and impartially look
11 at these important issues. They find themselves, of
12 course, in a situation in which they had to rely on
13 solicitors who undertook this work, without payment, in
14 order to ensure that they were properly represented
15 before the Tribunal and that the Tribunal could
16 properly discharge its mandate.

14:16

14:17

17
18 So you have there, in the relevant matters, a coercive
19 argument that the Tribunal is, of course, entitled to
20 make findings at any time. And must, of necessity, be
21 able to make orders as to costs arising out of those
22 findings, at any time, during its work. Any other
23 interpretation, which is not mandated by the section,
24 places the Tribunal at odds with those it relies on.
25 It means that those who have come forward do not enjoy
26 equal esteem. They do not enjoy equal opportunity.
27 They do not enjoy the fairness - and I say that in the
28 sense of perceived fairness as opposed to actual
29 fairness but perceived fairness, in a matter such as

14:17

1 this, is deeply important.

2
3 And, so, I can think of no reason, at all, why the
4 Tribunal wouldn't embark on the task of dealing with
5 costs at the end of this particular tranche.

14:18

6
7 I should say, also, I'm disappointed to find that the
8 Department of Justice and the Armed Forces have seen
9 fit to object to this course. I query to what extent
10 they actually have any locus standi in this matter at
11 all. They are entities being investigated by the
12 Tribunal. They are protected as to their costs, at
13 every level of the Tribunal, they don't have to wait
14 until 2029 to get paid.

14:18

15
16 Not only that, but whatever their clients say in the
17 witness box, even if you decide that one of them is
18 lying through his teeth, brings no financial
19 consequences to the Department or the Armed Forces.
20 They get paid anyway.

14:19

21
22 So, I believe that the Oireachtas would never have
23 intended that a situation arose in which there was a
24 question mark of the slightest degree over whether or
25 not my clients should be paid - and indeed the others -
26 should have their costs discharged.

14:19

27
28 And, again, you will see in our submission, we refer to
29 two other quite important matters, I believe. First of

1 all, the Court's inherent jurisdiction qua High Court
2 Judge, which is in Section 4 of the Act, which is in no
3 way compromised by Section 6. It sits there as a free
4 statement. It confers upon you, as the Chairman of the
5 Tribunal, all the powers of a High Court. That
6 includes all the powers of a High Court Judge in
7 relation to costs. And why I'm saying that is that, it
8 further illuminates the generosity of Section 6.
9 Because, of course, you look at Section 6 and then you
10 look at the Act as a whole. What's it all about?
11 What's it doing? And the legislature did not cut down
12 on what you could do as a High Court Judge.

14:20

14:20

13
14 Section 6 doesn't in any way purport to trammel or
15 restrict, in any way, your discretion as a High Court
16 Judge. It points you to looking at various matters
17 before you make findings as to fact, within the running
18 of the Tribunal, not at the end of it. And, again, I
19 refer to Section 5 of the Interpretation Act.

14:21

20
21 And Section 5, as you will be aware, is the provision
22 that finally brought into Irish law, the concept of a
23 purposive interpretation of legislation. And if there
24 was any doubt about what Section 6 means, a purposive
25 interpretation would assist the Tribunal in determining
26 that Section 6 was never intended to, in any way,
27 disadvantage people who volunteer to come before a
28 tribunal.

14:21

14:21

1 In relation to those witnesses who have now come before
2 the Tribunal. We have two categories; we have those
3 who came and gave interviews, gave statements, came for
4 interview, etc., volunteered. Many of those will never
5 be called but it was appropriate, and agreed, that they 14:22
6 would have legal representation and we all agreed, I
7 think, that this was something that worked to the
8 advantage of both the Tribunal and those who were
9 coming to give their statements. So they're already
10 finished with the Tribunal. They should have their 14:22
11 costs paid.

12
13 And in relation to this module of this Tribunal, we
14 have another 23 people, I think who have formally given
15 evidence before the Tribunal. The Tribunal, I think, 14:22
16 will be aware that it wasn't easy for many of them to
17 do so. It was extremely emotional for many of them
18 because these things are raw in the memory.

19
20 And so, to say to them now, that "well, we'll pay your 14:23
21 costs probably in a few years' time", is a bit of a
22 slap in the face. It's inappropriate and it's not, I
23 suspect, what those members of the Oireachtas, who
24 adopted this resolution, would have wanted at that
25 time. 14:23

26
27 In relation to the case law. There's reference to
28 Judge Morris and there's reference to Judge Peart in
29 the McBrearty case. Those cases are interesting but

1 they're not in any way of assistance to the Tribunal.
2 First of all, the Tribunal isn't bound by anything that
3 was said by either of them.

4
5 Secondly, they were of their time.

14:24

6
7 Thirdly, the concept of the Tribunal was entirely
8 different in the Morris Tribunal. And, of course, in
9 the Peart case itself, everything he said was obiter
10 because, in fact, he had already determined that the
11 application was out of time.

14:24

12
13 So, I would say that it's an interesting read but no
14 more than that. The cases that are relevant are, of
15 course, Fennelly, Mr. Justice Fennelly in
16 Murphy -v- Flood. And then Mr. Justice McCarthy in
17 Goodman -v- McCarthy. They are two Supreme Court
18 judgments which are binding on this Tribunal and which
19 should guide this Tribunal to the kind of conclusion
20 which would provide fairness and equity to my clients.

14:24

21
22 Thank you.

23 SOLE MEMBER: Thank you very much, Mr. Gordon.

24 Mr. McGarry.

25
26 SUBMISSION BY MR. MCGARRY:

14:25

27
28 MR. MCGARRY: Thank you, Chair. I'm going to restrict
29 myself and with your permission I would like to adopt

1 the substantive submissions that have already been made
2 by Mr. Gordon. And, perhaps, just focus on two or
3 three issues.

4
5 You requested the parties to focus on the Terms of 14:25
6 Reference for this particular Tribunal. And I think
7 that was in the context of a suggestion that there was
8 something in them that might preclude the Tribunal from
9 reaching some sort of a conclusion, or, I think, in
10 contradistinction to other Tribunals preparing interim 14:25
11 reports. Now, I'm not -- I don't see anything in the
12 Terms of Reference that would, effectively, preclude
13 the Tribunal, if it was so minded, to prepare interim
14 reports and, in fact, (v), at the end of the Terms of
15 Reference, talks about the receipt by the Taoiseach of 14:26
16 any report which would seem to suggest, at least, that
17 at least, as a matter of theory, more than one report
18 is possible.

19
20 But if I could just ask you to look at what the Terms 14:26
21 of Reference themselves say, and I'm not going to say
22 anything about Section 6, Mr. Gordon has already done
23 that and similarly in relation to the case law.

24
25 But, if you just look at (iii) above that, which is 14:26
26 where the Oireachtas has specified, but then this is
27 consistent with the case law, as we know, what this
28 Tribunal ought to do. And it says:

1 "All costs incurred by reason of the failure of
2 individuals to cooperate fully and expeditiously with
3 the Tribunal should, as far as is consistent with the
4 interests of justice, be borne by those individuals."

14:26

6 So, even if the Tribunal were minded to reach some sort
7 of a conclusions that was adverse, it would still have
8 to be satisfied that it was in the interests of
9 justice. And, obviously, we say that cuts both ways.

14:27

11 So, and I think Mr. Gordon's comments in that regard,
12 about the attitude, the position that has been adopted
13 by both the Minister and the Chief of Staff is as
14 apposite in that context. How could it be in the
15 interests of justice to adopt the submission by
16 parties, who are not concerned in any way with it, so
17 as to, effectively, deprive parties of their costs on
18 an interim basis or at an interim stage? And there is
19 nothing in the Terms of Reference that precludes, as I
20 think the Tribunal has suggested, the Tribunal from
21 coming to that conclusion.

14:27

14:27

23 And if I could ask you just to look very briefly at the
24 submissions of the Minister, just at paragraph 45,
25 under the heading "Conclusion". The Minister's legal
26 team say:

14:28

28 "It is submitted that to date all interested parties
29 have engaged with Tribunals without any advance

1 assurance of reimbursement albeit on the basis there is
2 a presumption in favour."

3
4 And it seems that what they're getting at is, well, you
5 know what the story is, you decided to get involved in 14:28
6 circumstances where you know that, unless there's an
7 interim report or a final report that takes a long
8 time, that decision isn't going to be made until that
9 is done.

10 14:28
11 But then there's a quotation from the extracts repeated
12 in Harrison from Murphy -v- Flood, the famous passage
13 about the default rule by reference to section 6(1).
14 And then there's a line:

15 14:29
16 "The question of these costs, including the loss of the
17 presumption of the entitlement, following the
18 application of express statutory considered, can only
19 safely be determined at the time of the provision of a
20 report." 14:29

21
22 With respect, there is no logical basis for ascribing
23 that interpretation to the passage quoted above. It
24 doesn't say anything of the sort. And this reference
25 to the safe determination of the position in relation 14:29
26 to cooperation or assistance, until the provision of a
27 report, that's not based on any particular authority.
28 And it certainly can't be gleaned from a reading of
29 that passage in Murphy -v- Flood.

1
2 So, there is no doubt, in our submission, that the
3 reference to the word "findings" which we all know is
4 not a reference to the substantive findings, is
5 something that can be addressed at an interim stage. 14:30
6 And, certainly, in circumstances where there's no doubt
7 but that this module has looked at a fairly discrete
8 issue, which is the issues in relation to Devoy. The
9 witnesses that have given evidence will not be required
10 to give evidence about this module, or anything to do 14:30
11 with this module, in any further element of the
12 Tribunal.

13
14 So there's no basis for which it can be said that the
15 Court can't come to an interim view as to the provision 14:30
16 of cooperation of assistance at this stage. Thank you.
17 SOLE MEMBER: Thank you, Mr. McGarry. Mr. Bradley.

18
19 SUBMISSION BY MR. BRADLEY:

20 14:30
21 MR. BRADLEY: Thank you, Chairperson. My clients,
22 Women of Honour, have been on this road for some
23 considerable period of time.

24 SOLE MEMBER: Could I ask you to speak into your
25 microphone or move it closer to you, please, 14:30
26 Mr. Bradley.

27 MR. BRADLEY: My clients, Women of Honour, have been on
28 this road for some considerable period of time and
29 welcome the opportunity afforded by the Tribunal to

1 engage with this notice.

2
3 There are, as you are aware, High Court proceedings in
4 existence and I don't wish to transpose on those
5 proceedings in any way. Yet what should be appreciated 14:31
6 is for any ordinary citizen, engaged in a tribunal
7 process, a significant fear is associated with costs.

8
9 It's acknowledged and, indeed, recognised that what
10 Mr. Justice Morris said, appearing before a tribunal of 14:31
11 inquiry inevitably inflicts a heavy financial burden
12 upon private individuals.

13
14 It is appreciated that each tribunal of inquiry
15 established by the Oireachtas is established for public 14:31
16 interest on behalf of the citizens of the nation. It's
17 not for the individuals who turn up and give evidence.
18 They are facilitating that process.

19
20 The obligation imposed upon you, Chairperson, is to 14:32
21 investigate a matter of crucial public importance as
22 set out in the Terms of Reference enacted by the
23 Oireachtas. Women of Honour accept their obligations
24 in terms of assisting and cooperating with your
25 Inquiry. Yet, fulfilling that legal obligation 14:32
26 inevitably creates a financial, personal and practical
27 burden upon individuals. The legal costs aspect is
28 only one element of the overall financial burden.
29 Individuals have to turn up to give instructions,

1 assist in terms of provision of counselling, etc.

2
3 Today, the full canopy of the State sits on the
4 right-hand and left-hand side of the room today
5 actually and that particular side is well resourced. 14:33

6 When you look at relevant matters it must be an
7 additional element that needs to be considered. Unlike
8 the Minister for Defence and Defence Forces, my
9 clients, a voluntary organisation, are impecunious and
10 without any financial resources at all. 14:33

11
12 They have travelled this road for two years during the
13 course of this Tribunal and for two years preceding the
14 establishment of this Tribunal in terms of engagement
15 in relation to Terms of Reference. There is an 14:33
16 inevitable inequality of financial capacity to fund
17 their ongoing obligations that exist in terms of the
18 obligations imposed by the State for public benefit
19 through the Terms of Reference.

20 14:33
21 It is accepted that this application is solely confined
22 to legal costs element within Section 6(1) yet there is
23 a wider element. And when you look at Section 6(1) you
24 should consider that wider element in terms of the
25 interpretation of that section. 14:34

26
27 This is not a tribunal in relation to the
28 misappropriation of funds, nor is it a tribunal where
29 there is an equality of resources on each side of the

1 room unlike many of the precedents referred to,
2 particularly by the Minister and the Defence Forces.

3
4 The Minister's position is that if women of Honour are
5 to receive their legal costs, it is post the conclusion 14:34
6 of your final report, post the conclusion of an
7 application on costs at that time, and post the
8 adjudication of costs. Mr. Gordon referenced 2029,
9 that would be extremely optimistic, in the context of
10 all that is required. That role should be commenced 14:35
11 today rather than delayed.

12
13 The public interest, and it's referenced very well by
14 Fennelly J. in Murphy -v- Flood, indicates:

15 14:35
16 "It is in the public interest that every person in
17 possession of relevant information should cooperate
18 with the Inquiry. It is beyond question that the
19 obligation to cooperate falls greatly on individuals
20 and exposes them to very substantial legal expense. 14:35
21 They must incur those costs without any advance
22 assurance of reimbursement"...

23
24 That is accepted

25 14:35
26 "... I think that the ordinary presumption should be in
27 favour of reimbursement otherwise the obligation to
28 cooperate with Tribunals will impose loss without
29 compensation on individuals."

1
2 So, the first issue that needs to be considered, I
3 would respectfully suggest, is the presumption of
4 entitlement to costs.

5
6 The second issue that needs to be considered carefully
7 is the importance of legal representations that are
8 granted. On the State side, there is significant
9 resources. On the individual citizen side, those
10 citizens are dependent upon their legal
11 representatives. If anyone on the State side was asked
12 to wait five/six years for payment, I wonder how many
13 would take that mission?

14
15 To ask individual citizens to take a burden that could
16 last, could be so extensive in such duration, is in
17 contradiction to the legislative intent under
18 Section 6(1).

19
20 The power of the Tribunal to award costs is very
21 strong, is a very significant power. And there are
22 positive and negative obligations associated with that
23 power which is defined by the conduct of the parties
24 only. Because of obligations that cooperate and assist
25 the Tribunal. The negative consequences are that if
26 you knowingly give falsehoods, they can be deprived of
27 that resultant entitlement.

28
29 That seems fair and that seems appropriate. But when

1 one looks at both sides of the room, it doesn't apply,
2 with all due respect to the Tribunal on an equal basis.

3
4 The State's representatives are being funded on a
5 monthly basis. The Respondents, against whom issues 14:37
6 arise, using a neutral term, have their legal costs
7 discharged immediately. Complainants, on the other
8 hand, if the Minister's desire is achieved, would be
9 required to wait for four, five or six years. That
10 does not seem an equality of situation. That must be a 14:38
11 relevant factor in the context of the manner in which
12 this application is assessed.

13
14 In addition, the manner in which the Respondents
15 approached this Tribunal, the State Respondents, is 14:38
16 such that there is a guarantee that the legal costs of
17 individuals potentially would be, are being discharged
18 in advance of any determination on the costs issue by
19 you. That is not an equality situation. That is a
20 very significant disparity. We have a range of issues 14:39
21 and the manner in which the State approaches matters
22 could be determined and will be viewed, inevitably by
23 some people, who look at this Tribunal as to whether
24 they should engage with it, as witnesses or otherwise,
25 as being unfair, in that the State is discharging costs 14:39
26 on a consistent basis to allow legal representation but
27 no similar option exists for individuals. That's not
28 your fault, it's not your Terms of Reference fault,
29 it's the manner in which the situation is being

1 operated by the State.

2
3 For the Minister to come in and to indicate the
4 position adopted by her, is doing an injustice to the
5 wording of Section 6(1). It is seeking to impose an
6 obligation that any literal interpretation of that does
7 not exist. The requirement that you would deliver a
8 modular report or a final report or a summary report
9 prior to any determination of costs.

14:40

10
11 Even if a purposive interpretation applies, all I have
12 indicated to date in terms of the engagement of
13 individuals, necessitates the purposive interpretation
14 being exercised in relation to an extensive
15 interpretation of the section.

14:40

16
17 In summary, costs cannot depend upon substantive
18 findings on the subject matter of the Inquiry,
19 everybody seems to accept that fact. The presumption
20 of entitlement to costs should apply. Findings
21 relating to entitlements of costs are solely findings
22 as to conduct, including cooperation, providing
23 assistance to positive obligations, or negative
24 consequences such as knowingly giving false information
25 to the Tribunal.

14:41

14:41

26
27 I would submit that if findings of that nature are made
28 as to conduct, it is almost more than a discretionary
29 power, in the context of the Terms of Reference that

1 you have been delivered. It is, I would submit, maybe
2 premature, but it is reasonable to assume that my
3 clients, women of Honour, cannot be responsible for the
4 culture in the Defence Forces, nor, indeed, can they be
5 responsible for the complaints processes.

14:42

6
7 So, the only issue that you have to determine is as to
8 whether they have cooperated or assisted you in terms
9 of the module concerned, or whether they have hindered
10 or obstructed you in the way outlined.

14:42

11
12 If you come to a conclusion that they have assisted and
13 they haven't hindered, I would submit in the context of
14 the statutory provision that exists, applying either a
15 literal interpretation or a purposive interpretation,
16 it is closer to a mandatory type exercise for a
17 discretionary power.

14:42

18
19 Thank you very much, Chairperson.

20 SOLE MEMBER: Thank you, Mr. Bradley. Does anyone
21 else?

14:43

22
23 SUBMISSION BY MR. CONLON:

24
25 MR. CONLON: Chairperson, very briefly, Carthage
26 Conlon, O'Mara Geraghty McCourt. I'm adopting the
27 submissions of Mr. Gordon, Mr. McGarry and Mr. Bradley
28 in support of the application for costs. I have
29 nothing meaningful to add.

14:43

1 SOLE MEMBER: Thank you very much indeed, thank you.

2
3 SUBMISSION BY MR. MORRIS:

4
5 MR. MORRIS: May it please you, Sole Member, 14:43
6 Eoin Morris instructed by Stephen Kelly Law on behalf
7 of retired Sgt. Coffey who was called to give evidence
8 and stood down at the eleventh hour. Again we're just
9 appearing to adopt the submissions made on behalf of
10 Mr. Gordon, Mr. McGarry and Mr. Bradley. 14:43

11 SOLE MEMBER: Did you file written submissions on
12 behalf of your client?

13 MR. MORRIS: we didn't file written submissions at all,
14 Sole Member.

15 SOLE MEMBER: And your position is to adopt? 14:43

16 MR. MORRIS: To adopt the submissions made by
17 Mr. Gordon, Mr. McGarry and Mr. Bradley.

18 SOLE MEMBER: Okay, thank you very much indeed.

19
20 SUBMISSION BY MR. D'ARCY 14:43

21
22 MR. D'ARCY: Kevin D'Arcy, instructed by
23 O'Regan Little, in relation to this module,
24 representing PDFORRA and named individuals. I don't
25 propose to repeat, but again adopt the arguments on 14:44
26 behalf of Mr. Gordon and those other persons who have
27 spoken before us. But I would make one additional
28 comment in relation to it.

29 SOLE MEMBER: Could you move the microphone a little

1 closer to you please, Mr. D'Arcy?

2 MR. D'ARCY: The Tribunal of Inquiry's legislation
3 dates back quite a considerable time and, indeed,
4 Section 6 itself was introduced and amended by virtue
5 of the significance and importance costs having regard 14:44
6 to the nature of tribunals.

7 That has evolved and while I appreciate that the issues
8 of the findings and you as Chairman would have to find
9 an issue of equity with regard to the awarding of
10 costs, nevertheless in the round, as regards costs 14:44
11 themselves, while not in any way suggesting that the
12 Legal Services Regulation Act applies to your position,
13 nevertheless, the position with regard to interim
14 payments for costs has been very strongly consolidated
15 within the general framework of the courts providing 14:44
16 for costs within Section 168, whereby the courts
17 themselves are directed as such to make a provision or
18 order for costs at any time and from time to time
19 within the wording of Section 168. And that, I say,
20 has become the norm within which legal services are 14:45
21 provided and in respect of which people are remunerated
22 and that should inform the manner in which the Tribunal
23 conducts itself.

24 SOLE MEMBER: Thank you, Mr. D'Arcy. Thank you very
25 much. Mr. Lehane. 14:45

26
27 SUBMISSION BY MR. LEHANE:

28
29 MR. LEHANE: Yes, Sole Member, I'm making a submission

1 on behalf of the Defence Forces so I'm going to do
2 three things. It will be relatively short, Sole
3 Member.

4
5 Firstly, I'm going to tell you why I'm making the
6 submission. (2) I'm going to discuss your power; and
7 then (3) I'm going to sit down, I think!

14:45

8 SOLE MEMBER: Thank you.

9 MR. LEHANE: So just in terms of why I'm making the
10 submission, joking aside, I think this is important.

14:45

11 This is an inquisitorial inquiry, it is not an
12 adversarial inquiry. The Chief of Staff in the Defence
13 Forces fully understand the emotive nature of the
14 Inquiry and why people might think that there are
15 sides. But there are not sides, there are people who
16 have been granted representation before the Inquiry and
17 who participate before the Inquiry.

14:46

18
19 Anyone who is in this room can see that when witnesses
20 come to give evidence in front of you, Sole Member,
21 they are your witnesses and they are cross-examined by
22 their own lawyers, etc., but they are your witnesses.
23 That's important because of the references that have
24 been made to the submissions that have been made by the
25 Defence Forces and people expressing surprise that the
26 Defence Forces would make a submission on this.

14:46

14:46

27
28 Those who've read your notice, Sole Member, will see
29 that you invited all parties, who had been granted

1 legal representation, to make submissions on this
2 issue, which you felt was important to you. It was in
3 that context that the Defence Forces made a submission.
4 It would be apparent to you and anyone else reading the
5 submission, that the submission is made in the context 14:46
6 of it being an inquisitorial inquiry, in an effort to
7 assist you, Sole Member, exercise your discretion or
8 establish the limits of your discretion in relation to
9 the important issue.

10
11 Nobody is to read anything into the fact that we have 14:47
12 made a submission or the Defence Forces have made a
13 submission as being in favour of another party or to
14 take away from another party. And I know you have
15 that, Sole Member, but I just think it's important to 14:47
16 put it on the record. Because there is no list in this
17 from the point of view of making a submission.

18
19 The second point, Sole Member, was just in terms of
20 your power. Again, the law is what the law is. But I 14:47
21 noticed Mr. Gordon refer you to the Supreme Court and
22 he referred you to Fennelly and he referred in Goodman
23 and he referred you to Murphy -v- Flood.

24
25 You will see from our submissions, that there was a 14:48
26 case on this issue in the Supreme Court, Hazel
27 Lawlor -v- The Tribunal of Inquiry [2009] 2 ILRM and
28 that case, unlike Murphy -v- Flood where the issues
29 that the Supreme Court had to grapple with in Murphy

1 -v- Flood were set out on page 150 at para 27.
2 Paragraph 27, Judge, the issues that the Court was
3 looking at, in that case, for example:

4
5 "... whether or not the Tribunal was entitled to take
6 into account its substantive findings of corruption
7 when dealing with costs. Whether the Tribunal was
8 entitled to make findings of obstruction or hindrance,
9 issues of delay and constitutionality."

14:48

10
11 That's what the Supreme Court was dealing with in
12 Murphy -v- Flood.

14:48

13
14 In the Hazel Lawlor case, the Supreme Court was dealing
15 with two issues, the second of which was the
16 construction of Section 6 and the ability of a tribunal
17 to deal with the issues of costs. And the reason I
18 reference it is because nobody else has. But you'll
19 have seen, Sole Member, from that, that the Supreme
20 Court starts dealing with it on page 415. And I think
21 it's important, just by virtue of what Mr. Gordon said,
22 when he said that the Act doesn't preclude you in
23 Section 6 from doing something, that the Supreme Court
24 actually says that's not the case and I'll read it out.
25 It says:

14:48

14:49

14:49

26
27 "While counsel for the Applicant accepted that the
28 legislation contained no express provision enabling a
29 tribunal to provide for costs in advance, he submitted

1 that insofar as Section 6 of the Tribunals of Inquiry
2 (Evidence) (Amendment) Act 1979, as amended by
3 Section 3 of the Tribunals of Inquiry (Evidence)
4 (Amendment) Act 1997 failed to preclude the making of
5 such an order, the statutory powers of the Tribunal 14:49
6 should be interpreted on the basis that a tribunal had
7 an inherent power in that respect to so order. Counsel
8 on behalf of the Applicant also attach some
9 significance to the fact that there had been at least
10 two incidents where other tribunals had exercised what 14:50
11 was described as an inherent power to discharge costs
12 of witnesses. The first instance cited arose during
13 the Beef Tribunal when a significant allocation of
14 funds was made to secure the attendance from a foreign
15 jurisdiction. Similarly, in the Moriarty Tribunal, it 14:50
16 was asserted that counsel for that Tribunal had
17 undertaken to pay the personal legal costs of
18 Mr. Christopher Vaughan, an individual they wished to
19 meet in London."

20
21 So, that was the argument that was being advanced by
22 the applicant in the Lawlor case. Firstly, that the
23 Tribunal had an inherent jurisdiction to make these
24 orders for costs. And (2) that precedent existed in
25 the context of the two Tribunals named, where this had 14:50
26 been dealt with in the past.

27
28 The Supreme Court in its decision on page 416 said:
29

1 "The Court does not believe it is necessary to conduct
2 a wide-ranging discussion into this aspect of the case.
3 It is plain that the only power a tribunal enjoys to
4 make any order in relation to costs, is that outlined
5 above and it arises only where findings have actually 14:51
6 been made by a tribunal. It is clear from the decision
7 of Laffoy J. in Goodman -v- Minister for Finance
8 (citation given) that a Tribunal of Inquiry has no
9 power to make an order for costs other than in those
10 circumstances. And as was stated by Laffoy J. in that 14:51
11 case, at page 367:

12
13 'Save and insofar as the Act of 1979 empowers it to
14 make an order for costs, a tribunal established under
15 the Acts of '21 and '79 has no power to award costs or 14:51
16 other monies to a party represented before it.
17 Moreover, such a tribunal is only empowered to direct
18 payment by the defendant pursuant to an order made
19 under Section 6 that monies provided by the Oireachtas
20 to the extent that it is clearly so expressed in the 14:51
21 Act of 1979'."

22
23 And the Supreme Court makes the point that that
24 decision was followed by Peart J. in the McBrearty -v-
25 Morris case at paragraph 61. And the Court sets out 14:51
26 there in the context of that. The Court also does
27 address the equality of arms point that had featured in
28 the European jurisprudence, The Steel and Morris -v-
29 The United Kingdom case, Judge, you will see there at

1 page 417 just for your note.

2
3 It says, the Supreme Court goes on to say:

4
5 "What the case law does establish in the context of the 14:52
6 criminal law is the right to be provided with legal
7 representation for accused persons in criminal cases."

8
9 Then it goes on to say:

10 14:52
11 "In the present case, the proceedings sought to be
12 impugned are not criminal proceedings nor are they
13 proceedings which determine the right of any parties.
14 While particular reliance was placed by the Applicant
15 on the decision of the European Court of Human Rights 14:52
16 in Steel and Morris -v- The United Kingdom, [citation
17 given] the Court is satisfied that that case has no
18 application here. The case was concerned with a right
19 to a fair trial under Article 6.1 of the Convention and
20 all the comments of the Court must be understood in the 14:52
21 context of that right. Thus, for example, in the
22 opening paragraph, the Court's assessment is stated as
23 follows:

24
25 'The Court reiterates that the convention is intended 14:52
26 to guarantee practical and effective rights. This is
27 particularly so if right of access to court in view of
28 the prominent place held in a democratic society by the
29 right to a fair trial. It is central to the counsel of

1 fair trial and civil as in criminal proceedings that a
2 litigant is not denied the opportunity to present his
3 or her case effectively before the Court and that he or
4 she is able to enjoy equality of arms with the opposing
5 side'."

14:53

6
7 And then the Supreme Court states in relation to this:

8
9 "Principally, because the Tribunal is neither a
10 criminal or a civil trial, the decision of the European 14:53
11 Court of Human Rights in the above cited case, is not
12 pertinent in the present circumstances. It is noted as
13 the learned trial judge also noted that the Applicant's
14 claim herein does not include any claim for a
15 declaration that the provisions of the Tribunal of 14:53
16 Inquiry Act which deal with costs are incompatible with
17 the convention."

18
19 And then the final bit I will read from this case and
20 the only reason I am -- this is the only authority I'm 14:53
21 drawing your attention to because it is important:

22
23 "The Court considers that there is no general principle
24 that legal costs may be claimed in proceedings pending
25 before a tribunal of inquiry with which this case is 14:53
26 concerned. Furthermore, and this is not contested, the
27 Tribunal itself has no funds and no power to make
28 provision for persons appearing before it."

1 So, Judge, that's what the Supreme Court have said
2 about this. It really is about you, Sole Member, being
3 satisfied that you have a jurisdictional pathway, that
4 you can follow should you choose to make a decision in
5 relation to an award of costs on an interim basis, Sole Member. 14:54
6 And again the context where you have indicated
7 in your notice, you don't intend, even though you have
8 finished this module, to issue an interim report, you
9 want to plough on to consider the other issues given
10 the timeline that the Oireachtas has imposed upon you, 14:54
11 in terms of doing it. So, Judge, that's the only
12 authority I wanted to refer you to in terms of your --
13 the decision you have to make.

14
15 The reason I'm going to sit down, Judge, is I have no 14:54
16 role in trying to advance a particular conclusion on
17 you. I've set out or we've set out in our submissions
18 why we think that there isn't that jurisdictional
19 pathway, in terms of just the manner of all other
20 relevant matters, your construction of that. That can 14:55
21 only be considered, we would say, at the conclusion of
22 a process. But, again, our role is simply limited to
23 setting out what the law is and telling you what our
24 answer is and nothing is to be read into the fact that
25 we have made submissions in relation to... 14:55

26 SOLE MEMBER: Please don't sit down because I have a
27 question for you.

28 MR. LEHANE: Of course, yeah.

29 SOLE MEMBER: Insofar as you refer to the Lawlor case,

1 am I correct in saying that that was concerned with the
2 question of advanced payments --

3 MR. LEHANE: Yes.

4 SOLE MEMBER: -- rather than the payment of costs.

5 MR. LEHANE: Yeah.

14:55

6 SOLE MEMBER: And clearly it says that findings must be
7 made before an order for costs can be made. Can you
8 direct me again because I didn't hear it in what you
9 read out, paragraph 33 of your client's submissions.

10 MR. LEHANE: Yes.

14:55

11 SOLE MEMBER: You say:

12
13 "Having regard to the very clear language of
14 Section 6(1) and the clear language of the Supreme
15 Court at page 416 in Lawlor, it is clear the Tribunal
16 has no power to make findings as to conduct at the end
17 of the first module."

14:55

18
19 where in 416, in Lawlor, does it say the Tribunal has
20 no power to make findings as to conduct?

14:56

21 MR. LEHANE: well that has to be read and thank you for
22 drawing my attention to that because what it says in
23 416, is the only power the Tribunal enjoys to make any
24 order in relation to costs that are outlined above, and
25 it arises only where findings have been made by the
26 Tribunal.

14:56

27 SOLE MEMBER: Yes.

28 MR. LEHANE: As to the context where you in your notice
29 say that you don't intend to make findings in relation

1 to that.

2 SOLE MEMBER: My substantive findings will be in the

3 final report, obviously.

4 MR. LEHANE: Oh, yes.

5 SOLE MEMBER: But where in Lawlor does it say that a 14:56

6 tribunal is precluded from making findings as to

7 conduct, at a given point? And this Tribunal, as you

8 know, at this point, doesn't intend to call back any

9 witness who has conducted himself or herself before the

10 Tribunal. I'm struggling and perhaps it's there but 14:56

11 please show me, where does it say it has no power to

12 make findings?

13 MR. LEHANE: The findings that it is talking about,

14 having been made, only mean it has been interpreted in

15 all the other cases substantive findings, okay. 14:57

16 SOLE MEMBER: Could you just look at paragraph 33,

17 because you refer to the very clear language of 6(1) --

18 MR. LEHANE: Yes.

19 SOLE MEMBER: -- and we're familiar with that.

20 MR. LEHANE: Yes. 14:57

21 SOLE MEMBER: And we know that having regard to the

22 findings of the Tribunal and all other relevant

23 matters, that when it comes to costs we can't be

24 talking about substantive findings.

25 MR. LEHANE: Yes. 14:57

26 SOLE MEMBER: And the clear language of the Supreme

27 Court at 416 in Lawlor, it is clear the Tribunal has no

28 power to make findings as to conduct.

29 MR. LEHANE: Yes.

1 SOLE MEMBER: where do you -- you talk about a
2 jurisdictional pathway but what pathway are you
3 following to lead you to the conclusion that the
4 Tribunal can't make a finding as to conduct?
5 MR. LEHANE: Because in the Lawlor case it says you 14:57
6 can't do this until findings are made.
7 SOLE MEMBER: Yes.
8 MR. LEHANE: Findings have been interpreted, the
9 distinction drawn in Murphy -v- Flood and the other
10 cases between substantive findings -- 14:57
11 SOLE MEMBER: Yes.
12 MR. LEHANE: -- and findings of cooperation. Here,
13 because of the interpretation as to findings, meaning
14 substantive findings, which have to be made before
15 findings as to conduct, you can't put -- you can't put 14:58
16 the second one before the other is what we would say in
17 our submission.
18 SOLE MEMBER: But can you point me to where in Lawlor
19 it says that conduct as to -- sorry, findings as to
20 conduct, can only follow after the making of 14:58
21 substantive findings?
22 MR. LEHANE: The sentence I say there is I say:
23
24 "Having regard" -- so this is in the submission, right?
25 SOLE MEMBER: Yes. 14:58
26 MR. LEHANE: "To the very clear language in
27 Section 1..."
28
29 And I say having regard or we say having regard to the

1 findings of the Tribunal all relevant matters, right,
2 that's the first thing.

3
4 And the clear language of the Supreme Court at 416 in
5 the Lawlor case. And that's -- I'm referring back, 14:58
6 that is why the comma is there because I'm referring
7 back to its reference there to findings.

8 SOLE MEMBER: Yes.

9 MR. LEHANE: "Substantive findings," we go on to make a
10 submission -- 14:58

11 SOLE MEMBER: It's that bit I'm struggling with, why
12 are you saying the reference to findings in Lawlor
13 refers to substantive findings?

14 MR. LEHANE: Because findings, there is all of the case
15 law draws a distinction between substantive findings -- 14:59

16 SOLE MEMBER: Yes.

17 MR. LEHANE: -- and findings as to conduct.

18 SOLE MEMBER: Yes.

19 MR. LEHANE: And in the Goodman case, what the Supreme
20 Court says is to avoid any suggestion that a tribunal 14:59
21 is involved in an administration of justice, you read
22 "findings" --

23 SOLE MEMBER: I understand, yeah, I understand the type
24 of findings I must make. But I'm struggling to see
25 where the clear language of the Supreme Court says 14:59
26 "those findings can't be findings as to conduct".

27 MR. LEHANE: I put in, the sentence is referring to two
28 things.

29 SOLE MEMBER: Yes, Section 6(1).

1 MR. LEHANE: And then the clear language at 416 in the
2 Lawlor case and then it's comma, and I go on to make
3 the submission it is clear that you don't have, that a
4 tribunal doesn't have a power as to make findings as to
5 conduct at the end of the first module of the public 14:59
6 hearings and in advance of the provision of the report,
7 given that you say you are not going to do an interim
8 report. It is my infelicity, I think, in expressing
9 myself. But I say the sequence is thus, you to make
10 your only -- your jurisdictional pathway is Section 6 14:59
11 is it. You have no inherent power pursuant so
12 Section 4. I know reference was made there to all the
13 powers of the High Court.

14 SOLE MEMBER: Mmm mm.

15 MR. LEHANE: But again the Supreme Court has been 15:00
16 clear, that the power that the Tribunal has is pursuant
17 to Section 6 because you, as you will be aware, are
18 imbued with certain powers under the Tribunals of
19 Inquiry legislation and given these powers.

20
21 Section 6 is the costs provision, it came in in 1979 as 15:00
22 a result of the K case and that is all set out in the
23 notice which is very clear, okay.

24
25 In terms of how the sequencing of it is to be done in a 15:00
26 way that avoids the problems that say gave rise or
27 arose in the Harrison case or in the Lowry case where,
28 you know, the Tribunal makes findings and has to embark
29 on that process, okay. What we are saying, at least on

1 the law, our reading of the law and again in a neutral
2 way I'm trying to express this, is that the sequence is
3 thus; if you're only going to do one report, okay, you
4 make your findings, which are interpreted as
5 substantive findings, in your report.

15:01

6
7 And then if you choose and again it is a matter for you
8 and all of this is a matter for you, Sole Member, to
9 make findings of non-cooperation, because, again,
10 Mr. Bradley is correct and other people are correct,
11 the default for anybody in a tribunal of inquiry
12 situation is zero, is should you apply for your costs
13 you are going to get your costs, okay. The onus shifts
14 over to the Tribunal if it sees a reason to depart from
15 that to identify findings of non -- cooperation,
16 hindrance, obstruction, etc. and to embark upon a
17 process of notifying you, the Tribunal is thinking
18 about making these findings and --

15:01

19 SOLE MEMBER: well I think the question was, the
20 Tribunal put out two questions, it didn't say it was
21 thinking of doing this --

15:01

22 MR. LEHANE: No, I'm just trying to express the way the
23 thing, the ordinary way --

24 SOLE MEMBER: Two questions, yes.

25 MR. LEHANE: -- the ordinary way that it would do it.

15:01

26 SOLE MEMBER: Yes.

27 MR. LEHANE: But I'm saying, I suppose, that that's the
28 approach that's been adopted to date. In respect to
29 the two questions, unfortunately, my reading of it and

1 our reading of it as we say to you to exercise your
2 discretion, is that the reference, for example, to all
3 relevant matters would indicate that there has to be a
4 degree of finality in terms of the piece of the Inquiry
5 that you're at. And you're choosing to, if you choose 15:02
6 to make findings -- (a), to invite an application for
7 costs because that's what you have to do at the end of
8 the module; (b) consider that application for costs,
9 make the necessary findings that would enable you to do
10 that, in advance of the substantive findings, I have to 15:02
11 say on our reading of it, that would be problematic,
12 with respect.

13 SOLE MEMBER: Thank you very much, Mr. Lehane, thank
14 you. Mr. McGuinness.

15 15:02
16 SUBMISSION BY MR. MCGUINNESS:

17
18 MR. MCGUINNESS: Thank you, Sole Member. Might I just
19 address the issue of criticism of the Minister's
20 position and locus standi. 15:02

21
22 It is the position, which I ought, of course, put on
23 record as is obvious, the Minister was granted
24 representation as a necessary party.

25 SOLE MEMBER: Yes. 15:03

26 MR. MCGUINNESS: And is entitled to respond to the
27 Tribunal's invitation to make submissions on the
28 matter.
29

1 And insofar as that goes, then, I also wish to reject
2 any criticism offered by counsel for the proponents of
3 their view, that there is anything startling in the
4 position of the Minister, in making submissions or
5 having regard to the content of the Minister's
6 submission.

15:03

7
8 I ought to recall for the record, in the Tribunal's own
9 opening statement of 16th June 2025, you outlined that:

15:03

10
11 "Parties were reminded that a grant of representations
12 does not confer an automatic entitlement to an order
13 for costs on the completion of its Inquiry."

14
15 Secondly, the Tribunal's own procedures document which
16 was published on the website, the following is set out
17 in paragraph 13.1.

15:04

18
19 "An application for an order for costs pursuant to
20 Section 6 of the Tribunals of Inquiry (Evidence)
21 (Amendment) Act 1979 may be made following the
22 submission of the final report of the Tribunal. The
23 fact that the Tribunal has or has not granted
24 representation to anybody, person or body, does not
25 mean that a party is entitled to an order for costs
26 automatically. And any order made by the Tribunal
27 will, ordinarily, be on a party and party basis in the
28 usual form. The Tribunal shall have regard to the
29 provisions of the Tribunal of Inquiries Evidence Act

15:04

15:04

1 1921-2004 and all recall case law when considering
2 applications for costs."

3
4 And I think it's appropriate to note that that opening
5 statement, Sole Member, made by you, wasn't the subject 15:05
6 of any application either for any, raising any issue
7 concerning costs or as being an inappropriate
8 interpretation of the law, or an inappropriate
9 procedure to lay down in your terms of procedure. And,
10 indeed, nor has any application been formally made for 15:05
11 the Tribunal to consider changing its rules of
12 procedure which is provided for.

13
14 So, I think it's appropriate to say that, to dispel the
15 aura of surprise that my Friends who are addressing the 15:05
16 issue and seeking orders for costs at this stage, to
17 say it shouldn't be a surprise to them and I don't
18 think it was a surprise and I think it's a fair comment
19 for me to make.

20 15:06
21 And, I think, it's appropriate to say that that
22 statement adopted by the Tribunal was, in fact,
23 representative and is representative of the law and
24 practice of Tribunals up to this point in time. And
25 you might well ask why and on what basis do I say that? 15:06
26

27 Firstly, Judge Morris was asked to consider this
28 proposition in the context of Mr. McBrearty. And the
29 challenge was made both on a constitutional basis, but

1 also on the basis of a statutory interpretation as to
2 whether such an order providing for costs could be
3 made. And that was rejected.
4

5 Now, the issue in this case, at this point in time, is 15:06
6 at what time an order for costs can be applied for.
7 And my Friends, I think, it's fair to say, have not yet
8 considered, as it were, the architecture of the
9 Tribunal of Inquiries Acts which triggers the
10 application of Section 6. And there's three elements 15:07
11 to it, in my submission. The first is the 1921 Act
12 which provides for the resolutions of the House. And
13 the resolutions of the House traditionally, they fix
14 the Terms of Reference.

15 15:07
16 The second issue, then, is the instrument of
17 appointment which determines, surprisingly enough, how
18 the Tribunal is to report because it's not dealt with
19 in the legislation itself, strangely enough. But it
20 follows normally the text of the Terms of Reference 15:08
21 that should be adopted by the Houses. And the Houses
22 here resolved, this is (i)(a):

23
24 "The Tribunal of Inquiry is requested to report on its
25 investigation into the matters set out in this 15:08
26 resolution and to make any appropriate recommendations
27 arising out of this investigation."
28

29 It goes on then to deal with the matter in a slightly

1 different way, where it in (i) it says:

2
3 "It is charged with investigating the matters provided
4 for in its turn the reference from 1st January 1983 to
5 the date of its establishment".

15:08

6 And then (ii) underneath it says:

7
8 "The Tribunal shall report to the Taoiseach and make
9 such findings and recommendations as it sees fit in
10 relation to these matters as expeditiously as
11 possible."

15:08

12
13 And then that's followed by the all costs incurred
14 provision by reason of the failure of individuals, etc.

15:09

15
16 And then at (v):

17
18 "The Taoiseach shall upon receipt of any report from
19 the Tribunal either apply to the High Court for
20 directions regarding publication of the report or
21 arrange to have it laid before the houses."

15:09

22
23 Now, the instrument applying the provisions of the Act
24 is SI 304/2024 and it nominates you to be the sole
25 Member, obviously, in paragraph 3.

15:09

26
27 But in paragraph 2 it provides:

28
29 "A Tribunal (herein after called 'the Tribunal') is

1 appointed to inquire into, report and make such
2 findings and recommendations as it sees fit to the
3 Taoiseach on the definite matters of urgent public
4 importance specified in the resolution."

5 Passed by both Houses as set out there.

15:09

6 And, in my submission, that prescribes the route and
7 the method and the timing and the sequence of steps
8 that has traditionally been taken by every Tribunal of
9 Inquiry. It does the task it has been mandated to do,
10 the investigations, etc. It reaches its findings and
11 includes them in a report of those findings to the
12 house and it makes recommendations.

15:10

13
14 And that triggers, in a very real way, it is the
15 trigger, the report is the trigger for the exercise of
16 the Section 6 power then, in my submission.

15:10

17
18 So, Section 6 isn't to be construed on its own, without
19 reference to, as I have described it there, the
20 statutory sequence. There was reference made, Judge,
21 there to the Lowry case and the Harrison case.

15:10

22
23 And the Lowry case considered a feature that can occur
24 in a report of the substantive findings of a tribunal,
25 where the report itself contained findings of
26 non-cooperation. And we deal with this, I'm not going
27 to read them out ad nauseam, we deal with this in
28 paragraphs 39 onwards of our submission, pages 14 to
29 15.

15:11

1
2 But the Court of Appeal noted that, the issue of the
3 substantive findings, including findings of
4 non-cooperation were relevant to the issue of the
5 findings that were then going to be made and were made 15:11
6 about non-cooperation affecting the costs of Mr. Lowry.

7
8 But at paragraph 60 of the judgment, there's a
9 recognition there that the -- there were two separate
10 processes. And it says at paragraph 60: 15:12

11
12 "It seems to me on this first question of time that the
13 argument put forward by Mr. Lowry is correct. The
14 process dealing with costs is a separate matter that
15 was initiated following the publication of this part of 15:12
16 the report."

17
18 And it goes on to say:

19
20 "The Tribunal might have considered it appropriate to 15:12
21 entertain further debate on the questions of costs,
22 that was an option open to it. I do not, of course,
23 suggest that the Tribunal was obliged to do so but
24 merely to describe one possible course of action that
25 it might have adopted. There was a clear line of 15:12
26 distinction and point of distinction in time and
27 purpose between the substantive material of the report
28 and the later embarkation on the costs issue."

1 That's the end of that quote.

2
3 We note, also, at paragraph 40, Ms. Justice Denham's
4 remarks in the Murphy -v- Flood case in the Supreme
5 Court. where she stated:

15:13

6
7 "In my opinion, the power to award costs under the Act
8 of 1997 -- I think that should read -- is confined to
9 instances of non-cooperation with or obstruction of the
10 Tribunal but that, of course, would including the
11 adducing of deliberately false evidence, that is what
12 the statutory provisions specifically requires regard
13 to be had to the findings of the Tribunal as well as
14 other relevant matters. I accept the First Plaintiff
15 and perhaps the other Plaintiffs may have to incur
16 costs in providing the Tribunal with the necessary
17 information and without there being any advance
18 guarantee of indemnity but there is a guarantee that
19 justice will be done in relation to costs at the end of
20 the Tribunal. It would not be practical or reasonable
21 to expect an advanced promise of indemnity. Any
22 monetary loss incurred on this account is simply an
23 unfortunate consequence of the legitimate right to hold
24 such an Inquiry."

15:13

15:13

15:13

25
26 We also refer, Judge, to Mr. Justice Geoghegan's
27 remarks in the Haughey -v- Moriarty case which are at
28 page 9 of the judgment. He states:

15:14

1 "The absence of a right of appeal from a costs order
2 and the absence of an advance indemnity in relation to
3 costs are not grounds for impugning the resolutions,
4 whether under the Constitution or otherwise. Costs
5 will be dealt with by the Tribunal at the end of the 15:14
6 entire Inquiry and I have no reason to believe that the
7 Sole Member would not deal with the costs issue in a
8 correct and constitutional manner. I accept that
9 Mr. Haughey and perhaps the other Plaintiffs may have
10 to incur costs in providing the Tribunal with the 15:14
11 necessary information without there being a guarantee
12 of an indemnity but what there is is a guarantee that
13 justice will be done in relation to costs at the end of
14 the Tribunal. It would not be practical or reasonable
15 to expect an advance promise of indemnity." 15:14

16
17 And there's some emphasis added in our quotation of
18 that.

19
20 We do refer to the Harrison -v- Charleton judgment, 15:15
21 again, which was an example of a case where the
22 findings themselves about the allegations made by
23 Mr. Harrison were found not to be well -- founded which
24 led to the costs issue being determined then, having
25 regard to fair procedures after that. So, I say on 15:15
26 behalf of the Minister, and I say with humility and
27 respect to the Tribunal, the Minister is responding to
28 the call for assistance as to the legal position and
29 the interpretation, and the position as it is

1 understood to be. But the Minister, of course,
2 recognises this is subject to your decision as to what
3 is appropriate and within the jurisdiction of the
4 Tribunal to rule.

5
6 But we summarise it in page 19 of our -- we start the
7 conclusion at the bottom of page 18. This is the
8 paragraph criticised by Mr. McGarry there. And it may
9 be a relevant factor for the Tribunal to consider that
10 it is more than two years in its expected duration of 15:16
11 three, in considering the issue. It's a matter for the
12 Tribunal, obviously, to weigh all of these other
13 factors that it considers relevant. But the primary
14 issue, in my submission, is the issue of the
15 jurisdiction. Has Section 6 been triggered or can it 15:16
16 be triggered solely on the basis of an adjudication now
17 of cooperation or conduct?

18
19 And the position, as it appears to the Minister, is
20 that it can be done, even on foot of an interim report 15:17
21 or a final report, but short of reporting the findings,
22 which then triggers the Section 6 costs issue, it's an
23 inappropriate and premature step to reverse what has
24 been understood to be the normal course of events.

25
26 So, in that sense, it's a novel issue for the Tribunal
27 to grapple with and my submission is made in that
28 light, that the Tribunal is now grasping that issue and
29 must take its own decision in the matter.

1 But the Minister is drawing these final submissions to
2 your attention to try and assist you in that. And
3 they're summarised there at paragraph 46:

4
5 "The Tribunal is obliged at the conclusion of its 15:18
6 inquiry to furnish its report to the Taoiseach. The
7 Tribunal is not expressly mandated to nor does it
8 intent to furnish any interim report in advance of
9 furnishing its report to the Taoiseach."

10 15:18
11 And I might just stop there and add on the, what's
12 noted earlier in the submissions, that Mr. Justice
13 Morris, and indeed Mr. Justice Charleton, did furnish
14 interim reports which were conclusive of their
15 investigations in those particular issues, following 15:18
16 which they went on to consider and made costs orders in
17 advance of the final report dealing with all of the
18 other matters.

19
20 So, that is a qualification, as it were. 15:18

21
22 We state, then, (3):

23
24 "Mr. Justice Geoghegan in Haughey -v- Moriarty outline
25 the costs would be dealt with at the end of the 15:18
26 Tribunal's Inquiry. Similarly, the High Court
27 determined in McBrearty that Section 6 does not provide
28 for an advance grant of costs notwithstanding the
29 representation had been granted. While the relevance

1 of the Tribunal's report to the question of costs under
2 Section 6 is limited to the circumstances set out at
3 paragraph 82 subparagraph (5) in Harrison, the case law
4 relating to Section 6 has to date been decided in
5 circumstances where a report containing the findings of 15:19
6 the Tribunal has been delivered.

7
8 6. The question as to what constitutes all other
9 relevant matters has not been determined definitively."

10
11 And it is submitted that:

12
13 "The Tribunal cannot know all other relevant matters on
14 a day-to-day basis, without an examination of the facts
15 at issue and, consequently, making its report on the 15:19
16 findings of the facts at issue.

17
18 7. The case law demonstrates that in certain
19 circumstances the substantive findings in a report may
20 be relevant to the conduct of the parties and the 15:19
21 question of costs before the Tribunal."

22
23 And then the sequencing point at (viii) there:

24
25 "Additionally the sequence envisaged by paragraph 2 of 15:20
26 SI 304/2024 and as outlined above, ought to be followed
27 by the Tribunal."

28
29 The remainder there, it might be considered less or

1 more important but (x):

2
3 "The approach mooted by the Tribunal in this discussion
4 of it making interim costs orders in the absence of
5 making findings or reporting on its findings, has not 15:20
6 been the subject of judicial approval to date and in
7 this regard it would be a novel course of action for
8 the Tribunal."

9
10 And, obviously, we're concluding there on the basis 15:20
11 that the interpretation of the Tribunal powers is
12 exclusively a matter for the Tribunal, having
13 considered the necessity of appropriateness and
14 consequences of adopting such an interpretation in the
15 absence of what might be regarded as clear or legal 15:20
16 authority.

17
18 If I can assist you any further, Judge.

19 SOLE MEMBER: Yes, Mr. McGuinness. Just a couple of
20 questions. Insofar as you refer to the architecture of 15:21
21 the Terms of Reference and you refer the Tribunal to
22 paragraph (ii) at the end:

23
24 "The Tribunal shall report to the Taoiseach and make
25 such findings and recommendations as it sees fit in 15:21
26 relation to these matters as expeditiously as
27 possible."

1 MR. McGUINNESS: Yes.

2 SOLE MEMBER: Do you agree that the findings referred
3 to in (ii) have to be substantive findings because it's
4 findings in relation to these matters and it's linked
5 with the recommendations the Tribunal may wish to make 15:21
6 in the light of the findings? So, do you accept that
7 the findings in (ii) can only refer to substantive
8 findings?

9 MR. McGUINNESS: I don't think I can agree with that
10 because I think it must embrace them, certainly, but it 15:21
11 can go on to include findings relating to the conduct
12 at or during or in the course of the Tribunal, which
13 spans the duration of the Tribunal, as it were and it's
14 difficult to foresee what might or might not arise.
15 But it's an issue for the Tribunal to determine, at the 15:22
16 end of the Tribunal because looking at Section 6, it
17 appears to be both a bit of a stick and a carrot at the
18 same time. It holds out and has been judicially held
19 to hold out a presumption of costs to those who fully
20 cooperate with the whole of the Tribunal process. 15:22

21
22 But, also, with the stick that if there's elements of
23 it or findings of untruth, I mean there might be
24 findings possible by any Tribunal, that the conduct at
25 different stages, and even in the face of the Tribunal, 15:22
26 might be regarded as not cooperating or trying to
27 obstruct the Tribunal in the sense of not assisting it
28 in its search for the truth in relation to any
29 particular factual matter at issue.

1 SOLE MEMBER: And where the persons who have come
2 forward to assist the Tribunal, in this first module,
3 are, where they have finished their testimony and where
4 it's not envisaged, in any way, that they would have to
5 be recalled, what could, in your view, what could 15:23
6 remove that presumption or that entitlement to costs,
7 or conduct if the Tribunal is in a position to say, if
8 it's in a position to say "this particular individual
9 or this particular group or whatever came forward,
10 assisted and there's no finding of any lack of 15:23
11 cooperation"; what, conceivably, and I'm looking for
12 your help, what could happen at a later stage that
13 might rebut that presumption, in your view?

14 MR. McGUINNESS: well, in the first instance, Judge,
15 the issue on this analysis is that the timing of the 15:24
16 making of that decision is at the end of when the
17 report has been concluded, and all matters are clear to
18 the Tribunal because it will have advanced all of its
19 investigations to conclusion.

20 SOLE MEMBER: How could what happens and I'm teasing 15:24
21 this out because I genuinely want to know where we are
22 going, how could what happens later impact upon a
23 finding that a person who gave evidence, cooperated,
24 was truthful, if the Tribunal is in a position to make
25 that finding, I'm not saying it is, but if it were in a 15:24
26 position to say, 'The evidence of A, B, C and D, I'm
27 satisfied was given truthfully, they cooperated fully,'
28 what could happen at a later stage that conceivably
29 might make me change my mind that that evidence wasn't

1 reliable?

2 MR. McGUINNESS: well, it's a difficult thing to
3 envisage, but what is the current position is that
4 there's the presumptive entitlement.

5 SOLE MEMBER: Yes.

15:25

6 MR. McGUINNESS: And then you have to, in my
7 submission, reach the state of mind that, having regard
8 to all of your inquiries, that there is nothing in the
9 way of non-cooperation and nothing in the way of a
10 failure to assist the Tribunal which would warrant any
11 interference with it.

15:25

12
13 So, it's a deliberate process on your part, rather than
14 an onus put on me or any other party to say X could
15 happen or Y could happen and you decide, well, that's
16 very unlikely or improbable. It requires a degree of
17 certainty, in my submission, having regard to the whole
18 of the conduct of the Tribunal. Many strange things
19 have emerged in many Tribunals and I'm not prepared to
20 envisage, in relation to any particular witness,
21 anything untoward that would jeopardise their costs.

15:25

15:26

22
23 But I'm saying that the time at which the Tribunal has
24 to consider that issue is at that conclusion time,
25 whether after an interim report or a final report on
26 the issue.

15:26

27 SOLE MEMBER: Thank you. And then, finally, just
28 insofar as paragraph (iii) deals with the question of
29 costs and the failure of individuals to cooperate and

1 the Tribunal should, as far as it is consistent with
2 the interest of justice, the costs should be borne by
3 those individuals, is there an entitlement to interpret
4 that as meaning the opposite must also apply? That if
5 a person has cooperated, the interest of justice, that 15:26
6 should be a factor taken into consideration?

7 MR. McGUINNESS: It's not clear to me that it is in the
8 sense that, how does one judge cooperation? Is it on a
9 daily basis or can it be over a period of time?

10 Witnesses not turn up on time or not making themselves 15:27
11 available for different purposes or parties not
12 attending the Tribunal? There could be a wide variety
13 of matters that occur in relation to documents. I
14 mean, there could be many, many issues which relate to
15 that at different stages. 15:27

16
17 And, the assessment of conduct is a very important
18 matter for the Tribunal, and I'm not criticising the
19 Tribunal in any sense. It has, obviously, yet to
20 finish this module and there's always the possibility 15:27
21 more evidence might be called, more witnesses relating
22 to different issues at different stages, which could
23 reflect on anyone. I think, on the basis of the
24 analysis of the section and the sequencing of the
25 timing of the events, it would be premature to rule 15:28
26 anything out or in. That's the best I can do, I think,
27 to address it on a level of principle.

28 SOLE MEMBER: Thank you very much, Mr. McGuinness.
29 Mr. Cush.

1 SUBMISSION BY CUSH:

2
3 MR. CUSH: There's perhaps one issue of principle that
4 appears to have arisen and if I might just address you
5 on that for a moment.

15:28

6 SOLE MEMBER: Yes.

7 MR. CUSH: Mr. Gordon made a submission to you to the
8 effect that Section 4 of the Act, the breadth of
9 Section 4 was not compromised, I think was the way he
10 put it, by Section 6. And Section 4, as you know
11 provides that:

15:28

12
13 "A tribunal may make such orders as it considers
14 necessary for the purpose of its functions, and it
15 shall have, in relation to their making, all such
16 parties, rights and privileges as are vested in the
17 High Court or a judge of that Court in respect of the
18 making of orders."

15:29

19
20 Mr. Lehane has pointed out to you that in the Lawlor
21 case the Supreme Court made clear that the power
22 derives from Section 6. But that might leave open the
23 question, just taken on its own, as to whether or not
24 the principles applicable when a High Court Judge is
25 making an award of costs are the same as apply to you
26 qua tribunal making an award of cost. As you know,
27 Judge, a starting point for any court making an award
28 of costs is that costs follow the event. And the event
29 being the ruling on the substantive matters under

15:29

15:29

1 consideration in the case. whereas, for a tribunal the
2 position is almost to the opposite effect because we
3 know that the substantive findings under consideration
4 by the Tribunal are not to be taken into account in
5 ruling on costs.

15:30

6
7 So, I'm sure Mr. Gordon didn't mean to suggest that the
8 principles for a court to make an award of costs were
9 in any way the same for a tribunal making an award of
10 costs but just to be clear that they're not the same.

15:30

11 SOLE MEMBER: Yes. Thank you.

12
13 The Tribunal will reflect upon the submissions that it
14 has received and will deliver its ruling in due course.
15 And it wants to thank all the parties who were invited
16 to, and who responded to the Tribunal's call to assist
17 it with its deliberations in this regard. Thank you
18 very much.

15:30

19
20 THE TRIBUNAL WAS THEN ADJOURNED UNTIL TUESDAY, 14TH
21 JULY 2026 AT 10:00 A.M.

15:30

	42:19 13.1 [1] - 127:17 13th [1] - 39:8 13TH [1] - 5:1 14 [1] - 131:28 143 [1] - 4:28 14TH [1] - 144:20 15 [1] - 131:29 150 [1] - 114:1 15th [7] - 41:4, 45:3, 47:14, 53:18, 53:21, 72:15, 74:6 16 [1] - 4:6 168 [2] - 111:16, 111:19 16th [10] - 36:2, 37:6, 54:2, 54:3, 72:16, 72:25, 73:6, 73:11, 78:1, 127:9 18 [1] - 135:7 1891 [1] - 17:6 19 [2] - 4:7, 135:6 1921 [1] - 129:11 1921-2004 [1] - 128:1 1975 [1] - 33:19 1979 [5] - 87:25, 115:2, 116:13, 124:21, 127:21 1979' [1] - 116:21 1981 [6] - 6:16, 6:19, 6:21, 7:8, 14:7, 15:18 1983 [1] - 130:4 1984 [3] - 8:6, 22:25, 22:29 1986 [1] - 33:21 1987 [1] - 33:24 1989 [5] - 46:23, 58:11, 58:13, 58:17, 66:17 1990 [14] - 7:13, 31:17, 34:22, 35:14, 35:28, 40:14, 45:11, 46:28, 47:4, 47:21, 58:11, 58:17, 68:15, 68:23 1990/1991 [1] - 60:12 1990/91 [1] - 39:16 1991 [16] - 31:17, 36:2, 36:11, 36:19, 37:7, 38:10, 41:4, 45:3, 47:14, 50:26, 51:1, 72:15, 72:25, 73:6, 73:11, 74:6 1992 [10] - 8:27, 12:13, 31:18, 51:16, 72:17, 75:11, 77:3, 77:21, 78:1 1993 [1] - 7:11 1997 [2] - 115:4, 133:8 1999 [1] - 7:16 1st [1] - 130:4	36:11, 36:19, 37:7, 38:10, 41:4, 45:3, 47:14, 50:26, 51:1, 72:15, 72:25, 73:6, 73:11, 74:6 1992 [10] - 8:27, 12:13, 31:18, 51:16, 72:17, 75:11, 77:3, 77:21, 78:1 1993 [1] - 7:11 1997 [2] - 115:4, 133:8 1999 [1] - 7:16 1st [1] - 130:4		37:28, 38:6, 72:25 2720 [3] - 38:7, 42:5, 42:10 2726 [4] - 39:12, 44:19, 58:14, 66:8 2772 [2] - 77:12, 77:13 2774 [1] - 75:7 2864 [2] - 59:1, 68:10 2865 [2] - 58:29, 59:1 2:00 [1] - 85:19 2IC [4] - 37:13, 40:1, 42:23, 73:29 2LT4.. [1] - 69:19 2nd [48] - 34:3, 34:13, 34:23, 35:2, 35:12, 35:15, 35:18, 40:10, 41:1, 44:25, 44:29, 45:9, 47:1, 48:13, 48:22, 50:12, 51:15, 52:23, 53:18, 53:22, 53:29, 54:4, 54:8, 54:12, 55:2, 55:8, 58:17, 70:11, 71:18, 71:24, 74:9, 74:17, 74:18, 74:24, 74:27, 76:7, 78:13, 78:29, 79:5, 79:12, 79:27, 81:2, 81:12, 81:21, 81:28, 82:5, 82:7, 82:27	3216 [1] - 18:17 33 [2] - 120:9, 121:16 34th [9] - 11:1, 17:3, 17:16, 17:21, 17:27, 19:18, 34:4, 36:12, 66:6 35 [2] - 60:18, 74:13 367 [1] - 116:11 39 [1] - 131:28 3rd [1] - 51:17	104:22, 104:23, 120:14, 121:17 6(1) [4] - 101:13, 106:18, 108:5, 123:29 6.1 [1] - 117:19 60 [2] - 132:8, 132:10 61 [1] - 116:25 63 [1] - 4:14 66 [1] - 4:15
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