

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 TUESDAY, 14TH JULY 2026 - DAY 24

24

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1 THE TRIBUNAL RESUMED ON TUESDAY, 14TH JULY 2026 AS
2 FOLLOWS:

3
4 SOLE MEMBER: Good morning, everybody.

5 MR. CUSH: Good morning.

10:00

6 SOLE MEMBER: Mr. Cush.

7 MR. CUSH: Good morning, Judge. Our first witness this
8 morning is Mr. Iain Anderson.

9 SOLE MEMBER: Thank you.

10 MR. CUSH: Good morning, Mr. Anderson.

10:01

11 THE WITNESS: Good morning.

12 MR. CUSH: Mr. Anderson, can I just enquire, are you
13 choosing to affirm or to take the oath this morning?

14 THE WITNESS: I'll affirm, please.

15 MR. CUSH: All right. And I think you have the
16 relevant language in front of you, is that correct?

10:01

17 THE WITNESS: No, I don't.

18 MR. CUSH: I wonder if we can help with that.

19
20 MR. IAIN ANDERSON, HAVING AFFIRMED, WAS DIRECTLY
21 EXAMINED BY MR. CUSH (REMOTELY VIA TEAMS), AS FOLLOWS:

10:01

22
23 1 Q. MR. CUSH: Good morning, Mr. Anderson. Good morning
24 from Dublin -- I think it's evening time where you are,
25 is that correct?

10:02

26 A. That's correct.

27 2 Q. Okay. And thank you very much for your assistance.
28 You've prepared, for the benefit of the Tribunal, a
29 report, isn't that so?

1 A. That's correct.

2 3 Q. And that has been circulated here to the relevant
3 parties with hyperlinks and with hard copy of the
4 documentation referred to. So I'm proposing this
5 morning, Mr. Anderson, to bring you through your report 10:02
6 and I have certain questions for you as we go; do you
7 understand?

8 A. Absolutely.

9 4 Q. Very good. Thank you. So, you tell us that since 1st
10 August 2022, you have held the position of Ombudsman of 10:02
11 the Commonwealth of Australia and that, by virtue of
12 holding that role, you are also the Defence Force
13 Ombudsman and the Law Enforcement Ombudsman. You hold
14 all of those roles that you describe?

15 A. That's correct. 10:03

16 5 Q. You then, in paragraph 2, describe your qualifications
17 and you are, dare I say, essentially a lawyer by
18 qualification, is that fair?

19 A. That's correct.

20 6 Q. And the Office of Commonwealth Ombudsman has held the 10:03
21 position of Defence Force Ombudsman since October 1983.
22 That's so, isn't that right?

23 A. That's correct.

24 7 Q. And you say that you can receive and investigate
25 complaints, but as I think we'll see later in your 10:03
26 report, you can also institute own-volition inquiries,
27 isn't that so?

28 A. That's absolutely right.

29 8 Q. All right. Thank you. In paragraph 5, you tell us

1 that you, yourself, then issued a report, "Defending
2 Fairness", which we'll come back to once we've set a
3 bit of context. It becomes relatively recently in a
4 long line of investigations and reviews, isn't that so?
5 A. That's correct. 10:04
6 9 Q. Okay. So, part of the context that you describe then
7 is the make-up of the Defence Forces themselves,
8 comprising the Army, the Air Force and the Navy, with a
9 full-time membership of approximately 60,000 with
10 32,000 reservists. So it's a large organisation by any 10:04
11 standards?
12 A. It's a large organisation.
13 10 Q. And, also, as it transpires in recent years, at least,
14 a very active one, isn't that so? You describe the
15 various conflicts in which it's been involved? 10:04
16 A. (Inaudible).
17 11 Q. It's just a little bit muffled there the last minute or
18 two, Mr. Anderson. Is there a microphone that you
19 can --
20 A. How is -- is it still muffled? 10:04
21 12 Q. No, that's perfect, thank you. Thank you very much.
22 So in the years that you there describe, the Australian
23 Defence Forces have been involved in the first Gulf
24 war, the conflict in East Timor, 20-odd years in
25 Afghanistan, the second Gulf war, and then a 10-year 10:05
26 operation combatting ISIL, isn't that so?
27 A. That's correct.
28 13 Q. All right. And then you describe over the next many
29 pages the various reviews and investigations. And

1 leaving aside for a moment the 1998 one, a lot of it
2 seems to have been triggered by the incident you
3 describe in April 2011, is that so?

4 A. Yes, that's certainly got public and political
5 attention. 10:05

6 14 Q. And you there describe it in paragraph 15. And can you
7 just give us a bit of background on that, please?

8 A. So, the scenario was that there was a female officer
9 cadet at the, eh, in the Cadet Training Programme, who
10 was having sex with another male cadet. He was 10:06
11 streaming that without her knowledge or consent,
12 broadcasting it to other cadets, other male cadets.
13

14 She raised this as an issue and was told that she
15 should not, in fact, tell anyone about it. For other 10:06
16 reasons, she was actually -- then her engagement with
17 the Defence Force was terminated and she was exited
18 from the Australian Defence Force. She did, however,
19 tell people about her experience. It became public,
20 and that led to a string of inquiries. 10:06

21 15 Q. And not just the ones immediately consequent upon that
22 incident, but further inquiries and reviews, isn't that
23 so?

24 A. That's correct. Because, in part, the process of
25 having reviews itself started to lead to servicing more 10:06
26 incidents, incidents involving other people as well.
27 And so it had an ongoing process of reviews, acting on
28 recommendations, but then more people coming forward to
29 say that their experience is then unsatisfactory and,

therefore, more reviews and more recommendations and more acting on recommendations.

16 Q. Okay. Well, we'll just look briefly at some of those reviews and the recommendations. I think the first in time and most immediately connected was the Kirkham Inquiry that you describe at the top of page 3 of your report, followed by two reviews with similar names, one the "Review into the Treatment of Women at ADFA", and the second, the "Review into the Treatment of Women at the ADF", both conducted by the Human Rights Commission, isn't that so?

A. That's correct.

17 Q. They, between them, raised large numbers of recommendations that you describe in short in paragraphs 18 and 19 of your report?

10:07

A. That's correct.

18 Q. One of them was a recommendation for the establishment of a dedicated Sexual Misconduct Prevention and Response Office, SeMPRO, and I think that was implemented and continues to this day, is that so?

A. That's correct. That recommendation was accepted and SeMPRO is still in existence today.

19 Q. Is that seen as a successful development?

A. It's been very successful, but SeMPRO, of course, is there to receive complaints and support complainants. It's not an investigative body in itself. So, while it's provided additional support for complainants, it hasn't necessarily assisted in getting to the bottom of the behaviour itself, or it's not a body that makes

1 recommendations either about how to deal with or
2 prevent future incidents from occurring.

3 20 Q. Okay. Thank you. In paragraph 20 then, you describe a
4 Review of the Management of Incidents and Complaints in
5 Defence including Civil and Military Jurisdiction 10:08
6 undertaken by the Inspector General of the ADF and
7 completed on 6th September 2011. Again, a large number
8 of recommendations, 38, and you there describe some of
9 the main ones in those subparagraphs to your report,
10 isn't that so, paragraph 20 your report? One of them, 10:09
11 at subparagraph (d), you say:

12
13 "The ADF should not adopt restricted reporting whereby
14 a victim can report abuse outside the chain of command
15 and access support services but an investigation is not 10:09
16 triggered without the consent of the victim."

17
18 And why was that, can you recall?

19 A. So the Human Rights Commissioner had recommended that
20 the ADF should adopt restrictive reporting. The 10:09
21 Inspector General disagreed with that. He believed
22 that in order to be properly acted upon, complaints
23 should be associated with a named person so it could be
24 properly investigated.

25 10:09
26 Now, as it happened and as I think I set out in my
27 report, Government did subsequently agree to accept
28 restricted reporting and there are now a number of
29 different options available for restricted reporting,

1 so it's seen as being desirable that not all
2 complainants wish to necessarily have investigation,
3 but every complaint should be able to be heard
4 21 Q. Okay. Thank you. In 21, you refer to a DLA Piper
5 review which I think took two parts, isn't that so? 10:10
6 A. That's right.
7 22 Q. And in paragraph 22, you record one of the
8 recommendations as being to give proactive support to
9 those in the ADF who have the courage to stand up for
10 what is right. And that language or that idea of 10:10
11 standing up for what is right I think becomes a theme
12 later in developments in Australia, isn't that so?
13 A. Absolutely.
14 23 Q. And, particularly, Lt. Gen. David Morrison, as we will
15 see, the Chief of the Army, made a statement 10:10
16 incorporating very much that idea, isn't that so?
17 A. Yes. He did, absolutely, really making it very clear
18 that as the head of the Australian Army at the time,
19 that he believed that preventing sexual misconduct was
20 entirely part of the mission of the Australian Army and 10:11
21 that it should be seen as being part of the values of
22 the Australian Army.
23 24 Q. And you quote from it later in your statement and we'll
24 look at some aspects of that. But it has been a theme
25 within the Australian review generally, if I may say, 10:11
26 from this very early stage, and continues, I take it?
27 A. That's correct, it does.
28 25 Q. In 23 then, you list the issues and findings in
29 volume 1 of the DLA Piper review, and they're there set

1 out, one being at subparagraph (d) that those who
2 suffered abuse in the ADF may have later participated
3 in inflicting abuse on others. And to your
4 recollection, was there -- presumably, there was an
5 evidential basis for that within the report?

10:12

6 A. Yes, there was.

7 26 Q. Over the page, in paragraph 24 then, you identify for
8 us that Volume 2 of the DLA Piper review contained an
9 assessment of over 1,000 individual allegations of
10 abuse from 775 different sources. And can I just ask
11 you, that investigation, that Review 2 from DLA Piper,
12 was that a lengthy, indepth process or how was that
13 done, can you recall?

10:12

14 A. Yes, it was a lengthy, indepth process. DLA Piper are
15 a private law firm. They had three partners working on
16 this, as well as a number of other staff carrying out
17 interviews and investigations, and that's how they got
18 to their assessments of those allegations of abuse and
19 then made recommendations as to what should happen in
20 terms of dealing with those different allegations.

10:13

21 27 Q. Right. We saw a reference to a standard of "reasonably
22 likely to have occurred", and can you recall whether
23 that was the standard invoked by DLA Piper or was it a
24 different standard?

25 A. It was a standard very similar to that. "Reasonably
26 likely to have occurred" was, in particular, the
27 standard that was legislated from my own office when it
28 was considering allegations of abuse and the question
29 of whether monetary reparations should be paid to the

10:13

1 survivors of that abuse. It was a very similar
2 standard that DLA Piper applied as well.

3 28 Q. All right. You then have a heading in your report
4 "Pathway to Change", which I think is -- reflects a
5 defence-originated document and review within the
6 Forces, isn't that so?

10:13

7 A. That's correct.

8 29 Q. -- beginning in March 2012. And, here, the Australian
9 Defence Forces committed to implementing certain
10 actions in six particular areas that you identify in
11 paragraph 26. And at the end of that paragraph, you
12 record the ADF as acknowledging that, and I quote:

10:14

13
14 "Substantial change in our culture will take some
15 years, suggesting five years as the likely time for
16 cultural effect in some areas."

10:14

17
18 And whilst that may have the appearance of being a
19 realistic assessment, can you give any indication as to
20 whether or not you think, in fact, it has been achieved
21 within that timeframe?

10:14

22 A. It was not achieved within that timeframe. We're
23 dealing with very difficult situations. I mean,
24 inappropriate behaviour, gender-based violence, it
25 occurs throughout society. The military is certainly
26 not alone in that. Society hasn't been able to wholly
27 and properly address issues of gender-based violence.
28 Five years has certainly not been sufficient for the
29 Australian Defence Force to change -- fully change

10:14

1 their culture in respect to dealing with allegations of
2 sexual and other forms of misconduct.

3 30 Q. Based on your own review, which I know comes later in
4 time, but also your understanding of the reviews that
5 preceded yours, do you detect a genuine attempt to
6 change the culture but just not wholly succeeding, or
7 do you think there's a lack of impetus?

10:15

8 A. I think that there's been a genuine attempt. I do
9 note, though, as DLA Piper noted, some of the people
10 who might themselves have been victims of inappropriate
11 behaviour and abuse might then have gone on to become
12 perpetrators and might have moved up through the ranks.
13 There is a challenge of ensuring that everyone at every
14 level in the Australian Defence Forces has shared that
15 view, that this is completely unacceptable, and that,
16 in fact, preventing this kind of misconduct is part of
17 the mission of the ADF in terms of preserving its
18 capability to do its actual purpose, to serve its
19 purpose.

10:15

10:16

20
21 So, yes, there's been a very genuine attempt, led by
22 the very highest levels of the ADF, to change the
23 culture over a number of years. But as my statement
24 sets out, it takes a lot of time and continual
25 evaluation and reviewing to really invent change and,
26 even then, you're bringing in new people from society
27 who need to themselves be acculturated into what is the
28 central culture of the military as well.

10:16

10:16

29 31 Q. So, if there's a lesson to be learned from Australia,

1 it may be that even with the genuine goodwill of many
2 within the Defence Forces, a change in culture is a
3 difficult thing to achieve and will take considerable
4 time; is that fair?

5 A. I would go one step further. I'd say that you can't 10:17
6 ever set and forget. You actually need to make it an
7 ongoing mission of ensuring that this kind of behaviour
8 is not tolerated.

9 32 Q. Okay. Thank you. In paragraph 27, you record the
10 reaction to the DLA Piper review report, which included 10:17
11 the Government making an apology delivered in
12 Parliament delivered on 26th November 2012, and clearly
13 that's a political apology. Now, can I just ask you
14 how important was that political apology, in your view?

15 A. I think it's very important. It's seen as being 10:17
16 something that is not just for the military to fix, but
17 also an expectation of the Government that it be
18 addressed as well, and the Government also accepting
19 responsibility and accountability for driving that
20 change within the Australian Military. 10:18

21 33 Q. Okay. And was there any reaction that you can recall
22 from victims of abuse or victims' organisations to that
23 political apology?

24 A. My recollection is that it was with welcomed, but at
25 the same time, it is fair to say that a number of the 10:18
26 survivors of abuse and representatives of the survivors
27 of abuse were not sure that that in itself would be
28 sufficient and they were not necessarily confident that
29 the required change would be carried out, knowing that

1 change does take a sustained effort over a very long
2 period.

3 34 Q. All right. The other developments consequent then on
4 the DLA Piper review, you detail in the other
5 subparagraphs and paragraph 27 of your report, 10:18
6 including the establishment of a Defence Abuse Response
7 Taskforce, DART, and does that continue to this day?

8 A. No, the DART ran for a number of years and, when it
9 finished, that's when my office was then given the role
10 under the Defence Abuse Reparation Scheme of continuing 10:19
11 to assess applications for reparation and reports of
12 abuse.

13 35 Q. All right. So the responses here detailed that
14 formerly fell within the review of DART are now
15 responses for which you are responsible; is that so? 10:19

16 A. That's correct. But even then, my office was only able
17 to assess reports up to -- abuse that occurred up to
18 30 June 2014 and to make recommendations that
19 reparations be paid to those people. Now, we continued
20 to receive reports of abuse that people have suffered 10:19
21 since 30 June 2014. We have received 153 such reports.
22 So there are still people who are suffering or believe
23 that they are suffering inappropriate behaviour while
24 serving in the Australian Military. The numbers have
25 got much smaller, but there continues to be a need for 10:20
26 people to be able to report to an organisation outside
27 the chain of command, outside the military, such as my
28 office.

29 36 Q. And the diminishing numbers, is that seen then as an

1 indicator of success of some of the reforms introduced?

2 A. It's certainly seen as positive that the numbers are
3 not as high. But the numbers have been, I think it's
4 fair to say, the numbers surprised the military and the
5 Government of the day. There was an expectation that 10:20
6 the numbers would be much lower, but when you see that
7 DLA Piper identified 1,000 cases, the Defence Abuse
8 Response Taskforce dealt with 2,400, my office dealt
9 with 5,000, so no one expected, I think, that there
10 would be that many people coming forward having 10:20
11 suffered abuse.

12 37 Q. There's a compensation possibility within the
13 Australian regime also, and you identify that, but
14 capped at \$50,000?

15 A. That's correct. That has now ceased. 10:21

16 38 Q. That has ceased?

17 A. That has ceased in that we have worked through all of
18 the reports of abuse that people have reported before
19 30 June 2014, and that was tied to the ability to
20 recommend a monetary payment. So, reports I received 10:21
21 since then, I can't make a recommendation on the
22 monetary payment, although I can still investigate the
23 matter and make recommendations.

24 39 Q. Okay. In paragraph 29, you draw attention to the fact
25 that the Minister then stated that to ensure the 10:21
26 ongoing implementation of these essential reforms - and
27 they received the highest levels of oversight - the
28 Minister for Defence will on an annual basis provide a
29 report to Parliament on Defence's implementation of the

1 reform programme. Has that happened?

2 A. That continued for a number of years. I don't believe
3 it's still continuing.

4 40 Q. Okay. And is that because it ran its natural course or
5 it just fell into disuse? 10:22

6 A. Well, effectively, it got overtaken by other events.
7 Subsequently, in my statement, I point to, for example,
8 a Royal Commission which was set up to specifically
9 look at the incidence of suicide amongst Defence
10 members and Defence veterans, and that Royal Commission 10:22
11 was reported in 2024 and made a very large number of
12 recommendations. Those recommendations were
13 effectively subsumed the reporting that was going on,
14 and now it's a question of reporting against the
15 implementation of those recommendations. 10:22

16 41 Q. Okay. Well, then, for as long as it did last - I mean
17 this reporting to Parliament on an annual basis - was
18 that seen as effective and useful?

19 A. Absolutely. With those reports, parliamentary
20 committees could consider having inquiries of their own 10:23
21 to look at particular issues, to follow up issues, to
22 engage with Defence when Defence appeared before them
23 at various committee processes. So it facilitated
24 transparency and facilitated engagement by Parliament
25 with those issues. 10:23

26 42 Q. May I ask did it come before a committee of Parliament
27 or was this Parliament in full session?

28 A. So, they would be tabled and then they would be
29 typically taken up when they were taken up by a

1 parliamentary committee.

2 43 Q. All right. And may I ask did it excite much interest
3 within the political body?

4 A. Eh, it depended. There have continued to be particular
5 cases which have been the things that have really 10:24
6 driven the intense interest. The annual reporting in
7 itself was useful, but didn't necessarily generate as
8 much attention as some of the incidents.

9 44 Q. Yes. We often hear here in Ireland that, you know, I
10 or some body will be subject to parliamentary oversight 10:24
11 -- I'll have to go before the committee on whatever it
12 might be, and it serves as a kind of a -- I suppose, an
13 enhancement of performance, perhaps, and do you think
14 it might have had that sort of an effect in Australia?

15 A. Oh, absolutely. The Defence Forces appear at least 10:24
16 three times a year before parliamentary committees, who
17 are then informed by a reporting of that type, and
18 they're free to ask any questions and it's a very
19 important demonstration of accountability to
20 Parliament. 10:24

21 45 Q. Thank you. Just returning to dealing with apology, at
22 paragraph 30 you draw attention to the fact that on
23 26th November 2012, the then Chief of Defence Force,
24 Gen. David Hurley, made an apology to those who
25 suffered sexual, physical or mental abuse, and you 10:25
26 there set out the terms of that. And it finishes with
27 him saying that:

28

29 "On behalf of the ADF, I say that I am sorry to those

1 who have suffered."

2

3 There's a second apology, which perhaps attracted a

4 little more attention, but maybe I'm wrong and you can

5 tell us. On 13th June 2013, the Chief of the Army, Lt. 10:25

6 Gen. David Morrison broadcast a speech with the

7 heading:

8

9 "The standard you walk past is the standard you

10 accept." 10:25

11

12 And, firstly, am I right in saying that this one

13 attracted maybe more attention than the previous one?

14 A. Yes, it did. It attracted considerable attention both

15 inside Australia and outside Australia. 10:25

16 46 Q. Yes. And you set out the terms of either all of it or

17 some of it beginning in paragraph 33. But it's punchy

18 in its terms, I think, is that fair?

19 A. That's the entirety of it --

20 47 Q. Oh, that's the -- 10:26

21 A. And that's why it got the attention, because it's very

22 simply but powerfully stated.

23 48 Q. Yes. And he was very clear about speaking directly to

24 those who think it's okay to behave in a way that

25 demeans or exploits their colleagues, and he has that 10:26

26 punchy line that "If it does not suit you, then get

27 out" --

28 A. Yes.

29 49 Q. The same, he says, goes to those who thinks toughness

1 is built on humiliating others. And then he says:

2
3 "If you become aware of any individual degrading
4 another, then show moral courage and take a stand
5 against it."

10:27

6
7 And staying with that idea, he says:

8
9 "The standard you walk past is the standard you
10 accept."

10:27

11
12 So, there's that idea, again, of standing up for what
13 you see as right, perhaps recalculating the idea of
14 loyalty, loyalty being to what's right as opposed to
15 the institution. Is that the theme he was getting at?

10:27

16 A. Yes, absolutely. It's about understanding that this
17 was not a distraction, this was actually central to
18 serving the Australian Military to understand that you
19 need to protect your fellow soldiers against
20 misbehaviour. And, also, that, in doing that, you are,
21 in fact, being loyal to the true nature and purpose of
22 the Australian Armed Forces.

10:27

23 50 Q. And you tell us his speech was received very positively
24 by many inside and outside the ADF. He was later
25 appointed Australian of the Year. But at the time of
26 his appointment, he was strongly criticised by some in
27 military veterans and political circles. So, I
28 suppose, universal approval is not ever going to be
29 achieved, but there were always some who didn't think

10:28

1 well of his stance on the Defence Forces, is that
2 right?

3 A. Yes, in particular, when he accepted the role of
4 Australian of the Year and gave a televised national
5 speech, he was criticised by some for not saying that 10:28
6 his mission as Australian of the Year was to advance
7 the cause of veterans.

8 51 Q. In any event, you then have a heading in your report:
9
10 "Rethinking systems of inquiry, investigation, review 10:28
11 and audit in Defence."
12

13 And you go back a little in time, beginning on 8th
14 November with the Secretary of Defence in 2011, the
15 Secretary of Defence and CDF commissioned a review of 10:29
16 all investigation, inquiry, review and audit systems in
17 Defence. And, again, the objective of the review was
18 to make recommendations regarding the establishment of
19 a system that is fair, timely, simple to implement,
20 provides whole of Defence outcomes, and which takes 10:29
21 into account legislative requirements. And it is a
22 feature, I think, of the maybe 15 years that have
23 followed the incident you described in 2011 that the
24 Defence Forces in Australia have been the subject of
25 really quite intense scrutiny, isn't that so? 10:29

26 A. Yes, absolutely. But they've also driven themselves --
27 they had themselves driven reviews in addition to being
28 the subject of external reviews.

29 52 Q. Yes. So, sorry, both external and internal. But an

1 additional feature, I think, that comes through from
2 your report is that some of these reviews are follow-up
3 reviews in the sense that they're looking at
4 recommendations, checking if they have been
5 implemented, and separately checking whether the 10:30
6 implementation has been effective. Is that a feature
7 of what's happening?

8 A. Absolutely.

9 53 Q. And, presumably, that's an overall review system that
10 you would advocate, that there would be these checks to 10:30
11 see if recommendations are implemented and, separately,
12 to see if they have been effected -- that's important?

13 A. Yes, as an Ombudsman, I can say that in every facet of
14 my work, I always look to see if an organisation has
15 accepted a recommendation, have they actually gone 10:30
16 ahead then and implemented it, and then has it created
17 the outcome that was intended. And, ideally, the
18 organisation, having accepted that the organisation
19 should really own that question of has it delivered the
20 outcome and, if not, what more do they need to do? 10:30

21 54 Q. All right. When we come to your Defending Fairness
22 report, we will see, will we not, that it is, in fact,
23 a follow-up report to an earlier report of your own?

24 A. That's correct.

25 55 Q. It's also an own-volition inquiry report, I think? 10:31

26 A. Yes, it is.

27 56 Q. An own-volition or the possibility of own-volition
28 inquiries is something that you see as important, I
29 think. Can you explain why that is so?

1 A. Look, I think it's very important because you might not
2 have complaints about something that you're responding
3 to, but you might be concerned about a particular issue
4 and, therefore, the ability to choose the timing, the
5 nature and the scope of your investigation, it is very 10:31
6 powerful. It means that you can't have someone saying,
7 'No, you can't look at this' because you haven't
8 actually got over the threshold by having a sufficient
9 number of complaints or a complaint. It's that ability
10 to choose this is the right time to do things, and then 10:31
11 to do that independently and impartially, which is the
12 role of the Ombudsman.

13 57 Q. Okay. Thank you. You then have a heading in your
14 report:
15
16 "Inquiries into Specific Instances of Abuse."
17
18 And you reference here subsequently the response to the
19 DLA Piper review being the creation of DART, as we have
20 seen before, and you reference there numbers of 10:32
21 complaints and sums of money paid out by way of
22 compensation. And I'll just -- you also mention class
23 actions, but I'll pass from that, Mr. Anderson, and go
24 to the next heading:
25
26 "Recent Reviews and Reports on Complaint Handling in
27 Defence."
28
29 And then there's a refers to DARS. Can you just remind

1 us what DARS is, please?

2 A. DARS is the Defence Abuse Reparation Scheme. That was

3 the successor scheme to the DART, the Defence Abuse

4 Reparation Taskforce -- Response Taskforce, sorry.

5 58 Q. Okay. You come then at paragraph 49 to mention your 10:33

6 own report in December of 2023 and, in the following

7 paragraphs, you identify some of the features of that

8 report, including its recommendations. But we might

9 just look at the report itself for a moment,

10 Mr. Anderson. Do you have it with you? 10:33

11 A. I do. I do, yes.

12 59 Q. Good. Thank you. So, it begins on page 5477 of the

13 book, and if we could go to 5479 to begin?

14 A. Yes.

15 60 Q. In the second paragraph on that page, Mr. Anderson, you 10:33

16 say:

17

18 "Defence is in a period of change. It has taken

19 positive steps to address and reduce unacceptable

20 behaviour. We commenced this own motion inquiry to 10:34

21 build on the findings of our previous report 'Defence's

22 policies for receiving and responding to reports of

23 abuse' and to examine how the policies and procedures

24 we evaluated in that inquiry work in practice."

25

26 So this is a classic example of a follow-up report to

27 see: 'Have our recommendations been implemented? Are

28 they effective?', right? And just to give some idea of

29 the scale of Australia, in the third paragraph on that

1 page in the last sentence, you say:

2
3 "In the 2022-23 financial year, Defence received 1,165
4 complaints of unacceptable behaviour."

5
6 So the volume remains significant? I think we may have
7 just lost your audio for a moment.

8 A. Can you still hear me?

9 61 Q. We can now, thank you, yes. Thank you. And then this
10 report sets out, if we turn to 5482, I think there are, 10:34
11 in total, nine recommendations, but you describe as a
12 key recommendation what's there set out in a second
13 paragraph?

14 A. That's correct.

15 62 Q. Is this the principal recommendation emerging from this 10:35
16 report then?

17 A. Yes. We particularly felt that one of the key issues
18 was that there were different processes in the
19 different services that make up the Australian Defence
20 Force and that those different processes with different 10:35
21 systems meant that there was an inability to gather
22 data, and the data is really important to actually
23 gather intelligence, look for things, say are things
24 improving or not. The consistency is really important
25 so that complainants have a similar experience and can 10:36
26 have confidence that they will receive a similar
27 experience as well, no matter how they raise a
28 complaint or where they raise a complaint. So, yes,
29 that single, centralised, specialised complaint unit

1 was really critical, but backed up by a single
2 record-keeping system as well.

3 63 Q. On page 5483, you have a visual of the nine
4 recommendations, if you can see that, and it's one per
5 -- there are eight boxes and it's one per box, except 10:36
6 for the bottom right-hand corner, which has two
7 recommendations, making a total of nine, isn't that so?

8 A. That's correct.

9 64 Q. We might just look at 5515, which is about training in
10 managing complaints of unacceptable behaviour. And you 10:37
11 highlight on that page in the blue box:

12
13 "A lack of training for the staff involved in the
14 complaint process impacts its effectiveness, especially
15 given the complaint framework is complex to navigate." 10:37
16

17 But could you tell us a little bit more about what you
18 encountered in terms of the training of those charged
19 with handling complaints? Sorry, page 5515 -- oh, this
20 is not in the book, I'm so sorry. It's internal 10:37
21 paragraph 3.75, Mr. Anderson.

22 A. Yes, thank you. So, what we found was that
23 complainants were frustrated with the processes, but so
24 were those who were required to actually carry out the
25 processes and that's why we said that training is 10:38
26 essential. Staff had -- staff and those in senior
27 positions need to be able to deal with these
28 complaints. They might, very rarely, deal with a
29 complaint, but when one arises, they need to be either

1 sufficiently trained or able to really reach out to a
2 useful resource that will actually assist them so they
3 understand what the complaint handling process requires
4 of them and how to ensure that it's a consistent and a
5 fair process for all the parties involved in it.

10:38

6
7 So, training is really important, but so is having
8 accessible and usable resources that are readily
9 available to people who need to then carry out the
10 process.

10:38

11 65 Q. Okay. Thank you. If we could just turn back to your
12 report and we had just broken off at paragraph 59 -- or
13 49, I beg your pardon, if you have that?

14 A. I do.

15 66 Q. At 50 then, you're summarising the main findings of the
16 report, and you set that out over the following
17 paragraphs.

10:39

18
19 You have a reference there to the continuing role of
20 SeMPRO at 52, and what did you find there?

10:39

21 A. It continues to play a very useful role, but as I
22 mentioned earlier in my evidence, in itself, it's only
23 one part of a framework of providing support to
24 complainants.

25 67 Q. And, at 55, you identify a recommendation in relation
26 to making information about complaint processes more
27 widely available and you had found there was no simple
28 way to access information. Now, a little further down
29 that paragraph, you say:

10:39

1
2 "The Australian Defence Force Academy had adopted the
3 course of putting up posters with a QR code that, when
4 scanned from a device, linked to information about the
5 options and processes."

10:40

6
7 And was your finding to the effect that that wasn't
8 sufficient?

9 A. Eh, you can always do more to ensure that information
10 is readily available. Complainants need that
11 information so they can decide what they're going to
12 do, having suffered the behaviour. That example of the
13 QR code is a really simple way of making a lot of
14 information readily available, but there's always more
15 that can be done. Particularly if you think about the
16 93,000-odd people serving at one time in the Australian
17 Defence Force, some are on ships, some are on bases,
18 some are out manoeuvres, they all need to have ways to
19 access information as simply as possible. And what
20 Defence had been doing by making it all available
21 within the protected network, that definitely was not
22 enough because a number of people were not able to
23 readily access that information. The QR code is just
24 one way example of a way of making it much easier to
25 access information.

10:40

10:40

10:40

10:41

26 68 Q. And can you think of other examples of making it easy
27 to access information?

28 A. There are other ways. Different units were doing it in
29 different ways. Some of them had resources that they

1 developed within their units, for example, that would
2 provide a synopsis and things like that. But the
3 beauty with the QR code is you can then access a great
4 volume of information, and other mechanisms don't
5 necessarily enable them to access the full volume of
6 information.

10:41

7 69 Q. All right. And when you're directed to information, is
8 it a reference to a regulation or a provision of a
9 statute, or is it some narrative description of the
10 process? In other words, are you referred to the
11 process itself or to a description of it?

10:42

12 A. Look, it's much more a narrative about the process
13 because if you're a survivor of abuse, one of the first
14 things you want to know is what are your options, and
15 your options are not necessarily just going down a
16 formal path. So if the information is limited to the
17 legislation or the regulations, that's not going to
18 actually help people to know what options they might
19 have. The options might include not reporting but
20 seeking support, for example, and SEMPRO can provide
21 support if somebody doesn't make a report. Or it might
22 be reporting anonymously, and the ADF has ways of
23 making anonymous reports. Or it might be making a
24 named report. It might be going to your commanding
25 officer, or it might be going outside the chain of
26 command. There are lots of different things that, lots
27 of different options that a survivor of abuse has to
28 them, and they need to go through those options to
29 decide which path they're going to go down. Because,

10:42

10:42

10:42

1 as we know, it's very difficult as a survivor of abuse
2 to decide which path you're going to go down because
3 formal reporting can be a very gruelling process for
4 anyone.

5 70 Q. Yes. Thank you. At the end of paragraph 56, you tell 10:43
6 us that Defence accepted the nine recommendations in
7 your report and have recently commenced the process of
8 reviewing how they have implemented those
9 recommendations. Have you any sense of where that
10 process is or the outcome of that process? 10:43

11 A. No, we're still at the early stages. We're gathering
12 information at the moment. We've issued some requests
13 for information and we're assessing what we've already
14 received back.

15 71 Q. So that's not just an internal review, it's a review 10:43
16 that's also reporting to you, is that right?

17 A. That's right, and I will then publish a report about
18 the implementation as well.

19 72 Q. All right.

20 A. Because, again, I believe that that transparency on how 10:43
21 Defences have actually done what they said they were
22 going to do when they accepted the recommendations is a
23 very important way of holding them to account.

24 73 Q. Okay. Then separately, but on the same theme, you tell 10:44
25 us in 57 that on 28th August 2024, the DFO published a
26 report on the implementation by Defence of DART
27 recommendations. So that's a similar review of
28 outcome?

29 A. Absolutely, to see, well, did they actually do what

1 they said they would do with respect to the DART. The
2 DART having finished, it couldn't carry out that
3 review, but I was in a position to again shine a light
4 and inform Parliament and the community on what had
5 happened on those recommendations.

10:44

6 74 Q. At 58, you say that on 9th September, the Final Report
7 of the Royal Commission into Defence and Veteran
8 Suicide was published, and that's a "Volume 3:
9 Military sexual violence, unacceptable behaviour and
10 military justice" and this, I think you indicated
11 earlier, was a type of successor to an earlier form of
12 reporting, is that right?

10:44

13 A. Well, this one subsumed some of the earlier reporting
14 because it was a very intensive scrutiny of a number of
15 things that Defence and Department of Veterans Affairs
16 were doing that were seen as having consequences in
17 terms of the suicidality for members and veterans. And
18 so one of those issues was how did people -- what
19 behaviour were people subjected to when they served in
20 the military and how were those issues of behaviour
21 dealt with.

10:45

22 75 Q. But this volume was focusing particularly on sexual
23 violence, unacceptable behaviour and military justice,
24 is that so?

25 A. That's correct.

10:45

26 76 Q. And then, in 59, you tell us, and I think this must be
27 as late then as September 2024, that with respect to
28 sexual harassment and abuse, the Royal Commission was
29 strongly critical of Defence for not acting more

1 strongly on the various reviews and recommendations
2 that had been made to it. And can I ask you was the
3 evidence of active or passive resistance to the
4 changes, what prompted that strong criticism?

5 A. The Royal Commission observed that there had been 10:46
6 plenty of action on the recommendations of various
7 reviews, but not necessarily taking a full
8 responsibility for obtaining the outcomes that those
9 recommendations were aimed at. So the Royal Commission
10 pointed to the lack of evaluation of what had happened 10:46
11 when recommendations had been implemented. What they
12 observed was a willingness to accept responsibility for
13 implementing recommendations, but not a willingness for
14 the change that should flow from that.

15 77 Q. All right. And you tell us, then, in 60 and 61 some of 10:46
16 those criticisms. And, in 62, you say:

17
18 "The Royal Commission recommended that Defence evaluate
19 the outcome of actions taken to implement the
20 recommendations to ensure that the intent of the 10:47
21 recommendations is achieved."

22
23 So I think that's what you're telling us was a key
24 feature?

25 A. That's correct. 10:47

26 78 Q. Then yet another report on 29th May 2026 about the
27 administration of investigations in Defence, this time
28 from the Australian National Audit Office, and what
29 prompted that, can you recall?

1 A. No, I'm not aware of what prompted that, but the Audit
2 Office, the Auditor General takes guidance from a
3 number of different sources, one of which, in
4 particular, is a parliamentary committee that
5 over sights the Auditor General, and they engage with 10:47
6 that parliamentary committee as to whether that
7 parliamentary committee thinks they there are
8 particular agencies or institutions or issues that they
9 should look at. So it's a dialogue, it's not the
10 Auditor General simply deciding on their own to talk at 10:48
11 a particular issue.

12 79 Q. Okay. And, in 64, you say:
13
14 "A new body, Defence and Veterans' Service Commission,
15 was established." 10:48
16
17 And that commission was a recommendation of the Royal
18 Commission, which we had seen earlier, and it had found
19 that sexual violence remains a systemic issue in the
20 ADF and is linked to suicide and suicidal distress. So 10:48
21 sexual violence still a systemic issue

22 A. That's certainly the view of the Royal Commission.
23 It's still an extremely serious issue and the ADF needs
24 to continue to do more.

25 80 Q. And, perhaps, an eloquent statement of how difficult it 10:48
26 is to change, notwithstanding the genuine desire of
27 many within the ADF to actual effect that change?

28 A. Yes. I mean, I certainly don't doubt the intention and
29 the goodwill of senior leaders in the Defence Force,

1 but it is extremely difficult -- the Defence Force is
2 continually bringing in new people. They need to be
3 also brought to understand what is acceptable and what
4 is not acceptable. I said earlier in my evidence that
5 Australian society continues to have issues with
6 gender-based violence. So, while it's still an issue
7 rife in society, it would be hard for the military to
8 be completely isolated from that. So the military
9 needs to keep very actively asserting to all of its
10 members that it will not be tolerated and it actually
11 weakens the capability of the ADF to tolerate that kind
12 of behaviour.

10:49

10:49

13 81 Q. Thank you. Above paragraph 66 in your report, you have
14 a heading "How Complaints of Abuse are Managed in the
15 ADF", and you say there's a range of ways in which
16 complaints can be made. Redress of grievance is and
17 remains the primary formal process, isn't that correct?

10:49

18 A. That's correct.

19 82 Q. And that's a longstanding process; it's been in
20 existence for many, many years within the ADF?

10:50

21 A. Absolutely.

22 83 Q. In paragraph 71, you tell us of a report in 1999 that
23 found a very inefficient process, failing to deliver a
24 fair process or outcome, and cases might be resolved in
25 days or might run for years. Has that improved?

10:50

26 A. There have been a variety of different reviews and
27 investigations into how the redress of grievance
28 process works. I believe that the current state of
29 play much improved. We, when we talked about, in our

1 Defending Fairness report in 2023, we talked about the
2 criticality that no matter how a complaint is dealt
3 with, whether it's informally, quickly dealt with, or
4 formally over a period of time dealt with, all of those
5 processes need to have an outcome recorded in a single 10:51
6 system because they all generate data and they all
7 contribute to culture, both how that allegation is
8 dealt well and how they're perceived to be being dealt
9 with, how does the rest of the ADF understand what
10 issues are being reported and how are they being 10:51
11 addressed.

12 84 Q. At paragraph 72, you tell us that in 2001, the Army
13 created what was called a "Fair Go Hotline". It's a
14 way for current and former members and their families
15 to confidentially seek advice on how to report 10:51
16 unacceptable behaviour and sensitive workplace issues.
17 Is that regarded as a successful development?

18 A. I believe it is and it's still in existence today.

19 85 Q. In 2022, a Defence Whistleblowers Scheme was created.
20 In 2023, the Inspector General of the ADF, to which we 10:52
21 have seen reference earlier, that was created at that
22 point, following the Burchett Inquiry, and you tell us
23 about some further changes in paragraph 76. There was
24 a Rethinking Systems Review commissioned by the
25 Secretary of Defence, which led to the implementation 10:52
26 of extensive changes to the review of grievance process
27 in 2016. And prior to these reforms, review of
28 grievance was seen as very internal, very slow and
29 inconsistent, and some members lacked trust in the

1 process due to the absence of external oversight. And
2 that lack of external oversight within the complaints
3 process, was that an important theme of those
4 criticising the complaints processes?

5 A. Yes, it was. One of the concerns always for a 10:52
6 complainant is 'Do I report to my commanding officer or
7 within the chain of command? what will happen, will I
8 suffer repercussions?', and so the lack of oversight
9 was contributing to people's lack of confidence in the
10 process. 10:53

11 86 Q. And then you say that a key element of the 2016 reform
12 was that the Inspector General of the ADF was given
13 responsibility for oversight of the review of grievance
14 process, with a further option of complaint to the DFO
15 -- that's the Ombudsman? 10:53

16 A. That's correct.

17 87 Q. -- if a person is satisfied with the IGADF process or
18 outcome. So was that, the possibility of going to the
19 Ombudsman, was that the external avenue implemented in
20 Australia? 10:53

21 A. Well, that's one of the external avenues. I mean, the
22 IGADF sits within the Defence portfolio, but he's not
23 part of Defence, as such. It's the fact that the IGADF
24 does those orders -- so it's not simply something that
25 happens within a unit, or indeed within a service. The 10:54
26 IGADF does those audits of how particular commands are
27 dealing with redresses of grievance, and then it
28 reports to the service chiefs on those and, if
29 necessary, there can be follow-ups if there's found to

1 be a material deficiency. So that's an important form
2 of oversight from outside a unit; and then you have
3 oversight from outside Defence entirely, which is
4 complaint to my office.

5 88 Q. And aside from a complaint to your office, is there any 10:54
6 other avenue for external complaint?

7 A. So, complaints can also be made in appropriate
8 circumstances to the Australian Human Rights
9 Commission. So if someone feels that they have been
10 discriminated against in some way, that can also form 10:54
11 the basis of a complaint, and sexual harassment and
12 sexual assault are both issues under the Sex
13 Discrimination Act in Australia.

14 89 Q. And then aside from these, I presume, statutory bodies,
15 the Human Rights Commission and the Ombudsman, there 10:55
16 aren't complaints bodies made up of civilian
17 membership, is that right?

18 A. That's correct.

19 90 Q. And has that ever been mooted in Australia?

20 A. The question has always been: Does the body have 10:55
21 power? And that was one of the things that led to the
22 creation of that Royal Commission in 2021 because there
23 were concerns being raised about Defence and it was
24 seen that those concerns of significance needed to be
25 handled by a body with the powers of a Royal 10:55
26 Commission. And so I'm not sure there'd be confidence
27 in Australia in a civilian body that had no statutory
28 basis, no statutory powers at all. My office can't
29 enforce outcomes, but at least we have the powers of

1 the Royal Commission to obtain the information. We can
2 compel people to give evidence to us and we can publish
3 our recommendations. So those are still significant
4 powers.

5 91 Q. So a crucial future, as you see it, would be that any 10:56
6 external body, however constituted, has power, is that
7 right?

8 A. I think that's necessary. I tend not to have to use my
9 formal powers to attain information or to obtain
10 cooperation from Defence. I think I said in Defending 10:56
11 Fairness that they cooperated very willingly. They let
12 me survey Defence members who had made complaints about
13 abuse, for example, without any concerns about that.
14 But it's important to know that I have those powers if
15 I did feel I was being impeded or obstructed. 10:56

16 92 Q. Very good. Going back to paragraph 80 of your report,
17 you tell us that in March 2023, there was a 20-year
18 review of the office of the IGADF, which found that
19 there was limited awareness of it on the part of
20 serving members, but, at the same time, the number of 10:57
21 complaints continued to increase and the review was
22 very positive, including noting advice from the DFO
23 that numbers of complaints to the DFO had decreased
24 since it took oversight. So perhaps a mixed and maybe
25 not entirely consistent series of outcomes there, is 10:57
26 that fair?

27 A. I think it definitely said that there there's more the
28 IGADF can do to make itself known about and to create
29 more confidence in itself. But it's a really positive

1 thing that it is certainly receiving increasing numbers
2 of complaints. And I think the number of complaints
3 can be seen as a sign of health, that people are, in
4 fact, having the confidence to bring a complaint and to
5 feel that it's actually worth doing because, in all 10:57
6 these different reviews, there have been times when
7 people have said 'we're not willing to make
8 complaints', which can be quite frustrating for
9 commanding officers and others, who say 'If you don't
10 make a complaint, I can't act on it.' So, now, these 10:58
11 people have more confidence to bring their complaints
12 forward, but more can continue to be done.

13 93 Q. Sure. One of the not so positive aspects of the
14 reporting was a perception, described as strong and
15 persistent, that the IGADF was not sufficiently 10:58
16 independent of the Forces. I think you told us earlier
17 it sat within the framework. Does that remain a
18 perception, in your view?

19 A. I think it definitely does and that report made
20 recommendations that the IGADF should be given a 10:58
21 standalone budget and should be made more independent.
22 They commented upon the fact that the two inhabitants
23 of the Inspector General's office both had military
24 backgrounds -- both resigned their commands when they
25 were appointed, but the more that they can bring in 10:58
26 potentially people from outside Defence, that would
27 assist with that as well because their staff tend to be
28 Defence people who are seconded for a period.

29 94 Q. Okay. You have a heading in your report "Reflections

1 on over 25 years of Reviews and Reforms into Complaint
2 Handling in the ADF", and you're very well placed, may
3 I suggest, to have these reflections, and can you tell
4 us then a little of what your thinking here is in this
5 aspect of your report?

10:59

6 A. Well, you can look at all these different reviews over
7 an extended period and you could form a number of
8 different conclusions and one of those conclusions
9 might be that there's a very, very significant systemic
10 problem within the Australian Defence Force. Another
11 conclusion might be the Australian Defence Force has
12 not been actively trying to change itself. I think
13 both of those conclusions would not be entirely correct
14 because I think, as you look over this period, there's
15 a real pattern of the Australian Defence Force, led by
16 senior people, trying to change itself, doing so at a
17 time while it's engaged in continuous conflict. So
18 it's a question of, I guess, a prioritisation and the
19 resourcing that it can give to these very important
20 processes, but, nonetheless, it's been trying very
21 determinedly over an extended period to change itself,
22 and it does require an extended period of determined
23 change led from the top to make effective change, but
24 it also needs to be an ongoing process. And those are
25 my key conclusions and I can talk in more detail about
26 that.

10:59

10:59

11:00

11:00

27 95 Q. Well, no, thank you very much. One of the matters that
28 you mention within this section begins at paragraph 91,
29 where you say that some challenges for successful and

1 sustained culture come from the nature of the military
2 workplace. And you detail some of those aspects, one
3 being the command and control structure; the second
4 being a characteristic of lower diversity of the
5 workplace; and a third, perhaps, being that the
6 majority of the people are transitioning out of the
7 Forces after an average of ten years. Those are, if
8 you like, structural features that make change more
9 difficult in your view?

11:01

10 A. That's right.

11:01

11 96 Q. You also mention in the next paragraph a high level of
12 commonality amongst recruits, particularly officer
13 cadets, and you describe their almost single-minded
14 commitment to career within the Defence Forces, and
15 that's a feature.

11:01

16
17 In 95, you talk about team work and carrying with it an
18 implied obligation of loyalty to your teammates against
19 external forces. Just going back to something we
20 touched on earlier, this idea of loyalty to what is
21 right, as opposed to loyalty to the institution, some
22 of the problems here are structural that might produce
23 the wrong type of loyalty, if I understand you rightly?

11:01

24 A. That's absolutely correct. That's my view.

25 97 Q. In paragraph 101, you tell us cultural change is hard
26 and requires sustained focus, particularly in a large
27 and complex organisation. So I take it, Mr. Anderson,
28 you'd never be one to underestimate the difficulties of
29 effecting cultural change within Armed Forces?

11:02

1 A. I certainly would never underestimate the difficulty of
2 effecting sustained cultural change within Armed Forces
3 and, as I keeping going back to, I point to the wider
4 society in Australia, it remains a problem in wider
5 society, gender-based violence. As Ombudsman, I look 11:02
6 at not just the military, but also at the Civil Service
7 and my office has been around for 49 years doing that.
8 And no matter how many times we tell the Civil Service
9 you need to follow the law, you need to keep good
10 records, you need to avoid maladministration, it 11:03
11 continues to be a work in progress. And I think you
12 could say that the price of peace is eternal vigilance
13 -- I think the price of organisational integrity is
14 also eternal vigilance.

15 98 Q. At the top of page 20 of your report, just the last 11:03
16 sentence in paragraph 103, having referred to the
17 various reviews, you say:
18
19 "Another factor which I believe is implicit in the
20 reviews is the impact of the relative importance of 11:03
21 complaint handling against other organisational
22 priorities."
23
24 Could you just explain what you mean by that?

25 A. While I'm certainly strongly of the view that the ADF 11:03
26 has been committed to cultural change, there are times
27 where the individuals might raise concerns that what
28 we're talking about is not the main game for the ADF,
29 that the main game for the ADF is, in fact, being

1 involved in Afghanistan or being involved in Iraq or
2 things like that, and the organisation needs to keep
3 bringing itself back to what its senior leaders have
4 said, that actually it's a better organisation, a
5 better military organisation if it's committed to 11:04
6 ensuring that this kind of behaviour does not occur;
7 that it protects its members, because that also enables
8 it to attract and retain more people and be a more
9 capable organisation.

10 99 Q. So it's about prioritising those matters - complaint 11:04
11 handling, for example - and seeing it as being a vital
12 ingredient to cultural change?

13 A. It's not a nice-to-have and it's not a short-term
14 thing. It needs to be understood as being -- part of
15 being an effective military organisation for the ADF is 11:04
16 that it can prioritise receiving and handling
17 complaints properly.

18 100 Q. You have a very brief section and an appropriately
19 brief section headed:
20
21 "Comments on the Irish Defence Forces processes."
22
23 You, obviously, have no experience of how these operate
24 in practice and all you have been able to do is to look
25 at the documents recording the processes, isn't that 11:05
26 so?

27 A. That's correct.

28 101 Q. But you do, on that high level, you have a number of
29 observations and, at paragraph 109, for example, you

1 say:

2
3 "They appear to be far shorter and simpler than
4 comparable ADF processes. They tend not to say how to
5 investigate. They set very short timeframes." 11:05

6
7 And whilst you observe brevity of process can be a
8 bonus, it can also create opportunities for
9 inadvertent, inconsistent interpretation and
10 application. That would be your view on shortness of 11:05
11 timeframe and presumably, also, shortness of
12 description about how to investigate?

13 A. Certainly drawing on our experience with the ADF, we do
14 see that because some people in commanding officer
15 positions might have limited experience with different 11:06
16 types of complaints, if the process is described very
17 simply, that might mean that they approach it in a way
18 that's not consistent with the way that other people
19 would approach it. So, yes, from an ADF perspective,
20 we would say there's a virtue in slightly longer, 11:06
21 clearer descriptions. They still need to be simple and
22 they still need to be as short as possible.

23 MR. CUSH: Mr. Anderson, thank you very much. Some of
24 my colleagues may have some questions for you, so if
25 you just bear with us a little longer. Thank you. 11:06

26 SOLE MEMBER: Thank you, Mr. Cush. Ms. Carney?

27 MS. CARNEY: We have no questions for Mr. Anderson.
28 Thank you.

29 MR. McGARRY: I also have no questions, thank you.

1 SOLE MEMBER: Thank you, Mr. McGarry. Mr. Brady?

2
3 MR. IAIN ANDERSON, WAS CROSS-EXAMINED BY MR. BRADY AS
4 FOLLOWS:

5
6 102 Q. MR. BRADY: Judge, I just have a couple of very brief
7 questions for Mr. Anderson. Mr. Anderson, my name is
8 Alan Brady. I'm a barrister and I represent,
9 approximately, about 123 current and former members of
10 the Defence Forces who have come forward to assist the 11:06
11 Tribunal and give information about their interaction
12 with the complaints processes and obviously their abuse
13 that gave rise to that allegation, both various degree
14 of seriousness, and I just wanted to focus on two areas
15 of your report. One is in relation to the DART, the 11:07
16 Defence Abuse Response Taskforce, and then obviously
17 the DARS process that took over from that. I think you
18 had mentioned to Mr. Cush that one part of it had dealt
19 with repatriations or compensation.

20
21 But it seems to me that the idea of the process was
22 kind of twofold; one was to assist and recognise the
23 complainant, and then also a mechanism, if needs be,
24 that steps can be taken against perpetrators. Would
25 that accord with the process? 11:07

26 A. Certainly assisting someone to raise their complaint --
27 and, of course, they could take legal action if they
28 wished, but this was intended to be a much simpler
29 process where they could raise a complaint, they could

1 be heard, they could potentially receive a restorative
2 engagement process, so acknowledgement and an apology
3 from a senior person in Defence.
4

5 But Defence was also then receiving the information 11:08
6 about the perpetrators. What Defence did with that was
7 not part of the process, but Defence was, at least,
8 informed that there were concerns and Defence were,
9 therefore, able to identify were there more than one
10 complaint about a particular individual, were there 11:08
11 complaints about a particular unit or a particular
12 location, and that's all very useful intelligence for
13 Defence in understanding what's going on within units.

14 103 Q. And, indeed, I think you say in your report that there
15 were 133 referrals made to the Domestic Police Force. 11:09
16 Can I ask you was there any referrals also made to the
17 Military Justice System, if that was deemed
18 appropriate?

19 A. There weren't any made to the Military Justice System.
20 It was expressly complaints that should have, in the 11:09
21 view of the DART, have gone to the Civilian Police and
22 that they had the consent of the complainants to
23 forward those things to the Civilian Police. So, that
24 was something that hadn't happened.

25
26 The military justice processes were something that
27 Defence had the ability to process if it wished to.

28 104 Q. I think outside of the competition, there seems to be
29 another couple of resources that were put in place or

1 mechanisms to assist people who came forward. One, if
2 I'm correct, is counselling services. Was that
3 provided in some circumstances?

4 A. Yes, that's
5 correct, counselling and support services. 11:09

6 105 Q. And then you detail the restorative engagement process
7 and I think that's a process where the individual
8 involved participates in this process where they tell
9 their story to a senior Australian Defence Forces
10 officer in an independently facilitated context, and 11:10
11 that senior officer acknowledges their story and
12 delivers a personal apology. And you said that it was
13 viewed extremely positively by those who have done
14 that?

15 A. Yes, absolutely. One person who always remains in my 11:10
16 mind, they said that they hadn't been able to breathe
17 for ten years, but when they got that apology, they
18 felt they could breathe again.

19 106 Q. But you also seem to recognise as well that it had a
20 benefit for the senior officers who were listening to 11:10
21 these complaints and had to deliver that apology; that
22 it seems that officers have also -- you say in your
23 report at paragraph 43:
24

25 "Officers have also commented on the powerful impact it 11:10
26 had on them to participate in this process."
27

28 A. Yes. Absolutely. It really seemed to assist to drive
29 understanding of the importance of change in this

1 regard. So, yeah, a really powerful contributor to
2 helping the ADF understand at single levels the reason
3 why this is a really important priority for change.

4 107 Q. And I think it would assist in shaping the culture or
5 changing the culture in the process because if you had 11:11
6 senior people within the organisation having a better
7 understanding of this complaints process or, I suppose,
8 the knock-on effects of not having a good system in
9 place, that that filters down through all ranks then?

10 A. Yes, although, again, you can't rely on that being 11:11
11 enough to -- to filter down, you need more active
12 processes to ensure that it gets actively driven down.

13 108 Q. Yeah, but it is something that does assist overall, but
14 you still need all the other procedures in place. You
15 need good training, you need good information, and need 11:12
16 everything like that as well?

17 A. Absolutely.

18 109 Q. It's a multifaceted kind of system in place. You can't
19 just rely on the fact that we've put training in place,
20 you can't rely on that. It has to be, as you say, 11:12
21 checked that it's being done, reviewed constantly. So
22 it's just a constant, constant mechanism to go through
23 that?

24 A. Yes, absolutely.

25 110 Q. One thing I just wanted to highlight as well, you said 11:12
26 that the DARS and the DART processes, they had a lower
27 threshold for deciding that the abuse had occurred. So
28 it wasn't necessarily an adversarial process conducted
29 to either the civil or criminal standards, but you said

1 it was, in relation to DARS, that it was said that it
2 was reasonably likely to have occurred. Do you think
3 that assisted in having people come forward, that it
4 was less adversarial and --

5 A. Absolutely. I said a few minutes ago that the people 11:12
6 who had suffered this kind of behaviour always had the
7 option of would they commence civil litigation, for
8 example, would they seek damages for what occurred to
9 them. Now we know that going through litigation is
10 extremely challenging and onerous. On the other hand, 11:13
11 you might be able to be awarded a much higher amount of
12 damages. So this was deliberately designed to be a
13 lower threshold, with a lower monetary amount
14 available, but hopefully that would be much less
15 onerous for those going through it because, certainly 11:13
16 in Australia, we know that many, many people choose
17 never to actually raise their complaints. So by having
18 that lower threshold, people still had to actually --
19 they still had to satisfy us that it was reasonably
20 likely that it occurred. So they couldn't just make 11:13
21 any kind of allegations in the hope of gaining money,
22 but they didn't have to persuade us beyond reasonable
23 doubt. They didn't have to meet the test of the
24 balance of probabilities, and that was a really
25 important part of making it a process that was more 11:13
26 welcoming to the individuals so they could come
27 forward.

28 111 Q. And I think it wasn't just solely focused on, from
29 complainants, maybe just the money aspect; part of it

1 was probably as well recognition of what happened to
2 them; an apology; and counselling, if needed. So it
3 had more of a -- for a lot of people, maybe more of a
4 holistic experience that they could certainly get
5 something off their chest, get an acknowledgement that 11:14
6 what happened to them was wrong, and get the support
7 that they needed?

8 A. And help them move on with their lives, absolutely.

9 112 Q. Can I just bring you to another aspect of your report
10 as well, and I think this probably encompasses a lot of 11:14
11 the Australian Defence Force's experience over the last
12 25 years, as you put it. It's paragraph 104 of your
13 report and you say:

14
15 "One fundamental way in which the process has changed 11:14
16 over the last 25 years has been a much greater
17 recognition that complaints need..."

18
19 -- as you say, three points:

20
21 "More support..." 11:14
22

23 -- or, sorry:

24
25 "...that complainants need more support, more 11:15
26 information and more options for voicing complaints."
27

28 So it seems that there are three aspects that
29 complainants -- that the experience of Australian

1 Defence Forces is that they are three aspects that
2 complainants really need in terms of having a process
3 that they feel more comfortable with?

4 A. Absolutely. And, as I go on in that sentence to say,
5 also that it's in the interests of the Australian 11:15
6 Defence Forces to enable this because people can suffer
7 behaviour, they cannot make a complaint, they can
8 leave. If you don't know about the behaviour, then you
9 can't change the culture, you can't prevent that
10 behaviour occurring in future. You're not going to 11:15
11 attract and retain people within the ADF to the same
12 extent. So, the understanding of it, it's completely
13 aligned. Giving complainants more ability to raise
14 their complaints in is in the interests of the ADF.

15 113 Q. Yeah, I was going to ask you that. So it's, having the 11:15
16 system in place, it's not just there to be a reactive
17 mechanism, it's also there to encourage people to --
18 sorry, to attract and to retain them, to know that they
19 have a good work environment. Obviously, it's military
20 lifestyle, but it's of a benefit to the Defence Forces. 11:16
21 That's what the Australian Defence Force have found,
22 it's been of benefit to them in attracting and
23 retaining people?

24 A. Absolutely.

25 MR. BRADY: Thank you very much, Mr. Anderson. 11:16
26 SOLE MEMBER: Thank you, Mr. Brady. Mr. D'Arcy.
27
28
29

1 MR. IAIN ANDERSON, WAS CROSS-EXAMINED BY MR. D'ARCY AS
2 FOLLOWS:

3
4 114 Q. MR. D'ARCY: Kevin D'Arcy is my name just on behalf of
5 the PDFORRA, the representative organisation for the 11:16
6 rank and file soldiers. I can understand the manner in
7 which you've broken down in terms of changing the
8 culture, then the system of complaints, and then
9 information to the complainants themselves, and it's
10 really the third prong I was just looking at, perhaps, 11:16
11 somewhat with you. In a world with a multitude of
12 means of giving information --and you have addressed
13 things like QR codes and the related... I want to put
14 that in the context of the 93,000 people. I take it
15 there's a diverse educational background between the 11:17
16 officers and other people who have entered the Army
17 from teenage years; would that be common within the
18 Australian Forces, as it would be here, I take it?

19 A. Yes, absolutely.

20 115 Q. And in the context of the sharing of the information, 11:17
21 could I put, perhaps, a suggestion that perhaps
22 sometimes too much information or too many avenues,
23 particularly, can be somewhat confusing, particularly
24 'Do I go to this route or that route?', that that can
25 be somewhat confusing for the various people who may 11:17
26 not have a legal background, such as yourself, or be as
27 well educated?

28 A. well, that's something that was highlighted in some of
29 the reviews that I cover in my statement, that there

1 has been criticism that too many avenues can be
2 confusing. Other challenges to have an overarching
3 narrative that says 'There are lots of different
4 options and here are the advantages and disadvantages
5 perhaps of those different options', so then a 11:18
6 complainant is able to make that choice of what do they
7 want to do with their complaint. If they're simply
8 given a picture of 'Here are all the different options'
9 but without any explanation of why there are different
10 options, then that can be more confusing. 11:18

11 116 Q. I appreciate that. But even within those options,
12 sometimes going one route precludes you from another.
13 Is there advantage, I'd be suggesting perhaps, in a
14 single codified route, that thereby you're not knocked
15 -- the door isn't closed, provided you have initiated 11:18
16 your complaint within a codified system, if you
17 understand what I'm getting at?

18 A. I do. My caution there is the Australian experience
19 has been that a codified route might be fine for named
20 complaints, as it were. So if you want to go down a 11:19
21 formal process. But what about people who don't want
22 to go down a formal process, yet still wish to raise
23 their concern? So, anonymous complaints over the chain
24 of command of complaints. Those can still be very
25 helpful for an organisation's wellbeing, to be able to 11:19
26 understand what's going on; to get a picture, even if
27 it can't do as much with those as if they were formal
28 reports that someone puts their name to and that lead
29 to a formal investigation. So I think you still need

1 to have scope for different types of avenues for
2 complaints to be made, even if they don't all lead to
3 the same kind of outcomes.

4 117 Q. We may be in agreement. Obviously, I'm not suggesting
5 that one would preclude a formal or informal 11:19
6 arrangement, but merely that one door wouldn't be
7 closed by having to force someone to elect a particular
8 route or a section of complaint. I think you're
9 probably in agreement with that scenario, that somebody
10 shouldn't be precluded or confused? 11:19

11 A. No, you shouldn't be precluded because, indeed, the
12 Australian experience again is that someone might wish
13 to handle a complaint and it will raise a complaint in
14 a particular way at one point and then, at a different
15 stage of their life, they might wish to, in fact, say 11:20
16 something else about their experience, particularly if
17 they are worried about consequences, reprisal, whether
18 it will affect their future promotion if they raise a
19 complaint in a particular way -- whereas later in their
20 career, they might feel they're more willing to talk 11:20
21 more broadly about it. So it is important that having
22 gone down one path, that doesn't preclude you from
23 raising in a different way subsequently.

24 118 Q. Thank you. Just one last, final point. Obviously
25 within that, and you have touched upon this, it is 11:20
26 fundamental for somebody to appreciate if their rights
27 have been violated or that 'This person cannot do this
28 to me.' Does that education come from, do you suggest,
29 other persons within the Defence Forces, or should that

1 be an external educational-type system of information?
2 A. Well, in Australia, you wouldn't get into the military
3 without having been exposed to that within the
4 schooling system, for example, and other ways in which
5 education about how people should behave towards each 11:21
6 other is carried out. But I think that the military
7 also has a role there in providing some of that
8 education as well, because, otherwise, people might
9 feel that when you're within the military, those rules
10 don't apply to you, that you're actually different. 11:21
11 119 Q. And I'm only offering the suggestion that if it's the
12 culture that needs to change, should that come
13 internally or externally?
14 A. I think the culture's got to be changed by internal
15 ownership with accountability and internal drive. 11:21
16 Externally, we can keep reminding and pointing to the
17 desirability of the need for that change, but it's
18 actually got to be owned from within side for it to
19 really happen.
20 MR. D'ARCY: Thank you. 11:22
21 SOLE MEMBER: Thank you, Mr. D'Arcy. Mr. Gordon.
22 MR. B. GORDON: Breffni Gordon representing
23 Rena Kennedy. I have no questions.
24
25 MR. IAIN ANDERSON, WAS CROSS-EXAMINED BY MR. BRADLEY AS 11:22
26 FOLLOWS:
27
28 120 Q. MR. BRADLEY: Good morning, Chairperson. Mr. Anderson,
29 I appear on behalf of women of Honour, who are a group

1 who represent both women and men affected by abuse. I
2 have a number of questions. First of all, how
3 important, arising from your experience in the
4 Australian arena, is the individual recognition that
5 abuse occurred for survivors?

11:22

6 A. I think it's very important. I think the
7 acknowledgement that it occurred and generally, at the
8 same time, an apology that it wasn't dealt with better
9 at the time is extremely powerful for the individual
10 survivors.

11:22

11 121 Q. And in terms of an admission and recognition, even in
12 an anonymised manner, that wrongdoing occurred, how
13 effective is that in terms of changing culture within
14 the Defence Forces in Australia?

15 A. I think it contributes. I think that the ADF has been
16 on a journey. You would have seen in my evidence
17 earlier that initially the ADF did not accept anonymous
18 complaints, but that it moved to accept that they
19 should accept them. Every complaint is useful
20 intelligence, is useful feedback about what's happening
21 to individuals and about how and in what ways, and what
22 happens when people then raise those concerns. So even
23 anonymous complaints can still be very powerful in
24 helping the senior leaders understand what's actually
25 happening within the institution that they lead.

11:23

11:23

11:23

26 122 Q. And how important, arising out of the Australian
27 experience, is the admission of wrongdoing by the
28 Defence Forces in the context of changing culture?

29 A. Extremely important. It sometimes surprises me that

1 more survivors don't go through a restorative
2 engagement process. There can be a range of reasons
3 for that and sometimes it can be that, for some people,
4 they have come down with a view that, as warriors, they
5 don't need -- they shouldn't be interested in
6 apologies.

11:24

7
8 But for all the people who have gone through that
9 process, all the survivors and all the senior ADF
10 leaders who have sat there and then given an apology,
11 have all said it's an extremely powerful; it really
12 persuades them of the importance of change.

11:24

13 123 Q. Arising out of the Australian experience, we have heard
14 about a very extensive apology. Is the nature and
15 extent of the apology important in terms of moving
16 forward and starting the process of restoration?

11:24

17 A. I think the apology needs to be authentic and it needs
18 to then be backed up by visible commitment. And I
19 think in the Australian context, there were very
20 authentic apologies made by the most senior leaders and
21 then backed up by commitment. Lt. Gen. Morrison has
22 spoken about the conduct you walk past is the conduct
23 you accept. That came in a context of investigation
24 into a particular pattern on behaviour in the
25 Australian Military and, as a result of that, a number
26 of officers, going from non-commissioned officers up to
27 a major, had their service in the Australian Defence
28 Force terminated. So that was very visible. And I
29 think 161 people were, in addition, were sanctioned

11:25

11:25

1 within the military. So that was a very visible
2 process, demonstrating that it wasn't just a speech by
3 the General, but, actually, that the ADF was taking
4 action.

5 124 Q. In terms of your own office, as Ombudsman, do you have 11:25
6 any time limits that apply from the date of an abuse
7 event to the date of lodgement of complaints?

8 A. I have an ability to not -- to choose not to
9 investigate a complaint if it's more than 12 months
10 old. But in the case of allegations of abuse in the 11:26
11 Defence Force, we haven't ever applied that. We've
12 said we'll look at any matter. And, as it happened,
13 there was -- I mentioned in my statement the Royal
14 Commission into institutional child sexual abuse. Now,
15 that looked at instances within the Australian Military 11:26
16 within one particular naval training establishment, in
17 particular, where 15-year-old/16-year-old boys were
18 sexually abused on a large scale going back to the
19 1970s and before. So you need to have the ability to
20 look back before you can actually really shine a light 11:26
21 and we know, in Australia, that there are many, many
22 good reasons why people won't raise their concerns
23 about sexual abuse, sometimes for decades, before they
24 feel comfortable or able to raise those complaints, and
25 so you need to be able to have no time limit at all. 11:26

26 MR. BRADLEY: Thank you very much, Mr. Anderson.

27 SOLE MEMBER: Thank you, Mr. Bradley. Mr. McGuinness.
28
29

1 MR. IAIN ANDERSON, WAS CROSS-EXAMINED BY MR. McGUINNESS
2 AS FOLLOWS:

3
4 125 Q. MR. McGUINNESS: Thank you, Sole Member. Mr. Anderson,
5 my name is Diarmaid McGuinness and I'm one of the
6 counsel for the Minister for Defence appearing before
7 the Tribunal. I just have a few questions to ask you.
8 At the end of your report, you say that you were
9 provided with or consulted a number of documents
10 relating to the Irish legislation and the Irish
11 complaints processes, but my question is directed to a
12 different subject. Did you have the opportunity to
13 look at any of the strategy documents or policy
14 documents or documents relating to the reform of the
15 Defence Forces?

11:27

11:27

11:27

16 A. Very, very few of them. I was cautious as to how
17 widely I should do my research with respect to the
18 Irish situation given that my focus has very much been
19 on Australia and I don't feel very qualified to comment
20 on the Irish situation.

11:28

21 126 Q. I understand.

22 A. I was cautious as to how widely I should do my research
23 with respect to the Irish situation, given that my
24 focus very much has been on Australia and I don't feel
25 very qualified to comment on the Irish situation.

11:28

26 127 Q. All right, I understand. But can I ask you some
27 questions just about your own situation? Firstly, what
28 is the extent of your powers vis-à-vis the Defence
29 Forces?

1 A. So, I can't look at some matters. So I can't look at
2 military discipline and I can't look at the award of
3 honours, but, broadly, I can otherwise -- I'm at large.
4 I can look at complaints made by people serving in the
5 Defence Forces or who have served in the Defence 11:28
6 Forces, and I can then make recommendations arising out
7 of my investigations of their complaints. My
8 recommendations can be very broad if I think that
9 something was wrong, was unlawful, was inappropriate,
10 or if it was wrong in all the circumstances. I can 11:28
11 then say that policies should be changed, like the law
12 should be changed, or something else should be done to
13 remediate that situation.

14 128 Q. But that's, as I understand what you're saying, that's
15 a recommendation rather than an order that has to be 11:29
16 enforced. But, presumably, the Defence Forces accept
17 the recommendation, by and large, or is it a matter for
18 the Government or the Minister to do that?

19 A. So, I can't look at the actions of ministers. They're
20 not in my jurisdiction. I can only look at the actions 11:29
21 of, in this case, the Defence Forces. So I make a
22 recommendation to the Defence Forces and it's a matter
23 for them whether they accept or not. I can't compel
24 them to accept, but I can publish my recommendations
25 and reports if I think it's in the public interest to 11:29
26 do so.

27 129 Q. Yes, and does that extend to publishing individual
28 reports of examinations of complaints?

29 A. So, we've not gone down the path of publishing reports

1 about particular individual circumstances unless we
2 feel we can do it in a way that entirely anonymises
3 that individual's situation.

4 130 Q. And in terms of triggering complaints, is there a
5 threshold in relation to the matters that are 11:30
6 complained about or how low our serious or trivial or
7 extreme can they be, or are they, within your
8 jurisdiction?

9 A. So, they could be very serious and sometimes they could
10 be from people who are, ultimately, concerned about 11:30
11 something but where there is no basis to their concern.
12 So, I don't have a legislative threshold, as such, it's
13 really just a question of do I believe that
14 investigation is warranted in all the circumstances.

15 131 Q. Yes. And just turning now to your own-volition 11:30
16 inquiries, obviously that's set out legislatively as to
17 what you may do, I would presume, is that right?

18 A. That's correct.

19 132 Q. And can you give the Tribunal some examples of
20 own-volition inquiries that you have knowledge of in 11:31
21 terms of the history of the Ombudsman's function with
22 regard to the ADF, or in your own time?

23 A. So, the easiest example is my report on Defending
24 Fairness in 2023 where we investigated how Defence was,
25 in practice, handling complaints of inappropriate 11:31
26 behaviour. Before that, my predecessor in 2019, did an
27 own motion investigation into Defence's processes and
28 whether the processes themselves were appropriate. So
29 that was looking at the documentation and the

1 processes, whereas my own motion investigation was then
2 to say, well, how that should be used in practice, and
3 I think that's an example of how powerful it can be.
4 You can either confine yourself to looking at the
5 documentation and the theory, or you can actually look 11:31
6 at it in practice.

7
8 There have been a sequence of other own motion
9 investigations on the Australian Defence Force. I
10 mention a number of other ones going back to 2004 11:32
11 looking at the redress of grievance process, for
12 example. So a number of different reports over the
13 years to shine a light on how the ADF is dealing with
14 complaint handling and with cultural issues.

15 133 Q. But, obviously, they're not triggered by an individual 11:32
16 who has made a complaint to you, but do you then seek
17 access to Defence Force material or how particular
18 complaints have been dealt with, or do you sample them
19 or how do you go about doing such an own-volition
20 inquiry? 11:32

21 A. So, with the 2023 one, because we actually wanted to
22 see how what's happening in practice, we visited a
23 number of different Defence establishments, we
24 interviewed a number of different serving members of
25 Defence who had been involved in complaint processes. 11:32
26 We did a survey to people in Defence to say 'If you
27 have ever had a complaint that you raised, please
28 complete this survey.' So we gathered the information
29 in a range of ways and so we have the ability to either

1 request information or to compel the provision of
2 information. But, generally, I find the ADF is very
3 cooperative. They provide material to us, records,
4 things that we request, and they know that we will
5 respect the confidentiality of those procedures, and 11:33
6 then we have a procedural fairness before I say
7 anything public about my concerns or my views about
8 their processes and practices.

9 134 Q. Does it extend to looking at how individual complaints
10 were actually dealt with within that inquiry? 11:33

11 A. Yes, we did look at how some individual matters were
12 dealt with, but we didn't publish details of how the
13 individual complaints were dealt with.

14 135 Q. And in terms of the outcome, you made recommendations
15 in your report, is that right? 11:33

16 A. That's correct.

17 136 Q. And they were all accepted, is that correct?

18 A. They were. All nine recommendations were accepted.

19 137 Q. Just turning to a slightly different issue, anonymised
20 complaints. Could you just, perhaps, tell me when did 11:34
21 the ADF introduce the concept of a procedure for
22 anonymised complaints being received?

23 A. So, it was recommended in around about 2011 when the
24 then Human Rights Commissioner did two reviews into
25 both treatment of women at the Australian Defence Force 11:34
26 Academy, and then treatment of women in the ADF. It
27 was, I think, agreed to by the Minister for Defence not
28 long after that and I'll just turn back to my report --
29 so at paragraph 28 of my report, I note that:

1
2 "On 26th November 2012, the Minister for Defence
3 announced that they will accept the recommendation to
4 implement restricted reporting, which allowed
5 confidential reports to be made of sexual harassment 11:35
6 and sexual abuse."
7

8 So, November 2012.

9 138 Q. How are they actioned in practice then and how are they
10 dealt with by the Defence Forces? 11:35

11 A. So, there are some mechanisms such as the ability to
12 make anonymous complaints through some online processes
13 and through telephone lines or, alternatively, making
14 anonymous complaints to the Inspector General of the
15 Australian Defence Force, or my office can receive 11:35
16 anonymous complaints. There are a range of different
17 ways that they can be made. I can't say how they are
18 made for someone who wishes to make an anonymous
19 complaint within the unit, for example, but that's why
20 the ADF has introduced all these different mechanisms, 11:35
21 to make it as easy as possible for people to make those
22 anonymous complaints through digital means, through
23 telephone means, or by going to bodies such as my
24 office or the Inspector General of the ADF.

25 139 Q. Presumably, it can lead to internal inquiries into the 11:36
26 matter complained of within the Defence Forces; are you
27 aware of that?

28 A. Yes, that's a fact. Yeah, that can certainly...

29 140 Q. Can I just turn to a separate more mundane issue. What

1 sort of a staff and a budget do you have underneath
2 your investigative powers?

3 A. Ah, that's an excellent question! I think when I was
4 first given the -- my office was first given the
5 responsibility with respect to the Defence Abuse 11:36
6 Reparation Scheme. I think we received funding of
7 \$6 million a year for that process, but we received
8 over 5,000 complaints. It was originally expected it
9 would be a much smaller number of complaints. I had at
10 one stage 26 staff dealing with those complaints, but 11:37
11 now that we've finished processing all of those
12 complaints and made recommendations, my numbers have
13 gone down considerably dealing with Defence Forces
14 complaints.

15 141 Q. Is it possible to say how many staff you currently 11:37
16 have? Is that an intrusion?

17 A. I think it's 12 staff at the moment who are dealing
18 with Defence Force complaints.

19 142 Q. But, obviously, the personnel you previously had and
20 the budget, that was connected with the issue of the 11:37
21 timeline of 30th June 2014 for dealing with complaints
22 and reparations etc., is that right?

23 A. That's right. We had the ability to receive those
24 complaints up until 30 June 2023, and then 30 June 2024
25 if people had lodged a report but not with the details. 11:37
26 So, yes, that funding went up until then.

27 143 Q. You touched a number of times on, obviously, sexual and
28 gender violence etc. in the wider Australian community,
29 but you mentioned the intake a number of times of

1 recruits -- I presume you're referring to people who
2 are coming into the Army. Has that proved to be a
3 particularly challenging aspect of the work of the ADF
4 and then giving rise to a greater level of complaints?
5 A. I'm not sure I understand the question, sorry? 11:38
6 144 Q. You referred a number of times in your evidence to the
7 intake of new recruits, as I understood it, and coming
8 from the cultural background that exists in Australia.
9 Has that proved to be a particular challenge in
10 Australia? 11:38
11 A. No, I wasn't saying that it was necessarily a problem
12 that people would join the military with a particular
13 perspective or on gender-based violence. I was simply
14 making the point, though, that the military recruits
15 from the broader society and the broader society does 11:39
16 continue to have issues with gender-based violence.
17 Unfortunately, gender-based violence continues to occur
18 in Australian society and so, if somebody joins the
19 military, it might be that they bring in whatever
20 background they have about how people should conduct 11:39
21 themselves, about what behaviour is appropriate or not,
22 and so the challenge then for the Australian Military
23 is ensuring that, as quickly as possible, those people
24 are brought into an understanding of what's the moral
25 standard for the Australian Defence Force. 11:39
26 145 Q. In paragraph 25, you refer to the pathway for change or
27 to change and Mr. Cush was asking you about the
28 timescale set for trying to change the cultural
29 background to it, and you said a target was set of five

1 years to do that, but it wasn't achieved, is that
2 correct?

3 A. No, that's correct.

4 146 Q. I'm not construing it as a failure, but what were the
5 weaknesses or the obstacles on the pathway which failed 11:40
6 to ensure that it did result within the five years?

7 A. I think it was just over-optimistic as to how long it
8 actually takes to change a very large, a very complex
9 organisation where there is considerable movement
10 internally. I mean, there is the process in the 11:40
11 Australian Defence Force where officers rotate roughly
12 every two years or so. That makes it a challenge to
13 maintain a consistent approach to behaviour in
14 different units. The fact of even the three different
15 primary services, Army, Navy and Air Force, they were 11:41
16 different and sometimes inconsistent ways of dealing
17 with behaviour and complaints of behaviour, recording
18 complaints of behaviour. That's why we've stressed in
19 our 2023 report the importance of a single,
20 centralised, specialised service to receive the 11:41
21 complaints, handle the complaints, track the
22 complaints, analyse the data that comes from complaints
23 so that the whole ADF gets the benefit from it, rather
24 than leaving it up to an individual unit or an
25 individual location or an individual service to fix 11:41
26 itself.

27 147 Q. I mean, obviously leadership and training, in
28 particular, is important and the consistency of
29 training. But how do you go about monitoring the

1 delivery of training and an evaluation of the
2 consistency of conduct-related complaint processing, as
3 it were?

4 A. So, you can evaluate the effectiveness of training by a
5 range of mechanisms. You can survey people, things 11:42
6 like that. You can check for attendance. There is
7 kind of those mechanistic ways you can check. But you
8 can also be informed by the experience of complainants
9 and of the experience of complaint handling -- so, does
10 the complaint handling, the outcomes, the numbers of 11:42
11 complaints, the experience of the complainants, does
12 that all point to people having been consistently and
13 effectively trained to deal with complaints in the same
14 way or not? So that's why looking actively at the data
15 you get from the complaints is really critically 11:42
16 important because that's your main way of evaluating
17 the effectiveness of what you're doing.

18 148 Q. Yes. Just turning to the variety of ways of
19 complaining. I do see from paragraph 56 of your report
20 that complaints can -- and, perhaps, it's your view 11:42
21 that they should be resolved at the lowest level
22 possible within the Defence Forces, is that right?

23 A. Yes, that's correct, and we talked about that in our
24 2023 Defending Fairness report as well.

25 149 Q. A more formal complaint then can still, obviously, be 11:43
26 made within the Defence Forces and is there scope to,
27 as it were, sidestep the chain of command in instances
28 when there's an issue about somebody in the chain of
29 command being implicated, whether directly or by not

1 dealing with something in the way that it should be
2 dealt with?

3 A. Yes, you can certainly go outside the chain of command,
4 and we say that's important. But we, similarly, also
5 recommend that it's really important that there be good 11:43
6 record-keeping to the consideration of conflicts of
7 interest or biases that might be held by officers who
8 are involved in the investigation or consideration
9 process as well.

10 150 Q. And those two options, they don't preclude anyone 11:44
11 coming to you at any stage, is that right, with a
12 complaint?

13 A. That's correct.

14 151 Q. And the only jurisdictional issue for you is whether
15 you decide not to look at something but you have never 11:44
16 not done that, as I understand it?

17 A. We've looked at every -- I mean, this is a very serious
18 subject, so, yes, we look at everything. Sometimes, we
19 have reached a view relatively quickly to say,
20 'Actually, this is a person who's unhappy, but it's not 11:44
21 actually a substantiated complaint.'

22 MR. McGUINNESS: Thank you very much, Mr. Anderson.

23 SOLE MEMBER: Thank you, Mr. McGuinness. If there are
24 no further questions...

25 11:44

26 MR. IAIN ANDERSON WAS QUESTIONED BY THE SOLE MEMBER, AS
27 FOLLOWS:
28

29 152 Q. SOLE MEMBER: Mr. Anderson, good morning, my name is

1 Ann Power and I'm conducting this Inquiry into the
2 complaints processes within the Irish Defence Forces.

3
4 There are four areas I'd like you to just express your
5 view on a little further. 11:45

6
7 The matter of apology and reparation, you described the
8 standard that was used in coming to decisions about
9 these matters. Was the standard of "reasonably likely
10 to have occurred" used before an apology was issued? 11:45
11 Or was that used only for the decision in respect of
12 reparation?

13 A. No, that was used for the assessment of the report of
14 abuse. If the assessment was that it was not
15 reasonably likely to have occurred, then there would 11:45
16 not be a recommendation that there be reparations and,
17 similarly, there would not be a recommendation on an
18 apology.

19 153 Q. Thank you. And then the question of anonymous
20 reporting, which Mr. McGuinness has touched upon. I 11:45
21 appreciate that every complaint is useful intelligence,
22 but what was the response to such anonymous reporting,
23 and how did the Australian Defence Forces ensure that
24 the rights of an accused person who was the subject of
25 an anonymous complaint were respected? 11:46

26 A. So, I think it's fair to say that the question of what
27 do you do with an anonymous complaint has been
28 something that the Defence Forces grappled with. How
29 much weight can you put upon it when you can't

1 necessarily test it to the same extent. How much
2 weight do you put upon it when there might be
3 consequences for the alleged perpetrator? On the other
4 hand, if you have a pattern of anonymous complaints
5 then you might start to think about it in a different 11:46
6 way and you might think, actually there's something we
7 need to look at here to a greater extent. So it's
8 really about does an anonymous complaint stand out as
9 being unusual or does it suggest that there's actually
10 something worth considering further and then you choose 11:46
11 an appropriate way of doing that. It's fair to say
12 that people would not suffer significant sanctions for
13 an anonymous complaint on its own but there might
14 nonetheless be conversations, things like that. And
15 there would at least be a record and that's part of the 11:47
16 power of the anonymous complaint. There should always
17 be that record so you can say, 'well, we did have that
18 complaint. We did know there was a potential issue
19 about that individual, that unit, that location, that
20 service.' So it does all contribute to an 11:47
21 understanding that there are things going on and you
22 can't pretend that they're not going on simply because
23 you don't have named complaints.

24 154 Q. And then on the question of gender-based violence being
25 a societal problem as well as a problem within the 11:47
26 Australian Defence Forces, given all the reviews and
27 evaluations that have occurred, do you have any
28 comparative data? Is there data to show whether there
29 is a higher incidence or a lower incidence of

1 gender-based violence or is it commensurate with
2 incidence of gender-based violence within society
3 generally? Is there something about the military
4 environment that might give rise to a greater incidence
5 or is there a lower incidence having regard to all the 11:48
6 reviews and evaluations?

7 A. The reporting that's being done, carried out by the ADF
8 has suggested there is a lower incidence, a lower
9 incidence of both abuse and harass the within the
10 military. The Royal Commission that reported in 2024, 11:48
11 however, said that the ADF had used some different
12 definitions for what it was looking at there and said
13 that the ADF shouldn't be as confident in the figures
14 because the ADF had produced figures that said that the
15 incidence was much lower than in society. And the 11:48
16 Royal Commission said you're, perhaps, putting too much
17 weight upon that, you should -- even if you do have a
18 lower incidence you should still be dealing with it
19 very appropriately and don't think too confidently
20 you've got as low an incidence as you think you do. 11:49
21

22 we know that sexual harassment, sexual abuse are
23 underreported in any event.

24 155 Q. Thank you. And then finally on the question of
25 external oversight, you have described the powers that 11:49
26 you have and they're quite extensive, in addition to
27 compelling witnesses and obtaining documents you could
28 conduct an own volition inquiry. But you said your
29 office cannot enforce outcomes. Is that a significant

1 deficiency, in your view, when it comes to progressing
2 positive change within the complaints processes system?

3 A. I don't believe so. We have a very good record in
4 terms of acceptance of our recommendations and then we
5 actively monitor and report on, publicly report on 11:49
6 again the implementation of our recommendations.
7 Effectively, it means that we don't get caught up in
8 someone wanting to challenge our processes, as they
9 might if there were consequences from our -- if we
10 could enforce our recommendations. So, it really comes 11:50
11 down to do we have the evidence to back up our
12 findings. Do we have the weight, the moral authority
13 from our recommendations? And then do they choose to
14 accept matters. And I find that providing we've got
15 the evidence and we can clearly explain our concerns 11:50
16 and then our recommendations are well founded, they can
17 be significant in contributing to change.

18 SOLE MEMBER: Thank you very much, indeed,
19 Mr. Anderson, for staying up late in the evening to
20 assist with the Inquiry. We're very grateful for the 11:50
21 work that you've done and for attending here today to
22 give evidence. Thank you very much.

23 THE WITNESS: My pleasure. Thank you.

24 SOLE MEMBER: The Tribunal will now rise and we will
25 commence again at 2:00 p.m. Thank you. 11:50

26
27 THE TRIBUNAL ADJOURNED UNTIL 2:00 P.M. AND CONTINUED AS
28 FOLLOWS:
29

1 SOLE MEMBER: Good afternoon. Now, Mr. McGovern.

2 MR. McGOVERN: Judge, the next witness is Mr. Justice
3 Alan Mahon.

4
5 MR. JUSTICE ALAN MAHON, HAVING BEEN SWORN, WAS DIRECTLY 14:06
6 EXAMINED BY MR. McGOVERN AS FOLLOWS:

7
8 156 Q. MR. McGOVERN: Good afternoon, Judge Mahon, and thank
9 you very much for coming today and for giving your time
10 to the Tribunal, for which we're much obliged. 14:07

11
12 Can I just, by way of introduction to those who perhaps
13 don't know you, I think you're a barrister, senior
14 counsel, you're a Circuit Court judge, a judge of the
15 Court of Appeal and you're now the office -- occupy the 14:07
16 Office of the Ombudsman of the Defence Forces?

17 A. That's correct.

18 157 Q. Can you just by way of introduction, Judge, if you
19 would just deal with the office itself? It's
20 established under the legislation passed in 2004, is 14:08
21 that correct?

22 A. Yeah. The office was established under the Ombudsman
23 (Defence Forces) Act of 2004 and the office actually
24 commenced work on, I think, 1st December 2005 and --

25 158 Q. I think you're the third holder of that office, is that 14:08
26 correct?

27 A. I'm the third holder of that office.

28 159 Q. You're currently in residence -- I think your term at
29 the moment expires, I think, in March of next year?

1 A. That's correct, yeah.

2 160 Q. Can you deal, Judge, with the jurisdiction of the
3 Ombudsman? What is the Ombudsman empowered to do or
4 enquire into?

5 A. Well, the essential function of the Ombudsman is to 14:08
6 adjudicate on complaints from both serving and former
7 members of the Defence Forces in relation to issues or
8 what are referred to in the Act as actions which
9 occurred while they were serving members of the Defence
10 Forces and which involve the Defence Forces -- in other 14:09
11 words, the jurisdiction doesn't apply to a situation
12 where a member of the Defence Forces has an issue or
13 something arises between a member of the Defence Forces
14 and a civilian. So, it's between the members of the
15 Defence Forces or between a member of the Defence 14:09
16 Forces and an institution within the Defence Forces.

17 161 Q. I think there are a number of statutory exclusions from
18 your jurisdiction?

19 A. Yeah.

20 162 Q. And I think they're in relation to a pay structure, 14:09
21 deployment and court-martials, is that correct?

22 A. Yes, and issues relating to security, they're dealt
23 with in the Act. There's a fairly wide -- I think
24 Section 4 of the Act provides the circumstances or the
25 types or the categories of complaint. It's where 14:10
26 something was done:-

27

28 "...without proper authority; actions taken on
29 irrelevant grounds; the result of negligence or

1 carelessness; based on erroneous or incomplete
2 information; improperly discriminatory; unreasonable,
3 notwithstanding consideration of the context of the
4 military environment; based on undesirable
5 administrative practice; or otherwise contrary to fair
6 or sound administration."
7

8 So, it covers almost all the, if you like, the ordinary
9 issues that might arise in the daily life of members of
10 the Defence Forces. 14:10

11 163 Q. Thank you. Can I ask you to tell us about the time
12 limits in which an application can be made to the
13 Ombudsman?

14 A. Yeah, there's a fairly tight time limit. Section 6(3)
15 of the Act provides that you must refer your complaint 14:11
16 to the Ombudsman within 12 months of the action or the
17 incident or the issue arising, or within 12 months of
18 becoming aware of it, whichever later occurs. So, the
19 usual time limit that applies is 12 months from the
20 date the incident occurred. 14:11

21 164 Q. And am I correct that the Ombudsman has no power to
22 extend that time?

23 A. No.

24 165 Q. I'll come back to that later on, perhaps, in relation
25 to recommendations. 14:11
26

27 Can I ask you, Judge, in your report you set out -- and
28 I should have said, Judge, Judge Mahon 's report or his
29 report to the Tribunal can be found at 3858, and the

1 Act, Judge, is in the reference book at 867.

2
3 In your report or your submission, Judge, you say that,
4 basically, a complainant within the Defence Forces has
5 three options. Could we go through those and consider 14:12
6 them? The first is an internal route, is that correct?

7 A. Yes. There is the internal route, which I would
8 commonly refer to as the A7-type complaint, and that
9 involves an individual making a complaint through his
10 unit commander or his commanding officer, and the 14:12
11 commanding officer is the person who initially will see
12 or attempts, perhaps, to resolve the complaint.

13 Anyway, if that doesn't work, the next step - and these
14 steps happen fairly quickly one after the other - it's
15 then, an MIO or a military investigating officer is 14:13
16 then appointed, who is usually a commandant or, on
17 occasion, a lieutenant colonel, and, again, there are
18 time limits as to how long the MIO has to produce a
19 report.

20
21 The MIO -- 14:13

22 166 Q. Can I interrupt there, Judge? Are those time limits,
23 are they time limits or are they guidelines?

24 A. Sorry, they're guidelines, and they're rarely adhered
25 to because they're not practical, particularly if 14:13
26 there's any -- or if there's any complexity, they
27 don't. But I think there is generally an attempt made
28 to deal with complaints as quickly as possible.
29

1 So, the MIO then would engage in what can be a lengthy
2 investigative process. It will involve the officer
3 taking witness's statements and interviewing the
4 complainant, and sometimes that can be fraught with
5 difficulty because somebody's abroad with the UN, or
6 whatever.

14:14

7
8 And the MIO then produces a report. That goes to the
9 head of the brigade, or the head of the Air Corps, if
10 it's the Air Corps, who'd be referred to as the GOC or
11 the General Officer Commanding. The General Officer
12 Commanding, then, expresses his view on the MIO's
13 findings, and, commonly, the GOC will agree with the
14 MIO. And then, if the complainant is still unhappy, he
15 can -- he or she can ask that it go to the Chief of
16 Staff. And the Chief of Staff then makes a ruling and
17 that's the end of the internal process.

14:14

14:15

18
19 Also, there's an informal process available for
20 interpersonal-type complaints as part of the internal
21 investigation system.

14:15

22 167 Q. Can we go back just for a moment to the MIO, the
23 military investigating officer, he investigates,
24 interviews the parties, prepares a report, but am I
25 correct that he does not make the decision; his report
26 is forwarded to a GOC and it's the GOC who makes the
27 decision, but based on the report?

14:15

28 A. Yes, but the MIO is effectively reporting to the GOC in
29 his report or in his or her report. The MIO will make

1 findings and reach conclusions, and will often make
2 recommendations.

3 168 Q. That's the internal process?

4 A. Yeah.

5 169 Q. The second option that you identify is to go to the 14:16
6 Ombudsman -- that's yourself?

7 A. Yeah.

8 170 Q. How does that come about or in what circumstances can a
9 matter be referred to the Ombudsman?

10 A. Well, if an individual opts to take the internal route, 14:16
11 as we've described, or as I've described, at any point
12 after 28 days in that system, the complainant can opt
13 to refer the complaint to my office and -- or he or she
14 might wait for some time longer to see if there's a --
15 if there's some way of resolving the complaint, and 14:17
16 they might wait right up until after the Chief of Staff
17 has made a ruling and refer to my office at that stage.
18 The problem there can be that if the individual waits
19 for a ruling from the COS, from the Chief of Staff, he
20 or she may well go over the 12 months. 14:17

21 171 Q. I think the requirement to wait the 28 days comes from
22 Section 4(1)(d) of the 2004 Act, am I correct?

23 A. That's right, yeah.

24 172 Q. That's where an internal process has already been
25 commenced? 14:17

26 A. Mmm.

27 173 Q. And Section 4(1)(d), I'll just read it, it says:
28
29 "In the case of a serving member of the Defence Forces,

1 the matter is not likely to be resolved and a period of
2 28 days has expired since the complaint was made under
3 section 114 of the Act of 1954."

4
5 To put that into context, Judge, I think that if a 14:18
6 complaint process is initiated within the Defence
7 Forces, your office is notified of that by the
8 Grievance Office?

9 A. Yes. When an individual starts the internal complaint
10 process, he or she first deals with his or her 14:18
11 commanding officer, who might be able to resolve the
12 issue. And a lot of minor complaints get involved
13 resolved at that stage. If that doesn't work, the
14 individual has to complete or to generate what's called
15 a Notification of Claim, or "NOC" in short, and that is 14:18
16 an official document with boxes in it and in the boxes
17 will go details such as the individual's name, his or
18 her service number, the date when the incident or issue
19 arose, the date they're now making this complaint. And
20 then there's a small box for details of the complaint 14:19
21 which might reveal very little -- it might be something
22 like, 'I was unfairly refused overseas,' or something
23 of that nature. It may be accompanied by a more
24 detailed statement. But that document, which we're
25 calling the NOC, under the legislation and under the 14:19
26 Defence Forces Regulation A7, and under the
27 Administrative Instruction A7, a copy of that document,
28 that NOC, has to be sent to my office, and I think also
29 it has to go to the Minister's office.

1 174 Q. So, in other words, once the internal process is
2 invoked, your office is aware of that?

3 A. Yeah. Well, within sort of a week or two. I think,
4 strictly speaking, it should happen within a week, but
5 it might be more often two weeks, but nothing really 14:20
6 turns on that.

7

8 So, sort of, if you like, two weeks after this process,
9 this internal process has started, my office has a copy
10 of the NOC, and it won't have full details of the 14:20
11 complaint. We file that. That's not a referral to the
12 office under the Act. So, it sits there for 28/30 days
13 - that's the 28 days referred to - and what we then do,
14 and this is something we only introduced maybe two or
15 three years ago, we then send what we call a 28-day 14:21
16 letter or a 30-day letter to the complainant, advising
17 them - because they mightn't know this - advising them
18 that because they've been in the internal system for 28
19 days, they can, at any time, ask that their complaint
20 be referred to my office. Some would do it fairly 14:21
21 quickly after they get that letter. They probably
22 might have a sense at that stage that they're not going
23 to get what they want from the internal system. Or
24 they might wait for two or three or four months, but
25 they all get that letter from us. And then -- and, 14:21
26 again, during those, that period, we might also get a
27 notice of withdrawal from the Defence Forces GMO, which
28 is the Grievance Management Office, to say that this
29 complaint has been withdrawn or it's resolved, in which

1 case that's the end of it.

2
3 But, assuming that doesn't happen, we now have on our
4 file, we have -- and assuming the person doesn't refer
5 to us after the 28 days or in that short period after, 14:22
6 the NOC simply stays on our file and then we send what
7 we call - and this is something, again, we introduced
8 only about three years ago - we send what we call a
9 nine-month letter, and that's so-called because that's
10 nine months measured from the date the incident 14:22
11 occurred and we're now telling the complainant that you
12 only have three months left to avail of the services of
13 the ODF, if they so wish to take that route. And,
14 again, we would get a couple of cases would be referred
15 to us as a result of that. 14:23

16
17 what was happening before was, they were receiving no
18 notice or notification at all that time was running.
19 They were waiting anxiously to maybe get a decision
20 from the Chief of Staff and they were over-running the 14:23
21 year, and there's nothing in the Act which allows me
22 any discretion in that situation. So, these 30 or
23 28-day letters and nine-month letters have sort of
24 really sorted out that problem. I mean, the only --
25 for the most part, the only time we get people 14:23
26 referring a complaint now over the year are people who
27 are maybe two or three or four years over the 12 months
28 and we obviously can't deal with that complaint.

29 175 Q. That's the process, Judge, in relation to where a

1 complainant initiates a process within the Defence
2 Forces --

3 A. Yeah.

4 176 Q. -- and then comes to you after the 28 days?

5 A. Mmm. 14:24

6 177 Q. Can a complainant go directly to you without invoking
7 or instigating proceedings directly within the Defence
8 Forces?

9 A. Yes. And they can -- we call that a direct referral to
10 my office, and they have that choice. Former or 14:24
11 retired members of the Defence Forces always had to
12 take that route because they can't use the internal
13 unless they commence the internal route before they
14 left the Defence Forces. So up to about 2022 or maybe
15 late 2021, when we, as a result of looking more closely 14:24
16 at the provisions of the Act, it was at that point that
17 we offered or we started to advertise the fact that we
18 would take complaints directly from serving members.
19 We were taking them from retired members before that,
20 although they wouldn't have been very many in number. 14:25
21 So, that started, I can't recall the exact date but in
22 sort of late 2021, I would think. And we're now -- I
23 mean, there's been a gradual increased take-up of that
24 facility over the years as the word has got around. It
25 would now be pretty well known throughout the Defence 14:25
26 Forces, I would imagine and so. Now, about 80% of our
27 complaints are coming directly. They've never been
28 through the internal process.

29 178 Q. I think looking at your reports, Judge, that over the

1 years, they give statistics for the number that has --
2 are now going directly. In 2021, it was 7%. In 2022,
3 it was 30%. In 2023, it was 50%. In 2024, it was 80%.
4 And in your report which was furnished to the Tribunal
5 at the end of last year, at that stage it was, I think, 14:26
6 85%. Is that where the statistic or percentage would
7 stand at the moment?

8 A. It would be 80-something percent still, probably above
9 85%.

10 179 Q. Above 85%? 14:26

11 A. Yeah, well, it would be in or about the mid 80s now.
12 But, I mean, but there are serving members still using
13 the internal system and I suspect, because I don't - I
14 wouldn't know the exact detail - I would imagine that
15 people with -- or serving members with, perhaps, less 14:27
16 complex complaints are very happy to use that system
17 because they often get resolved very quickly. And
18 there is a big benefit, and I said that in a good few
19 of my reports in the last two or three years, there's a
20 benefit in using the internal system because it gives 14:27
21 the powers that be an opportunity to deal with the
22 complaint, you know, on the spot, so to speak, whereas
23 if the complaint is made directly to my office, it's
24 sort of, you know -- I mean, there's no reason why it
25 can't be resolved, but there's a general sort of 14:27
26 feeling of hands-off if it's gone to my office.
27 So, there is that benefit. And, also, there's the
28 benefit, also, which has always been there, that if you
29 do take the internal route and you can't get an early

1 resolution, you can still sort of jump ship, as it
2 were, at 28 days, so you can, perhaps, have the best of
3 both worlds.

4 180 Q. I think your acceptance of direct access to the Office
5 of the Ombudsman comes from the interpretation of
6 Section 4(2) of the Act, which says:

14:28

7
8 "Subject to the Act, the Ombudsman may investigate any
9 action that is the subject matter of a complaint."

14:28

10
11 A. Yes.

12 181 Q. And the only limitation was under subsection 4(1)(d)
13 which provides that where an application has been made
14 internally, that you must wait 28 days before it can
15 come to you?

14:28

16 A. Yes.

17 182 Q. The third option, Judge, that you identify that a
18 complainant has -- he can go internally, come direct to
19 you the third is, I think, a more recent one that has
20 only arisen since 2025. There is now a non-statutory
21 complaints investigation process which is under the
22 Chairmanship of Mr. Justice Kevin Duffy. That, I
23 think, comes outside our Terms of Reference, our
24 cut-off date, but do you know anything about that
25 process?

14:29

26 A. Well, I know very little. I know I was fully briefed
27 by the Department of Defence at the time that they were
28 introducing it, so I have a good idea of, if you like,
29 their Terms of Reference. They have a six-month period

1 in which to make a complaint. I think that there's a
2 discretion then to add another six months to that. But
3 it's designed to deal with interpersonal-type
4 complaints, such as bullying or harassment, or things
5 of that nature. I have no idea how many cases have 14:29
6 taken that route. I expect that some do, obviously. I
7 mean, it's a very confidential route to take, so it
8 suits a lot of people who have interpersonal-type
9 complaints. But I don't know how many complaints
10 they've dealt with or what their turnaround time is in 14:30
11 terms of completing an investigation.

12 183 Q. Every year, the Office of the Ombudsman furnishes a
13 report and that contains statistics on the number of
14 cases you've dealt with and so on. Is there any
15 information published in relation to this non-statutory 14:30
16 investigative process that you're aware of?

17 A. I don't think so, but at a rough guess, they've
18 probably only had about a year or a little bit more.

19 184 Q. It may be too early yet to --

20 A. Yeah, so maybe there is going to be a report, but I 14:30
21 don't know. I think I can think of one case, possibly,
22 in the last year or so where an individual told us or
23 told my office, as part of their submission, that they
24 had been into that system, but I didn't get any more
25 information about it other than that. 14:31

26 185 Q. Can you assist us, Judge, about the number of cases
27 that would end up in your office, the Office of the
28 Ombudsman, whether direct or on referral after an
29 internal process? How many cases would you deal with

1 in a year?

2 A. well, I think we probably produce about 40 -- somewhere
3 in the region of 40 reports a year. It might be 35 one
4 year, it might be 50 another year, but it's in or
5 around that. And they'd be completed investigations 14:31
6 and we would -- so we would have, we would probably
7 take in 50 to 60 complaints. We're quite up to date
8 almost all the time. So every complaint that's
9 referred to the office is -- the investigative process
10 starts immediately, so we've no backlog in that sense. 14:32
11 So we probably have 50/60 complaints coming in on
12 average in a year, and obviously the ones that come in
13 towards the end of the year, there isn't a final report
14 maybe until the following year. So, that would be the
15 sort of workload level. 14:32

16 186 Q. What percentage of those cases would involve "abuse" as
17 that term would be defined under the Tribunal's Terms
18 of Reference?

19 A. well, I think something in the region of maybe 10%, and
20 it's been a fairly steady 10%. It might hit 12% some 14:33
21 years or drop down to 6 or 7% in other years. This is
22 now in recent years in my time. So, they're a smallish
23 category of cases. Most of the complaints that I deal
24 with would be relating to administrative matters,
25 issues related to promotion, overseas, course 14:33
26 selection. So, interpersonal-type complaints would be
27 a small -- would be a fairly small category. And when
28 the IRG Report came out, it was published about three
29 or four years ago, and, before that, there was a lot of

1 publicity arising from the Women of Honour group. And
2 that was the IRG Report and then there was the
3 establishment of this Tribunal. So, there was a huge
4 now focus on interpersonal-type complaints, so I
5 expected then that there would be a sort of queue
6 around the block with complaints, but they haven't
7 really, they still hover around the 10%. Now, it may
8 be that some have gone to Mr. Duffy's investigation
9 process, I don't know. But they certainly haven't
10 spiked hugely as a result -- or at all as a result of
11 all those events over the last three or four years.

14:34

14:34

12 187 Q. There's a requirement that any sexual assault cases go
13 direct to the Gardaí. So do you deal with any of that
14 type of complaint?

15 A. Well, certainly in my time, in the last eight years,
16 the complaints that have been submitted to my office,
17 within the last eight years, I can only recall one
18 involving a sexual complaint that was from a male
19 member of the Defence Forces, but he was long retired
20 and I couldn't deal with it. But other than that, I
21 haven't had any sort of cases involving - at least that
22 I can think of off the top of my head - any involving
23 sexual misbehaviour. The interpersonal-type complaints
24 that I've dealt with in my time would be more along the
25 lines of abusive behaviour, maybe harassment, you know,
26 asking people to do too many duties, people feeling
27 that this is as a result of bullying. But nothing
28 of -- nothing that I can think of a sexual nature.
29 I've had one or two cases involving alleged assaults,

14:35

14:35

14:36

1 not serious assaults now but things of that nature.

2 188 Q. Judge, could I ask you to explain the process in your
3 office whereby things were dealt with? I think that,
4 firstly, it's open to both serving and former members,
5 as you said. Secondly there's a statutory provision in 14:36
6 Section 4, I believe, for independence and
7 confidentiality?

8 A. Yes.

9 189 Q. The process for notification of claims, I think you
10 have already told us about that, that the Grievance 14:37
11 Office tell you when a complaint is made?

12 A. Mmm.

13 190 Q. You, at the end of your investigation, am I correct
14 that, as the Ombudsman, you issue a recommendation in a
15 report? Is it a recommendation or is it an actual 14:37
16 finding or an order or how do you classify it?

17 A. No, I don't have jurisdiction to make an order or to
18 produce, if you like, a binding result. I can -- I
19 make findings and reach conclusions and I -- and this
20 wouldn't necessarily happen in every case, but I make 14:37
21 recommendations to the Minister for Defence. In my
22 time, about 95%, or perhaps even more, of
23 recommendations made have been accepted by the
24 Minister. But there's often a significant time lag
25 between the time I would produce a report with a 14:38
26 recommendation and I would hear back about the, whether
27 that recommendation is accepted because, often, a
28 recommendation that I might make, or that I would make
29 might involve altering or changing Defence Force

1 Regulations or administrative instructions. So,
2 there's a process then, obviously, the Minister and his
3 staff have to engage with in relation to -- or with the
4 Chief of Staff and his people to try and work out how
5 that might be put into operation.

14:38

6
7 So, I don't make recommendations in every case, but I
8 would make them in a few. And in some cases there
9 might be two or three recommendations. Or the
10 recommendations might be more personal to the
11 individual complainant -- like, for example, I might
12 recommend that somebody be promoted, or be put on the
13 next list to travel overseas or something of that
14 nature.

14:39

15 191 Q. Am I correct that your report is sent to the
16 complainant, the Chief of Staff and the Minister?

14:39

17 A. And the office of the GMO, the Grievance Management
18 Office. And on many occasions, but not all, to the
19 General Officer Commanding, if the individual is still
20 serving within his unit. And, also, I would send, not
21 usually the full report, but I might send a section of
22 the report to an individual against whom I've made an
23 adverse finding. That person would have had notice of
24 that and would have been given time to make
25 submissions, but I would give them extracts from the
26 report so that they know the outcome, insofar as they
27 are personally concerned.

14:39

14:40

28 192 Q. So, the final decision as to whether or not to accept
29 your recommendation if you make one, Judge, that, my

1 understanding, correctly rests with the Minister, is
2 it?

3 A. Yes, the Minister.

4 193 Q. Rather than the Chief of Staff?

5 A. No -- well, yeah. Well, absolutely correct, the 14:40
6 Minister. But, in practice, I expect it's some sort of
7 a joint process between the Minister and the Chief of
8 Staff.

9 194 Q. Am I correct, Judge, that there is no further appeal
10 from any -- 14:40

11 A. No.

12 195 Q. -- finding or recommendation which the Ombudsman makes?

13 A. No.

14 196 Q. In your report, Judge, you set out some what you see or
15 perceive as the disadvantages of the current system, 14:41
16 and part of the task of the Tribunal and the Judge is
17 to make recommendations in relation to the future. So,
18 if we could go through those because they're quite
19 helpful, if you would?

20 14:41

21 I think, first of all, you talk about lack of
22 confidence in the existing internal process. How do
23 you identify that and see -- and how do you see it as a
24 difficulty or a disadvantage at the moment?

25 A. Well, I've spoken to a lot of people at different 14:41
26 gatherings involving members of the Defence Forces so a
27 lot of it is anecdotal. It's often been said to me in
28 submissions that the reason -- comments to the effect
29 that the complainant has no great confidence in the

1 system, in the internal system, and that is because -
2 and it's often been stated to me in submissions as
3 well, and anecdotally, the military investigating
4 officer will either be a commandant - usually a
5 commandant - or a lieutenant colonel. And often the 14:42
6 individual at the other end of the complaint, a person
7 being complained about is an officer, possibly of the
8 same rank or even a more senior rank, and, also -- so,
9 there's a sense -- now I'm not saying it's justified,
10 but there's a sense, there's a sort of a lack of 14:42
11 confidence often on the part of the complainant that
12 this is going to be a fair assessment of their
13 complaint.

14
15 Now, to be fair to the officers who do this work - and 14:43
16 I'm well aware from speaking to them sort of off the
17 record that a lot of them don't like being appointed
18 investigating officers because it's quite a -- it can
19 be quite a difficult task and certainly until fairly
20 recently there was very little, as far as I have ever 14:43
21 been able to make out, there was very little effort to
22 train officers to do investigative work and a lot of
23 officers might have done one investigation per year,
24 because it always -- the investigating officer is from
25 a different unit than the unit where the complainant is 14:43
26 based. So, there's often been -- so, their training
27 was pretty inadequate, in my view. Now, I know that
28 has changed and is in the process of changing and
29 there's now much greater effort being made to train

1 officers. And you can see it in the handful of cases
2 that have gone through the full internal system, and
3 they've now been referred to me because the individual
4 wasn't happy with the outcome, but you can see there's
5 a certain quality creeping into the investigation 14:44
6 reports that, perhaps, mightn't have been there in the
7 past. So, it was a lack of confidence, I think,
8 because, as NCOs and privates have said to me, that
9 'The officer I'm complaining about would be friendly
10 with the officer who's conducting the...' -- or he'd be 14:45
11 a close colleague of the officer who's conducting the
12 complaint. So, that was the problem that -- and that's
13 why, when we made the facility available for people to
14 come directly to my office, that's why there was such a
15 huge and rapid uptake over the last three or four years 14:45
16 197 Q. And you believe that's directly related to a lack of
17 confidence in the internal process?
18 A. Well, like, it's very difficult to say that absolutely.
19 There may be a certain attraction for a complainant to
20 go to an outside body, even if they think they'll get a 14:45
21 fair run internally, and so -- because they're anxious
22 of the fact that, although I think there's a fairly
23 tight control in terms of the confidentiality in the
24 internal system, but you've individuals within the
25 Defence Forces putting in complaints internally and the 14:46
26 people who are administering it in the GMO and the
27 people who are investigating it are all, potentially,
28 close colleagues. So, I think there's a sense of a
29 lack of confidence and I think that's been there for

1 years. It's probably lessening a little bit now that
2 there's better training being given to the -- and the
3 GMO now has one or two civilian staff, you know, who
4 are assisting in that process. I don't think they're
5 investigators, but that wouldn't have been the case, it 14:47
6 was 100% serving personnel who ran the GMO.

7 198 Q. In relation, specifically, to the military
8 investigating officers, you mentioned a lack of
9 training, but am I correct that they were expected to
10 conduct these enquiries in conjunction with their 14:47
11 normal activities --

12 A. Yeah.

13 199 Q. -- that they weren't standalone investigators?

14 A. Yeah, because I have certainly heard complaints from
15 officers - this is now going back over the years - and 14:47
16 this is why I think they dreaded being asked to be --
17 to act as investigator because they were expected to do
18 it on top of their ordinary work. And, also, the
19 investigation of a complaint can be quite complex. It
20 involves a lot of research of regulations and a lot of 14:48
21 interviewing of witnesses and things of that nature.
22 So, it can be quite a heavy task.

23 200 Q. You also, Judge, talk about the process itself, the
24 internal processes, which I believe you feel are
25 unnecessarily complex or cumbersome? 14:48

26 A. Yeah, I mean, what I would like to see is a simple
27 two-tier system where you have an internal complaints
28 process, and I think it's very important that the
29 Defence Forces would always have that. So you have --

1 so the first tier would be the internal process, but it
2 would be -- I would like to see it being simplified,
3 which would mean legislative change. And I would like
4 to see it simplified in this way, that when an
5 individual has a complaint, his or her first port of 14:49
6 call would be his unit commander or his commanding
7 officer, which will often be a captain or a commandant,
8 and that that officer would, as he or she does now,
9 would try to find a resolution. And if that didn't
10 work, an investigating or an investigator would be 14:49
11 appointed. That would be a civilian investigator, but
12 working within the Defence Forces. You'd probably need
13 two or three of them, or four of them, possibly, I
14 don't know. But they would do the investigation.
15 They'd be trained investigators, not from the 14:49
16 Department of Defence -- presumably, they'd be --
17 they'd possibly be civil servants, but there's plenty
18 of people to draw from throughout the whole Civil
19 Service. So they would then investigate, completely
20 independently of officers, and they would then produce 14:50
21 a report. I would like to see that report carrying
22 some weight in terms of them being able to give a
23 direction or make an order as to what should happen.
24 201 Q. As opposed to a simple recommendation?
25 A. Yeah. 14:50
26 202 Q. And that's the end, then, of the internal process. And
27 then if the individual -- and I would -- I would see a
28 rule whereby all serving members had to use that system
29 and exhaust that system and then, at the end of that

1 system, or when the investigator would produce his or
2 her report, there would be a right of appeal to the
3 Ombudsman's Office. Now, I won't be there when all
4 that happens, if it does happen, but that it would come
5 to the Ombudsman by way of appeal and the people 14:51
6 entitled to appeal would be the complainant, obviously,
7 an individual against whom a finding was made. The
8 Chief of Staff would have a right of appeal and the
9 Minister would have a right of appeal because some
10 far-reaching decision might have been made by the 14:51
11 investigator, which might, potentially, cause problems
12 for the military as a whole.

13
14 So, all these parties would have a right of appeal.
15 And so the Ombudsman would simply be dealing with 14:52
16 appeals from this internal system. And, again, the
17 Ombudsman would have some -- you know, at the end of
18 the day, if the Ombudsman made a decision, it would
19 have some binding effect.

20
21 I think the current system is far too complex. There's
22 too many layers to it. And I think if you had a system
23 like that and the investigators and the internal system
24 are civilian and are trained, and then everybody
25 concerned had a right of appeal, and I think that would 14:52
26 be a good system.

27 203 Q. Perhaps, surprisingly, Judge, in the light of your
28 previous comments about direct access and how
29 successful that has been, I think you would recommend

1 that there should be no direct access to the Ombudsman
2 without going through the internal system, but only in
3 the context of the simplified system that you have
4 spoken about?

5 A. Oh, but only in the context of a revamped internal 14:53
6 system. And, also, I would like to see former members,
7 who now have to come directly to my office, they would
8 now have access to this internal system.

9 204 Q. You would also like to see the system open to civilian
10 employees as well? 14:53

11 A. Yeah, because there are a large number of -- I don't
12 know what, but there are probably a couple of hundred
13 or more civilian employees working, you know, in close
14 proximity to members of the Defence Forces. The
15 civilian employees are often former members of the 14:54
16 Defence Forces. So -- and I know from my own
17 experience, I've had to reject complaints, you know, or
18 turn down an investigation of complaints where there
19 was a civilian employee involved, and I think that
20 should be catered for. 14:54

21 205 Q. In relation to time limits, in a revised or amended
22 system, Judge, what time limits would you recommend or
23 believe would be appropriate?

24 A. Well, the time limit for the internal process, I
25 suppose, would - that's the first tier - would probably 14:54
26 have to be 18 months, or thereabouts. I wouldn't have
27 any strong view about what that should be. The time,
28 then, to bring an appeal from the time they become
29 aware of the outcome of the internal process

1 investigation should be possibly six months, with some
2 discretion on for the Ombudsman to increase that by
3 another six months in particular cases.

4 206 Q. So, do you believe, Judge, that there should be a
5 provision in any amending legislation which would allow 14:55
6 the Ombudsman to extend time for appeals, in certain
7 circumstances?

8 A. Oh, I do, yeah, because, I mean, there can be -- now,
9 the discretion has to be pretty firmly applied in the
10 sense that it shouldn't be there. It shouldn't be just 14:55
11 there as a matter of right, but you have situations
12 where members of the Defence Forces are serving
13 overseas and whether it's fair to impose a strict time
14 limit on somebody who maybe would find it difficult to,
15 you know, to go to think their way through the appeal 14:55
16 process without access to family or colleagues maybe
17 from their unit. So, I think there has to be some
18 discretion, but sort of applied in a sort of a strict
19 sense.

20 207 Q. You may not be aware of this, but, this morning, the 14:56
21 Tribunal heard evidence from Mr. Iain Anderson, the
22 Australian Ombudsman, the system in Australia, as I
23 understand it, and I am sure someone will correct me if
24 I'm wrong on this, but my understanding is they have a
25 12-month -- sorry, the Ombudsman has a discretion to 14:56
26 refuse to deal with a matter after 12 months, but it is
27 a discretion and he said that in relation to serious
28 sexual allegations, they had never rejected them on a
29 time limit basis?

1 A. well, probably something like that seems very fair to
2 me because, by and large, 99% of complainants are going
3 to complain -- or, in that system, they would appeal
4 and they would, they do so pretty promptly. So it's
5 the only odd, it's only occasionally that you have an 14:57
6 individual who will delay, and often there are good
7 reasons why they've delayed in putting in... So, I
8 think, I'd be happy, certainly, if I was designing the
9 scheme, to build in as much discretion as possible to
10 the ombudsman. 14:57

11 208 Q. Finally, Judge, you, at the end of your report, you say
12 that the Ombudsman should have jurisdiction to
13 undertake what you refer to as "own motion"
14 investigations. Again, that's something that
15 Mr. Anderson spoke about. He used the terminology, 14:57
16 "own initiative" or "own volition" and he said that it
17 was important in that context that there shouldn't be a
18 time limit. Do you believe that the Ombudsman, the
19 Irish Ombudsman should have jurisdiction to take,
20 investigate own motion investigations? 14:58

21 A. Yes, and they're also called themed investigations. In
22 other words, you hone in on a particular subject. At
23 the moment, under the legislation that governs my
24 office, I can only investigate matters directly linked
25 to a complaint, so personal to a complaint, but often 14:58
26 you see, as time goes by, you see issues that are there
27 in the background and they're sort of featuring in a
28 lot of different... So I think that is an important
29 power. Our own National Ombudsman or the Public

1 Services Ombudsman has that power. The Children's
2 Ombudsman has that power. The Police Ombudsman in
3 Northern Ireland has that power. The Welsh Ombudsman
4 has that power. So it's now -- it wouldn't have been a
5 hugely common power to put into Ombudsman legislation 14:59
6 20/25 years ago. But certainly any of the more recent
7 legislation relating to Ombudsman institutions includes
8 that power, and I would envisage that being probably
9 exercised once or twice a year. It might be to do with
10 the whole subject of gender discrimination, the 14:59
11 adequacy of accommodation, the promotion process, you
12 know, because, as time passes, you can see where there
13 are issues recurring in all those areas and the idea
14 would be that you would be able to conduct, over maybe
15 a few months, a more detailed investigation of a 15:00
16 particular subject, but not because of any particular
17 single complaint.

18 MR. McGOVERN: Thank you very much, Judge. My Friends
19 might have some questions for you.

20 SOLE MEMBER: Thank you, Mr. McGovern. Mr. McCann. 15:00
21

22 MR. JUSTICE ALAN MAHON WAS CROSS-EXAMINED BY MR.
23 McCANN, AS FOLLOWS:
24

25 209 Q. MR. McCANN: So, Judge, I propose, if it's acceptable 15:00
26 to you, we might look at just one or two of your
27 reports. They'll come up on the screen in due course
28 and I'll ask the Registrar to bring up the report for
29 2023, which Ms. Pillay tells me is at 8755. So we'll

1 be looking at the 2023 report, the 2024 report, your
2 own report for this Tribunal, and that will then begin
3 my questions.
4

5 So, if we look at 8755, and these are -- so 8755 and if 15:00
6 you go to internal page number 5, so this is after the
7 Glossary of Terms --

8 A. This is the '23 report?

9 210 Q. The '23 report, yes, Judge. And it's the Ombudsman for
10 the Defence Forces Customer Charter? 15:01

11 A. Yes.

12 211 Q. Just turn to that page, internal pagination 5 in the
13 2023 report, and if we just look together, if we may,
14 at paragraph 1 and it says:

15 15:01
16 "The Ombudsman for the Defence Forces was established
17 by law to provide a statutorily independent appeals
18 process whereby members of the Defence Forces who have
19 processed a complaint through the Redress of Wrongs
20 system, but remain dissatisfied with the outcome, may 15:01
21 refer their grievance to the Ombudsman for review."
22

23 So there's, first of all, an appeal from Redress of
24 Wrongs and that's part of the jurisdiction of the
25 Ombudsman, is that correct? 15:02

26 A. Yes.

27 212 Q. And I think we can also take it -- and, again, as you
28 explained to Mr. McGovern, who took you very helpfully
29 and comprehensively through your evidence, you occupy

1 an independent office, and I think it says that in the
2 statute, doesn't it?

3 A. That's right, yes.

4 213 Q. And it's a statutory office, isn't it?

5 A. Yes. 15:02

6 214 Q. And do you have any relationship, as such, with the
7 Department of Defence? You're not part of the
8 Department of Defence, no?

9 A. No.

10 215 Q. And you're not part of the Defence Forces neither? 15:02

11 A. No. And, in fact, my office consists of three staff,
12 plus myself. So it's a very small unit, and it can be
13 difficult to find a home for us because we're such a
14 small unit. But we don't go -- and this was something
15 that the first Ombudsman, Paulyn Marrinan Quinn, 15:02
16 insisted on and it's always been respected since that
17 we don't go into a Department of Defence or a Defence
18 Forces building. So, we remain sort of -- I mean, the
19 optics of our independence is very important. So I
20 have no association with the Department or the Defence 15:03
21 -- other than the Department provide my budget to run
22 the office.

23 216 Q. It might even be the Minister for Finance, I think, who
24 provides your budget?

25 A. Well, sorry, it does, yeah. But, I mean, the 15:03
26 discussions about the budget take place with the
27 Department of Defence. So, also, the staff that I have
28 in my office never come from the Department of Defence.

29 217 Q. Yes.

1 A. They're all civil servants. They come from other
2 departments.

3 218 Q. And you also, as discussed with Mr. McGovern, you also
4 are and were a civilian?

5 A. Yes. Yes. 15:04

6 219 Q. -- to put it in those terms. And, I think, though, the
7 Department can ask you for, or the Minister can ask you
8 -- can make enquiries of your office, I think that's
9 there in the statute somewhere, if I can remember where
10 it is -- 15:04

11 A. Yes, yeah.

12 220 Q. But I think that is there in the statute?

13 A. Yeah.

14 221 Q. I think, also, there's a relationship with the Houses
15 of Parliament, isn't there, in that -- 15:04

16 A. There is. And I think I appeared maybe before three
17 committees.

18 222 Q. Yes.

19 A. -- over the last three or four years.

20 223 Q. Yes. I think there's a right to require the office to 15:04
21 appear before the Public Accounts Committee, and I
22 don't know whether that's ever happened?

23 A. Well, not in my time.

24 224 Q. No, all right!

25 A. I appeared, fairly recently, before the Defence 15:04
26 Committee and, before that, the Petitions and Ombudsman
27 Committee.

28 225 Q. Right. So, in that sense, are you, would it be fair to
29 say, and correct me if I'm wrong, and maybe it's not

1 fair to say, but are you answerable to Parliament in
2 that sense? Are you a parliamentary ombudsman in that
3 sense?

4 A. Well, I'm not officially a parliamentary ombudsman but,
5 eh, I'm -- I suppose you could say that. 15:05

6 226 Q. All right.

7 A. But I'm completely independent of the two agencies that
8 I deal with mostly, if not all the time, and that's the
9 Department of Defence and the Defence Forces itself.

10 227 Q. Thank you, Judge. And then, Judge, again, Mr. McGovern 15:05
11 very carefully and precisely addressed this point with
12 you, that, I think, as I understand it, your office --
13 again, you used some language which, of course, now I
14 can't remember, but your office revisited the
15 provisions of the Act in maybe 2021? 15:06

16 A. Mmm.

17 228 Q. And you decided that, in fact, the Act, as drafted,
18 created a jurisdiction of where there could be a direct
19 referral, isn't that so? I think you said you looked
20 more closely at the provisions of the Act in late 2021? 15:06

21 A. Yes.

22 229 Q. You might just tell the Sole Member about that
23 exercise. And the question I want to ask you is, in
24 other words, was that jurisdiction, in your view,
25 always there to make a direct -- 15:06

26 A. Oh, yes, yeah, I didn't create a new jurisdiction, but
27 the first Ombudsman, who developed and created a lot of
28 the processes that would still be followed in the
29 office, and did so with great competence, it was

1 decided by her that in order for a serving member to
2 come to the Ombudsman's Office, he or she had to first
3 test the internal route for at least 28 days.

4 230 Q. Yes, and --

5 A. And that was adopted and followed by her. And then her 15:07
6 successor, my predecessor, followed suit. And I
7 followed suit when I was appointed to the role in 2018.
8 And it was probably three-odd years later that I looked
9 more closely at the legislation and I could
10 immediately -- as far as I was concerned, there was no 15:07
11 bar to somebody directly referring a complaint to the
12 office.

13 231 Q. Yes. Thank you very much for that, Judge.

14

15 Judge, we might just then look at the final paragraph 15:07
16 on the Customer Charter page, and it says:

17

18 "The Ombudsman for the Defence Forces strives to
19 provide a fair, user-friendly and accessible means of
20 adjudicating cases." 15:08

21

22 And I take it that it is your view that that striving
23 is, in fact, put into effect; in other words, you do
24 actually provide a fair, user-friendly and accessible
25 means of adjudicating cases? 15:08

26 A. Yes, whether complainants come through the internal
27 system or come directly, it's...

28 232 Q. Thank you very much, Judge. If we turn then to page 6
29 again of the 2023 report and you say at paragraph 3,

1 just towards the end of paragraph 3, you say there
2 maybe four or five lines from the bottom:

3
4 "The Section 114 Chapter 2 route nonetheless remains a
5 value, as I had previously pointed out, because it 15:08
6 offers the best possibility for an early resolution of
7 the complaint. This is particularly the case in
8 circumstances where the complaint is relatively minor
9 or straightforward."

10
11 And I presume that, subject to your suggested
12 performance which you have discussed with the sole
13 Member earlier, that that remains your view, or not?

14 A. Yes, and that is the benefit of a good internal system,
15 that a lot of complaints by their nature will be 15:09
16 straightforward or easily resolved.

17 233 Q. Yes.

18 A. -- or minor, or whatever term you want to use. And
19 they're, if you like, they're the low-hanging fruit and
20 they'll get sorted. But if you have only an external 15:09
21 system, that probably won't happen to the same extent.

22 234 Q. All right. And that's very helpful for the sole
23 Member, I hope.

24
25 If we then just look at paragraph 7, again on the same 15:09
26 page, and this is dealing with the 51 completed
27 investigations in 2023, and your report says that six
28 included complaints relating to interpersonal issues
29 such as bullying, harassment, inappropriate behaviour.

1 I mean, that does seem like a very small -- is that, in
2 your view -- maybe any number is too many, but is that
3 a small number of complaints for an organisation having
4 8,000/9,000 serving personnel, or do you have any view
5 on that?

15:10

6 A. I think it's a small number. I mean, you are always
7 going to have interpersonal-type complaints, and
8 perhaps more so in a military organisation, albeit a
9 relatively small one. So, it's about 10% of the total.
10 And those complaints, I mean, I've read with some alarm
11 some of the reports that this Tribunal has heard in
12 recent days, reading the transcripts every day, and
13 with the vast majority of the what I call bullying and
14 inappropriate behaviour complaints wouldn't come near
15 to that.

15:11

16 235 Q. And I was going to eventually come around to asking you
17 that question, that the complaints you're seeing now
18 are qualitatively different than the allegations that
19 you've heard about in the Tribunal to date and that
20 you've read about it?

15:11

21 A. Yes. Yeah. But, obviously - and this, again, because
22 of the military setting and the rank and file structure
23 that exists in a military establishment - even what
24 might be relatively minor bullying to a civilian or
25 somebody working in a civilian office, you know, might
26 be far more serious or potentially far more serious in
27 the military setting. So I think, obviously, one has
28 to be very careful about suggesting that there are
29 minor bullying complaints.

15:11

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But, compared to what I've been reading, with the very odd exception, none of them sort of remotely came close to that threshold.

236 Q. And I was going to ask you also in relation to these six complaints relating to interpersonal issues, were they six distinct complaints from six different complainants about six different incidents? In other words, we've seen at the Tribunal -- or maybe we will see at the Tribunal, possibly, the multiple complainants -- perhaps we see this in other disciplinary regimes as well, or can you recall?

15:12

15:12

A. Well, I mean, if -- if I say there were six interpersonal-type complaints, they were from six individuals.

15:13

237 Q. Individuals.

A. But some of those would have been part of, if you like, a bigger complaint about failing to get promoted, and there might be a suggestion that their Sergeant so-and-so -- 'The reason I'm not being promoted is because Sgt. so-and-so is a bully', or something like that.

15:13

238 Q. Yes.

A. But the main complaint in that case, that example, would be the promotion.

15:13

239 Q. Yes, that's very helpful, Judge. And, again, this is probably a question you don't know the answer to, but perhaps you do. If we're talking about these six complaints now only in this year, but six complaints

1 relating to interpersonal issues, bullying, harassment,
2 inappropriate behaviour and the personnel is in the
3 thousands - maybe 8,000/9,000 personnel - do you have
4 any sense of how that compares with other public
5 sectoral organisations? 15:14

6 A. Well, I don't, and I suspect that there would be --
7 that some bullying claims would get resolved at a
8 fairly immediate or low level.

9 240 Q. Yes.

10 A. Because the term "bullying", you know, incorporates a 15:14
11 lot of different activities, some very serious and some
12 not so serious. So, I suspect that, as a general rule,
13 members of the Defence Forces - and this would apply to
14 people in other walks of life too, I think - members of
15 the Defence Forces would be -- are slow to allege 15:14
16 bullying or harassment unless it is really difficult
17 for them and is making their life difficult. And I
18 would imagine minor bullying gets sorted out before it
19 becomes a formal complaint.

20 241 Q. Thank you, Judge. I think we did discuss the 15:15
21 allegations in -- sorry, the complaints made to you in
22 this channel - that's the inappropriate behaviour,
23 harassment, bullying channel - and you're, I think,
24 telling the Sole Member, if I understand you correctly,
25 that the allegations you've read about by way of 15:15
26 evidence led before the Tribunal, that the allegations
27 you're now hearing about are of a much less serious
28 nature?

29 A. Yes. I've had one or two, perhaps, more serious, not

1 more serious than what I've read, but I don't want to
2 give the impression that nothing serious comes my way
3 under the heading "bullying". But certainly what I
4 read in the transcripts from the Tribunal, and a lot of
5 those are, there's a historical nature to a lot of 15:16
6 them, but some of them were quite shocking.

7 242 Q. Yes.

8 A. Whereas you wouldn't get that sense from most of the
9 interpersonal stuff. I think, personally, there's been
10 a huge culture change in the last two or three years, 15:16
11 because of the IRG Report, the Women of Honour
12 publicity, the establishment of this Tribunal, all of
13 those reasons. I think there's a complete -- I mean, I
14 think, you know, people in the Defence Forces who might
15 have engaged in inappropriate behaviour, particularly, 15:16
16 or serious bullying in years gone by wouldn't, you know
17 -- would be -- would stay well clear of it. And I
18 think the Defence Forces themselves are much tougher
19 now and much quicker to respond. So there'd be very
20 little mercy shown to any, say, officer or senior NCO 15:17
21 who would engage in any of that sort of nature, or any
22 of that sort of behaviour.

23 243 Q. Thank you for that, Judge. And then, in an allied
24 field, I think you told the Sole Member that over your
25 eight years as occupying the Office of Ombudsman, did I 15:17
26 understand you correctly there's been no allegations of
27 sexual misbehaviour?

28 A. Well, there were -- in terms of allegations that were
29 sort of new allegations that came in within those eight

1 years, I can think of one from a male --

2 244 Q. Yes, sorry, I think you said that, sorry.

3 A. -- who had long since left the Defence Forces.

4 245 Q. That's very helpful. And then I think the last thing I

5 wanted to look -- 15:18

6 A. Sorry, just before -- I mean, I've had complaints

7 relating to gender discrimination.

8 246 Q. Yes.

9 A. But that's... I don't class that as bullying, although

10 there may be an element of it. But gender 15:18

11 discrimination, I've had complaints about, yeah, gender

12 discrimination and things of that sort.

13 247 Q. And then, Judge, if we just look at the last question I

14 have for you on this report, the 2023 report, internal

15 page 8, there's a quote there, and it may be somewhere 15:18

16 else in the document:

17

18 "It remains my strong view that it is important for the

19 Defence Forces to maintain its own internal grievance

20 management system and I believe that most complaints 15:18

21 are capable of resolution at that level and, in fact,

22 are resolved at that level."

23

24 I think that's consistent with what you told the sole

25 Member about your -- 15:18

26 A. Yeah, I feel strongly about that, yeah.

27 248 Q. And it would be -- it's your evidence that it would be

28 a mistake to do away with the internal system?

29 A. Yeah. I think every large -- I mean, while the Defence

1 Forces are small compared to other armies around the
2 world, I think it's important that -- well, it still is
3 a significantly large institution and I think it's
4 important that organisations of that size, whether they
5 be civilian or have their own internal complaints 15:19
6 system and a system where the users of it are confident
7 in its ability to resolve complaints.

8 249 Q. Yes. Maybe I can ask you just a general question in
9 relation to the 2024 report. You did describe how, in
10 your direct evidence to the Tribunal, that there's now, 15:19
11 again, since the Tribunal began, as it were, there's
12 now an independent internal complaints element in that
13 there's a new strategic HR person, is that correct?

14 A. Yes.

15 250 Q. All right. And I think that's foreshadowed in your 15:20
16 report.

17
18 Then if we just look at your statement then, again I've
19 forgotten -- sorry, it's on page 3858. Let me just see
20 what I wanted to ask you here... Again, on page 8, 15:20
21 there is in your statement at paragraph (e)(iii) --
22 this is page 8, internal page 8, 3865.

23 A. Yeah.

24 251 Q. Judge, you'll see there at (iv) the Tribunal legal team 15:21
25 asked you on 1st December 2025 -- I think it was
26 suggested that there might be a lack of awareness
27 amongst DF personnel of the right to directly refer a
28 complaint to the ODF, and you go on to say:

1 "I strongly disagree that this is so."

2
3 And could you elaborate on that for the Sole Member?

4 A. Well, I think that was in 2025, six or seven months
5 ago, and I think at this stage -- obviously it took a 15:21
6 while for word to get around that that there was the
7 option to directly refer a complaint to my office. So,
8 I think a lot of -- I mean, it's all over our website,
9 it's in our -- it's in my annual report for the last
10 three or four years. There's a Defence Forces magazine 15:22
11 we advertise in. We have notices up. We know -- and
12 we also know the GMO, which is the Grievance Management
13 Office, who are very -- we have a lot to do with them
14 and they're very good and very helpful. I know they
15 have sort of advertised this option when they have the 15:22
16 opportunity. So I would be amazed if there was anyone
17 now in the Defence Forces - I'm sure there is - but I'd
18 be surprised if there are many that wouldn't be aware
19 of that option.

20 252 Q. And, presumably, the representative organisations like 15:22
21 PDFORRA are recommended --

22 A. They've been heavily briefed in relation to -- and I
23 know they have -- I've addressed representative
24 association conferences to push this as well.

25 253 Q. Yes. And then again on page 3866, you just note that 15:23
26 there has been the appointment of a civilian head of
27 strategic HR, an unnamed person, since last year. And
28 you say there has been significant improvements in the
29 training of the MIO, who are the investigative

1 officers, and you can see that as Ombudsman when you
2 see their reports?

3 A. Yeah, I can see -- and, yeah, I there's -- I'm very
4 much of the view that there's a culture -- now, it's
5 probably still changing -- 15:23

6 254 Q. Yes.

7 A. But I think that the change is there for people like
8 myself to see who are working closely within the
9 Defence Forces.

10 255 Q. I think again in your report for the Tribunal, you also 15:23
11 say further down, maybe number 7 or 8 on that page, you
12 talk about:
13

14 "I think it is likely that this view would be less
15 prevalent now because of improved training and other 15:24
16 newly introduced supportive measures for the MIOs."
17

18 You mention that.

19 A. Yes.

20 256 Q. Again, as regards your suggestions for the future, I 15:24
21 mean, I'd only say they're very interesting and I will
22 look forward to them, and will be of great assistance
23 for the Tribunal. One little point of detail is I
24 think in a place where there are judges everywhere
25 today, I think Kevin Duffy is not, in fact, and was 15:24
26 never a judge; he's the Chairman of the Labour Court
27 and --

28 A. Yes, and he'd be very experienced in that area.

29 MR. McCANN: Very experienced. He was also Chairman of

1 An Post and so on. Thank you very much, Judge.

2 SOLE MEMBER: Thank you, Mr. McCann. Does anybody else
3 wish to put a question to Mr. Justice Mahon?

4 MR. BRIEFLY: Yes, just briefly.

5 15:24

6 MR. JUSTICE ALAN MAHON WAS CROSS-EXAMINED BY

7 MR. COMPTON, AS FOLLOWS:

8
9 257 Q. MR. COMPTON: Judge Mahon, my name is Gary Compton.
10 I'm instructed by, I think, 123 former and serving
11 members of the Defence Forces, and I'm instructed by
12 Coleman Legal. Certainly a concern of a lot of my
13 clients was what you have described, this perception
14 that has undermined confidence. It doesn't necessarily
15 matter that these things are true or not, but there's a
16 perception that has led to an undermining of
17 confidence. And I see from your suggestions as set out
18 in page 11 of your statement, all of those suggestions,
19 to me, reflect your years of experience and our own
20 experience of fair procedures?

15:24

15:25

15:25

21 A. Mmm.

22 258 Q. It seems to have that structure about it whereby you
23 have an independent investigation and then you have an
24 appeal to a proper authoritative body. So it does
25 strike me as being your experience and your experience
26 of fair procedures, and my question is why has it
27 taken -- do you have a view as to why it's taken so
28 long for the Defence Forces to consider this or
29 implement this? Because, certainly, the procedure at

15:25

1 the moment is convoluted and your suggestion is so
2 clear and based on experience, why was this
3 procedure -- why hasn't it been adopted before now, and
4 why can't it be adopted quickly?

5 A. well, I don't know why it hasn't been adopted before 15:26
6 now. I assume that a lot of this is -- a lot of the
7 entire discussion about the complaints process in the
8 Defence Forces and its adequacy and its fairness has
9 only come to light in the last two or three or four
10 years. I would imagine that's one reason why it's only 15:26
11 now being discussed.

12
13 Also, in terms of how quickly change can be introduced,
14 you do need legislative change. In relation to
15 anything I've suggested, you would require some 15:26
16 legislation, and that doesn't happen very quickly
17 259 Q. It doesn't happen quickly. And do I understand it
18 correctly in what you've suggested that the end will be
19 an appeal to the Office of the Ombudsman? Is that the
20 final step in what you have called the revamped 15:27
21 suggestion?

22 A. Yes, but you'd have a very good internal system before
23 you get to the Ombudsman, and that there would be
24 confidence in that system. And if you don't like the
25 result or if other interested parties don't like the 15:27
26 result, there is this right of appeal to the Ombudsman.

27 260 Q. Yes, indeed.

28 A. So, there's a sort of a level -- there's a sort of
29 double protection there for the complainant.

1 261 Q. And, I agree, and I think that's certainly something I
2 get from talking to my clients, that independence and
3 confidence that this system would bring would, I think,
4 certainly give them some comfort.

15:28

5
6 But in the current system, am I right in thinking that
7 after your report, the next step is, if recommendations
8 are made, then it's up to the Minister for Defence to
9 consider those recommendations and agree or not to
10 agree; is that the step?

15:28

11 A. Yeah, well, when I make a recommendation, it goes to
12 the Minister. The Minister then -- I haven't been
13 physically with the Minister while this happens, but I
14 understand, then, it goes into discussion with the
15 Chief of Staff or his senior people, because the
16 recommendation could be far-reaching. It might involve
17 amending an Administrative Instruction. Or it might
18 simply mean promote somebody now rather than at a later
19 stage. It could be any of these.

15:28

20
21 So I presume there's a lot of discussion. There's a
22 back and forth between the Minister and the Chief of
23 Staff, and they thrash out how best they might... And
24 then I would be told, I would receive a letter from the
25 Minister - it might be many months later - saying that
26 they've accepted my findings and they're proceeding to
27 implement the recommendation. Or, in a very small
28 number of occasions, they might say why they're not
29 going to implement the recommendation and they give me

15:29

15:29

1 very detailed reasons as to why it wouldn't be
2 practical to do so. But that's only happened on a
3 couple of occasions.

4 262 Q. And is that the same where you don't make
5 recommendations, where you make findings or
6 conclusions, are they sent to the Minister as well or
7 do they just go directly --

15:29

8 A. Oh, yes, the Minister gets the same report that the
9 complainant gets. So, it has all the reasons why I
10 arrive at certain conclusions, or arrive at certain
11 findings. Now, there mightn't be a recommendation
12 after that because the findings and conclusions might
13 be the end of it so there might be nothing to
14 recommend. But the Minister gets the full report, as
15 does the Chief of Staff, and the Grievance Management
16 Office.

15:30

17 263 Q. And I appreciate a change may take time, but the
18 current system which requires - and I do understand why
19 these bodies are notified - that the current system
20 that requires the report to be sent to the main
21 parties, such as the Chief of Staff, the Minister, the
22 GMO and the -- is it the CMO? I'm not sure about that.
23 Is there any way to minimise that? Because again a
24 concern on behalf of my clients is the number of
25 parties that are involved in a complaints process
26 undermines -- as I say, it gives the perception of
27 undermining confidence. Is it necessary to share the
28 report with all of those bodies just to implement the
29 report or is there a better way in the meantime,

15:30

15:30

15:31

1 pending change, to maybe limit that?

2 A. well, the legislation simply requires me to provide a
3 copy to the Minister and to the complainant. And then
4 it uses words like "and then to any other parties at my
5 discretion". So, the reason it goes to the Chief of 15:31
6 Staff is it's important that the Chief of Staff would
7 know that there may be adverse findings against
8 individuals in the report. And then it goes to the
9 Grievance Management Office -- really it's more of an
10 administrative thing because they've been sort of in 15:32
11 some way involved in the complaints process, you know,
12 because when -- even with a direct referral of a
13 complaint to my office, there would be almost daily
14 contact with the office of the GMO looking for contact
15 details of individuals. They're our link with 15:32
16 individuals in the Defence Forces. Like, they don't
17 get involved in our discussions with the individual,
18 but we need to be -- we use them to find contact
19 details. We would asking them questions like who is
20 the officer commanding, whatever, because we need to 15:32
21 contact that person. We would get copies of
22 Administrative Instructions from them. So, we've a
23 very close and regular contact with them.

24
25 So, they get a copy of the report at the end of the 15:33
26 day.

27 264 Q. And is it possible under the legislation or otherwise
28 to, say, anonymise the name of the complainant in
29 circumstances where it is not necessary for the

1 recipient to know the name?

2 A. well, I do that and that's something I've only been
3 doing for a last couple of years. I would anonymise as
4 much as possible because the consequences can be
5 somewhat unfair to individuals who just happen to be 15:33
6 part of the complaint and not be responsible -- so,
7 that is done as much as possible. But the complainant
8 is always named in the report because I don't see any
9 way to avoid that.

10 265 Q. Absolutely. And in circumstances where implementation 15:33
11 is necessary, that may be unavoidable, but in other
12 circumstances where there is just a necessary to obtain
13 information such as the -- sorry, I forgot the
14 department you mentioned -- it may not be necessary to
15 name the complainant in those circumstances? 15:34

16 A. No, but, as a general rule, you're contacting, maybe,
17 usually officers or senior NCOs because you want a
18 statement from them. And they have to be told what the
19 complaint is. So even if you didn't name the
20 complainant, the officer will immediately know who's -- 15:34
21 So, because you have to be fair to the people
22 complained about as well, and they're entitled to fair
23 procedures.

24 MR. COMPTON: Absolutely. No, I do accept that. It's
25 very difficult. Thank you very much. 15:34

26 THE WITNESS: Thank you.

27 SOLE MEMBER: Thank you, Mr. Compton. Ms. McGrath.

28

29

1 MR. JUSTICE ALAN MAHON WAS CROSS-EXAMINED BY

2 MS. McGRATH, AS FOLLOWS:

3
4 266 Q. MS. McGRATH: I think I'm the last person there, Sole
5 Member, thank you. 15:35

6
7 Judge Mahon, good afternoon. My name is Sinead McGrath
8 and I'm one of the barristers with the team for the
9 Minister for Defence and I do want to ask you a couple
10 of questions. I think I'll be about, maybe, 20 15:35
11 minutes, something like that, if that's okay.

12 A. That's fine, yeah.

13 267 Q. Maybe shorter. But you said there earlier on in your
14 evidence that you had been keeping an eye on the
15 transcripts and one of the things I will ask you to 15:35
16 give your views on is you will have seen that the
17 evidence was heard from a Mr. Bratli on Day 1 of the
18 Tribunal. Do you remember that at the very, very
19 beginning? He was the Norwegian Parliamentary
20 Ombudsman between 2004 and 2014. So I will just refer 15:35
21 you to one or two things that he said in his transcript
22 or his statements, if that's okay.

23
24 But before I get to that, can I just, at the outset,
25 you have been asked about your office and you described 15:36
26 yourself as an outside body in your evidence this
27 morning. Now, you also described yourself as a small
28 unit and I think one thing that's quite noticeable is
29 that if you look at the annual reports, and we'll just

1 deal with your ones from when you started -- I think
2 your very first one was in 2018, is that right?

3 A. well --

4 268 Q. well, you came in --

5 A. I think the first one was 2018/19 because I came in -- 15:36
6 I started halfway through 2018.

7 269 Q. Okay. And one of the things we notice in the reports
8 is that you have been operating on the basis of a very
9 small number of staff. I think, quite consistently,
10 you have had approximately three members of staff 15:36
11 throughout your time, is that right?

12 A. Mmm.

13 270 Q. And has that -- and does that remain the case? Have
14 the staffing requirements grown, do you think, or as
15 you're leaving the position now, next year, do you 15:36
16 think that the staffing requirements at three will
17 remain so, or will it be necessary to increase those?
18 Is there a body of work growing in that regard?

19 A. well, the -- I would meet the Secretary General of the
20 Department of Defence every year, not to talk about 15:37
21 individual cases, obviously, but just to talk about
22 general things like the budget and things like that.
23 And, every year, she and her predecessor has offered
24 additional resources, if they were needed. And I've
25 said on each occasion that we didn't need them. In 15:37
26 fact, our budget, I think our budget wasn't even spent
27 last year or the year before.

28 271 Q. And are you in a position to say -- Mr. Anderson talked
29 this morning about his budget on an annual basis in

1 Australia and it was quite a striking sum of I think he
2 said 6 million Australian dollars a year, if I got the
3 figure right --

4 A. Yes.

5 272 Q. With regard to your budget, are you in a position to 15:38
6 say to the member what you operate on, on average?

7 A. Yeah, my budget, roughly, is about 440,000 a year. And
8 that includes all salaries and other, obviously, office
9 expenses. But there's a small staff. And I think it
10 was at about 490,000, three or four years ago, but I, 15:38
11 certainly -- it's been made clear to me that if,
12 particularly in recent years, that if more resources
13 are required or more staff are required, that they
14 would -- I would be facilitated.

15 273 Q. Okay. And I think on the basis of that budget, you've 15:39
16 talked today about the work that you do and, in
17 particular, with regard to the investigation of the
18 complaints. And you said, on average, you're looking
19 at 40 reports a year and it can vary either side of
20 that. But I think your evidence was on average, is 15:39
21 that right?

22 A. Yeah, on average, yeah. I think when I started there
23 was a big backlog and I think there was something like
24 nearly 200 cases going back a number of years. So, it
25 took two or three years to clear those and catch up 15:39
26 with the current workload. But, since then, there's no
27 backlog. All the cases that we have are being actively
28 worked on from --

29 274 Q. And, sorry, I don't mean to interrupt you there, but I

1 think you may have said recently at an Oireachtas
2 meeting, and I'll just come to that in a moment, that
3 you're clearing each investigation approximately within
4 a period of four to six weeks, is that right?

5 A. Well, I'd probably say six to eight weeks now. You 15:40
6 see, one of the -- when we were operating on just the
7 internal -- the cases coming through, you know, the A7
8 complaint structure and complaints coming to my office,
9 serving members, which were the bulk of complaints,
10 starting in the internal process, by the time they 15:40
11 would come to my office for investigation, if they were
12 referred to me, a lot of the sort of donkey work was
13 done in a sense that you'd lists of witnesses, and you
14 may have to go back and get more statements, but a lot
15 of that, if you like, preliminary investigative work 15:41
16 was done.

17
18 Now, what's happening more, they are -- our workload
19 has increased because the cases which are the bulk of
20 them now, the directly referred cases are coming fresh 15:41
21 with, perhaps, even inadequate details about the
22 complainants. So you're spending a couple of weeks
23 just trying to get to the point that would have been
24 there had the case come through the internal system.

25 15:41
26 So, they're probably moving -- I mean, we do do some
27 complaints within three or four weeks and others within
28 two or three months. It depends on the complexity. It
29 also depends -- we're obviously at the mercy of getting

1 responses from people. And, in fairness to the great
2 majority of officers and senior NCOs that we would be
3 dealing with on a regular basis, they do respond very
4 quickly. But there are a small number that don't. I
5 mean -- or perhaps they're away, they're overseas. So, 15:42
6 you can -- a complaint which is moving along nicely can
7 suddenly come to a stop for two or three weeks while
8 you're trying to get details from the Defence Forces.
9 Also, there can be a delay in getting medical files,
10 which we often have to get with the complainants' 15:42
11 consent. But they have to go through a pretty rigorous
12 system in the Defence Forces before they're released.
13 Now, they do release them, but a medical file might
14 take two or three weeks to reach us and that might be
15 the only thing outstanding in relation to an 15:43
16 investigation

17 275 Q. I think what you've just described there, I think it
18 feeds into then you're saying your strongly held view
19 of the maintenance of a robust internal system?

20 A. Yes. 15:43

21 276 Q. Because in the absence of that, if they're all coming
22 directly to you, it's that added additional burden of
23 investigation?

24 A. Well, I mean, I'm not complaining about it but --

25 277 Q. It's a fact? 15:43

26 A. It's a fact that a lot of the, to describe it somewhat
27 crudely as the donkey work in an investigation, the
28 initial work is done where it goes through the internal
29 system, so we don't have to do it, we just have to pick

1 up, if you like, at a certain stage. Whereas when
2 they're coming directly, we're starting with blank
3 sheet of paper.

4 278 Q. Okay. And so staying with your office and the work
5 that your office does, that is, obviously, the major 15:43
6 component of it. I've noticed in your annual report
7 you talk about visiting formations as well and you
8 often refer to these visits in your annual report. Can
9 you just tell the Sole Member a little bit about those?
10 Are they in the nature of friendly visits, 15:44
11 inspectional, or how do you see them? What's the
12 purpose of them?

13 A. They are friendly and my head of office, David
14 O'Connor, also visits different installations. I
15 haven't visited them all, I still have one or two I'd 15:44
16 like to... But it's really a sort of a PR exercise for
17 the office and to meet people I would meet -- if I go
18 to a particular barracks I would ask to -- I'd meet the
19 PDFORRA and the RACO -- these are the representative
20 bodies and their local delegates would be there. You'd 15:44
21 meet the Commanding Officer. You'd meet officers and
22 NCOS. It's really just to announce that we're here
23 and --

24 279 Q. Okay. So do they go to the visibility or accessibility
25 of your office? 15:45

26 A. Yeah.

27 280 Q. Is that part of the exercise?

28 A. Yeah. I mean, I don't think it produces any huge sort
29 of work, but it's just something that it's important to

1 do from time to time.

2 281 Q. And I think you also, then, I noticed in one of your
3 reports you talked about attending international
4 conferences?

5 A. Mmm. 15:45

6 282 Q. And, I think, it might have been in 2022 that you
7 attended the conference in Oslo on these matters, and
8 is that something again that you do with regard to
9 informing yourself of peer systems?

10 A. Yeah, I do. I haven't been anywhere now for a little 15:45
11 while. I've been in Oslo, I've been in the UK, and
12 David O'Connor went to south Africa last year for a
13 military ombudsman conference.

14 283 Q. And if you tell the Sole Member the extent to which
15 then this informs your view of global structures on 15:46
16 military ombudsman structures?

17 A. Yeah, it's interesting to see how other people operate.

18 284 Q. Okay.

19 A. They all seem to have much bigger armies than we do.

20 285 Q. And I notice in Mr. Bratli's statement he talked about 15:46
21 DCAF. Have you any familiarity with DCAF? It's the
22 Geneva Centre for the Democratic Control of Armed
23 Forces?

24 A. Yeah, that was the conference in Oslo, I think, yeah,
25 and the one in south Africa last year, and they have 15:46
26 military ombudsmen, although they're not all called
27 ombudsmen, but they have the military ombudsman or
28 their like from all different -- from all the countries
29 from all around the world.

1 286 Q. okay, and do you make submissions at these conferences
2 on the part of your office?

3 A. Yeah, we join work groups and discuss --

4 287 Q. okay.

5 A. And it's just interesting to occasionally do things 15:47
6 like that, and to attend other conferences.

7 288 Q. I think you said there earlier in your evidence that
8 you meet with the representative bodies as well, and
9 did you see that part of your role?

10 A. Yeah, that's very important because they have that link 15:47
11 with the personnel in the Defence Forces and they would
12 be quite active in terms of getting a message across to
13 their members as to the sort of services we can
14 provide, and they sometimes would feature in complaints
15 that we would get in the sense that they would have 15:47
16 been active on behalf of a particular complainant in
17 relation to trying to find a resolution to a particular
18 problem. So, there is quite a bit of contact with them
19 throughout the year.

20 289 Q. okay. I think, also, you've said you attend Oireachtas 15:48
21 Committee hearings from time to time?

22 A. Yeah.

23 290 Q. And one was in April of this year. It was the Defence
24 and National Security one, is that right?

25 A. That's right, yeah. 15:48

26 291 Q. I think I saw in one of your reports also that one of
27 the committees was -- it had, if I can find the name of
28 it...

29 A. There was the Petitions and Ombudsman --

1 292 Q. Yes.

2 A. And I don't know why they're linked together, but

3 that's the name of the Committee.

4 293 Q. Okay. And I think that might have been in 2023, I

5 think you might have -- 15:48

6 A. Yeah, I think I've appeared before them twice.

7 294 Q. Well, the Joint Committee on Public Petitions and

8 Ombudsman, is that right?

9 A. Yeah.

10 295 Q. Okay. Then I think, more recently, we've seen, post 15:48

11 IRG, the External Oversight Body was established, and I

12 think you have some relationship with the External

13 Oversight Body as well?

14 A. Well, I have met them and I have made submissions to

15 them at their request. 15:49

16 296 Q. Okay?

17 A. Yeah, that's...

18 297 Q. Okay. And I think does that give a flavour, then, of

19 the work that's happening in your office both on the

20 ground and then on a more sort of diplomatic level, is 15:49

21 that right?

22 A. Well, you're keen to, you know, get the message across

23 as to the services you provide.

24 298 Q. Okay.

25 A. And there's obviously an interest in ensuring that 15:49

26 there's a fair grievance or complaints process there

27 for members of the Defence Forces to use, whether it be

28 internal or my office.

29 299 Q. Okay. Now, Mr. McCann was asking you about the

1 independence of your office and I think you very
2 clearly say that this is clearly outlined in the
3 legislation?

4 A. Yes. And, in fairness, I've never had a sense, in any
5 shape or form from either the Department or the Defence 15:50
6 Forces that that independence has in any way been
7 challenged or questioned.

8 300 Q. And, I mean, interestingly, Mr. Bratli at page 58 of
9 his evidence on the day that he was here, he talked
10 about perception of independence and he said people ask 15:50
11 the question 'Are you independent enough?' Have you
12 ever come across a problem in that regard?

13 A. About my office?

14 301 Q. Yes.

15 A. No, but I suspect that if you find against or if you 15:50
16 don't uphold a complaint, that there will be some, in
17 some instances, there will be some complainants who
18 won't think very highly of your office. But it's never
19 been -- I've never felt any sense of challenge to my
20 independence. 15:51

21 302 Q. Okay. Now, just going into the actual structure of the
22 Act itself, prior to 2004, we've been through this over
23 the last couple of weeks, and we've talked about what
24 are the Chapter 1 and Chapter 2 complaints processes
25 and, just to be clear, that the Chapter 2 complaints 15:51
26 are the Redress of Wrongs process under section 114 of
27 the 1954 Act, and then the Chapter 2 complaints are
28 more what we might call the interpersonal complaints?

29 A. No, I think the Chapter 1 complaints are --

1 303 Q. -- the interpersonal, sorry.
2 A. Interpersonal.
3 304 Q. Sorry, absolutely. Chapter 1 are the interpersonal and
4 Chapter 2 are the Redress of Wrongs. Now, when your
5 Act came into place, one of the things that happened 15:51
6 was this notification obligation. That is mandatory,
7 isn't that right, Judge? It's mandatory on the Chief
8 of Staff to notify your office and the Minister of the
9 Redress of Wrongs applications, from 1st December 2005,
10 isn't that right? 15:52
11 A. Yes. And they seem to do that in practice within
12 certainly a couple of weeks.
13 305 Q. And you see these notifications coming in and you
14 reference them in your reports. And you can see from
15 the number of notifications what might translate into 15:52
16 what comes on your desk later. You can see some of
17 them are resolved internally or withdrawn, and you can
18 look at patterns. You see if they're from officers or
19 enlisted men, and you reference this in your report. I
20 mean, I'm not saying you're tracking patterns, but you 15:52
21 do comment on it, isn't that right, what you're seeing
22 in these notifications?
23 A. Mmm.
24 306 Q. And we know that the interpersonal Chapter 1
25 complaints, they may come into ultimately the ROW 15:53
26 process because it is without prejudice to the ROW
27 process. But it's correct to say, I think, that you
28 see the number of ROWs, but you will not see and you're
29 not notified of the number of Chapter 1 complaints,

1 isn't that right?

2 A. That's correct, yes.

3 307 Q. Okay. And do you have any view on that, that there is
4 no notification provision at the moment in the
5 legislation. They don't come to you. 15:53

6 A. Well, I don't have any particular view in the sense
7 that, ultimately, my main interest is what's likely to
8 eventually be referred to my office. I would only pay
9 passing interest in what comes in by way of the NOCs or
10 the notifications of complaint. 15:54

11

12 I don't get -- I expect that one possible reason why
13 that doesn't happen, I mean, it's not required under
14 the Defence Force Regulations or my Act, that the
15 Chapter 1 type, which are the interpersonal-type 15:54
16 complaints, aren't notified is to do with the
17 confidentiality of that system because a lot of them
18 would be of a fairly personal nature.

19 308 Q. Okay. So what you see then in interpersonal terms is
20 you see whatever has made its way into the ROW process 15:54
21 or whatever comes to you by way of direct referral, is
22 that right?

23 A. Yeah.

24 309 Q. And I think you do define in your reports what you
25 consider to be interpersonal issues and you say where 15:54
26 there's an element of personality conflict or
27 interpersonal difficulty, it may include allegations of
28 inappropriate behaviour, bullying or exclusion, and I
29 think that was in your 2024 report?

1 A. Yes.

2 310 Q. Is that you trying to capture the nature of what you
3 see landing on your desk from an interpersonal --

4 A. Yeah, yeah.

5 311 Q. And I think it was -- Mr. Anderson gave evidence this 15:55
6 morning - it's very similar in Australia - and there is
7 no legislative threshold or definition of what can come
8 before you. So it could be anything. It could be on a
9 broad spectrum of interpersonal complaints, is that
10 right? 15:55

11 A. Yes.

12 312 Q. And when you're talking about who can complain, you
13 said in your evidence and in your statement that one of
14 the things that you would like to see is the civilian
15 employees brought under your umbrella, is that right? 15:55

16 A. Yes, because they're working side by side with members
17 of the Defence Forces, so issues like -- all the
18 different types, you know, interpersonal type of
19 complaints presumably occur between civilian employees
20 and members of the Defence Forces, but -- and I've 15:56
21 certainly -- we've been approached on a few occasions
22 by civilians wondering do we deal with complaints and
23 we've had to say no.

24 313 Q. And I think this, actually, would have a little bit of
25 a history in IRG, one of the recommendations of the IRG 15:56
26 Report - and just for the Sole Member, it's at
27 recommendation 4.13.1 - was to establish a complaints
28 process for civilian employees and civil servants and
29 dealing with their interactions with members of the

1 Defence Forces. So, work was needed in respect of
2 civilian employees and civil servants according to IRG.
3 I don't know if you remember that?

4 A. Well, I do, yeah.

5 314 Q. Okay. And I think, after that, and Mr. Duffy is a very 15:56
6 busy man, it seems, Mr. Duffy, I'm instructed, is
7 working on, at a very advanced stage, on a civil
8 military complaints process which brings both the
9 civilian employees in a very expansive way into a new
10 complaints process for them, and I think what you are 15:57
11 saying to the sole Member about civilian employees, it
12 will all fit into a new framework, effectively, or may
13 do so?

14 A. Yeah.

15 315 Q. And I think would you accept that's under the 15:57
16 microscope right now?

17 A. Yeah. And, also, if you look at the British system,
18 they've a revamped service personnel -- I don't think
19 they call her an ombudsman but -- Commissioner, I
20 think. And her jurisdiction covers members of the 15:57
21 Defence Forces or members of the Armed Forces in the UK
22 and their families. So they can deal with --

23 316 Q. It's quite broad.

24 A. Yeah. So, that's maybe another thing to look at here,
25 I don't know. 15:58

26 317 Q. And I think my instructions are, and you may already be
27 aware of this in the sense of that there is no
28 opposition, if you want to use that word, to bringing
29 all of the three work streams, the members of the

1 Defence Forces, civilian employees and civil servants
2 under the remit of the ODF, ultimately; would you be
3 familiar with that?

4 A. No, but if you're going to revamp the system, then why
5 not use the ODF or the Ombudsman's Office to deal with 15:58
6 everything an internal system deals with. You know, I
7 mean, it's -- if it's going to be done -- if it's going
8 to be revamped comprehensively, then it should cover
9 all possible complaints involving members of the
10 Defence Forces. 15:59

11 318 Q. And staying with the people who can make a complaint to
12 your office, we heard this morning again Mr. Anderson
13 talking about anonymised complaints and the facility
14 for anonymised complaints to the DFO in Australia; do
15 you have any view on that? Has this come up as an 15:59
16 issue for you over your term? Have they landed on your
17 desk? Have you had to turn them away? What is the
18 position? Can you help the Sole Member is this a real
19 issue in this jurisdiction?

20 A. No, I can certainly recall one case recently where an 15:59
21 individual wanted to lodge a complaint or refer a
22 complaint but not have his name provided to anyone.
23 And obviously that person had to be told that, well, it
24 would be impossible to investigate the complaint
25 because that individual was making allegations against 15:59
26 other individuals, so how are the other individuals
27 going to deal with the complaint if the individual's
28 name isn't disclosed?
29

1 But, no, I mean, like, from time to time, when we ask
2 people for statements, witnesses, they might ask that
3 their name not be disclosed. And we would facilitate
4 that, unless it's sort of impossible to do and we'd
5 give them -- we'd call them Cpl. A or Cpl. B or 16:00
6 something like that in the report.

7 319 Q. Okay.

8 A. But the Defence Forces is a small enough place, so it's
9 difficult to have absolute secrecy about identities.

10 320 Q. I think the Sole Member put it to Mr. Anderson this 16:00
11 morning about how would you protect the rights of
12 respondents in scenarios like that. And I think in
13 your answer, the anonymous complaint was turned away,
14 not necessarily because it was anonymous but because of
15 the difficulty of investigating it, is that right? 16:01

16 A. Yes. It wouldn't be possible -- now, that individual
17 immediately responded and said, 'Okay, I'll drop that
18 request.' I'm sure he - it was a he - I'm sure he
19 realised that the complaint wouldn't be, couldn't be
20 investigated without his identity being disclosed. 16:01

21 321 Q. And just moving on, then, from we're really into the
22 Section 6 territory of who can make the complaint and
23 who are the complainants. But, also, in Section 6(3)
24 you have that time limit of the 12 months that you
25 talked about to my colleagues earlier. And I think in 16:01
26 your most recent reports, you say that any problems
27 with people falling foul of this limit have effectively
28 resolved themselves, is that right? I think your
29 letters have been instrumental in that?

1 A. Well, anybody who's falling foul of it by maybe a few
2 months, you know, because they were perhaps waiting for
3 the internal system to produce its report and by the
4 time they got that from the Chief of Staff, it had gone
5 over the year. And that was a recurring issue in my 16:02
6 first three years or so. That's now, effectively, gone
7 because of the letters that were sent out. But we do
8 still, occasionally, get people referring a complaint
9 to the office which might be years old. We don't -- I
10 don't have the jurisdiction to deal with it. 16:02

11 322 Q. And that is a fact. I think you talk about those in
12 your 2023 report, one such case of being years old and
13 was outside your jurisdiction?

14 A. Yeah.

15 323 Q. In relation to that 12-month period, though, you were 16:03
16 asked, I think it might have been by Mr. McGovern about
17 the discretion to extend that time and you agreed with
18 regard to an extension in a very strict sense. But, I
19 think, when you were before the Oireachtas Committee in
20 April, you described that 12-month limitation period as 16:03
21 reasonable; do you recall that? Do you believe it is a
22 reasonable period overall?

23 A. Yeah, well, ideally, I would like to have a six-month
24 discretion as an add-on because there are occasions
25 when, you know, people really have been quite unfairly 16:03
26 rejected because of the strict 12-month limit. So, I
27 think a discretionary six months -- I think one year
28 suits most people in terms of a complaint, or in terms
29 of making a complaint.

1 324 Q. Okay. Now, with regard to the direct referral of
2 complaints, you've talked a lot about that earlier on
3 to my colleagues. You talked about that you took the
4 view, and we can see the concern you were expressing in
5 your early reports, about -- it really arose out of the 16:04
6 time period because if you're in the internal system
7 you could end up missing the limit for you. And then
8 you said you took a decision in 2022 that direct
9 referrals were not prohibited by the legislation and I
10 think that was your evidence. Now, in Mr. Bratli's 16:04
11 statement he analysed the seven processes and process
12 no. 3 was the Ombudsman and he says at page 4491 - we
13 don't have to open it for a moment I can just read it
14 out to you. He said that this was an interpretative
15 and not a legislative change and durability depends on 16:05
16 success of ombudsmen. So, effectively, the suggestion
17 was being you're happy to do it now but what about the
18 next Ombudsman. And I think it would seem to me, on
19 the basis of your evidence, that you're satisfied that
20 it is a correct legislative interpretation that direct 16:05
21 referrals are permissible, is that right?
22 A. Yes.
23 325 Q. It's not simply an interpretative change depending on
24 the way the wind blows with an individual?
25 A. No. Ultimately, it's a matter for the Ombudsman to 16:05
26 decide the limits of his or her jurisdiction, subject
27 to that being challenged by judicial review. And I
28 felt strongly when I looked at the Act more closely
29 that it allowed for direct referrals, and --

1 326 Q. So I think it is a legislative right under Section 6?
2 A. Oh, yes, it's an interpretation of what the legislation
3 allows or permits.
4 327 Q. Now, can I ask you; once we've gone past all of those
5 issues in relation to a complaint coming into your 16:06
6 office, I think one of the things you say in your
7 reports, one of the things you do when a complaint
8 comes in under Section 6 is that you tell the person
9 that you're going to liaise with the military
10 authorities to obtain the facts of your complaint. I 16:06
11 think that's the position, is that right, that it's
12 made very clear to a complainant how you're going to
13 proceed?
14 A. Well, we would -- they would be told, as a general
15 rule, that statements will be sought from different 16:07
16 individuals who they have named and they would be asked
17 where there might be an element of sensitivity, maybe
18 interpersonal-type complaints, they'd be asked have
19 they any objection if particular individuals are
20 written to. But, I think, there -- I mean, they're all 16:07
21 well aware that that's going to happen if they make a
22 complaint, that people who have some involvement with
23 the complaint are going to be contacted.
24 328 Q. And, I think is that not the reality? That is a
25 reality of external investigations that you have to 16:07
26 go --
27 A. Yes.
28 329 Q. -- inside, if you're going to investigate the complaint
29 and you have to contact people and you have to take

1 statements and investigate, is that right?

2 A. well, I mean you can't adjudicate on a complaint until
3 you hear from all sides.

4 330 Q. And I think we heard from a number of witnesses over
5 the last couple of weeks and they would have been asked 16:08
6 a question at the end of their evidence of what would
7 they like to see changed and a number of them talked
8 about fully external complaints processes outside the
9 Defence Forces. And I think it would have been put to
10 them and I think the Sole Member would have put to some 16:08
11 of these witnesses but do you accept that in order to
12 investigate you have to go back to the military? And I
13 think you're a prime example of that, is that right?

14 A. Yeah, because I think, unless you have an internal
15 system, in which there is confidence by its users, 16:08
16 unless you have that system, a lot of easily resolved
17 complaints will go unresolved, I would imagine. I
18 think most people, in any organisation, would want some
19 sort of an internal system, you know, which would
20 involve, perhaps, less formality than going to an 16:09
21 external system, or, you know, they all had to come to
22 some external body, whether you call it an ombudsman,
23 or whatever. But I think people would want that. That
24 would be my view anyway.

25 331 Q. Okay. Now, when, then, the investigation commences, I 16:09
26 think you have very significant powers, isn't that
27 right, and they're outlined in the Act themselves?

28 A. Yeah.

29 332 Q. And the IRG Report described them as extensive. For

1 example, in Section 8 you can obtain documents and
2 information; under Section 9 you can conduct your
3 investigations; under Section 15 you can appoint
4 investigation officers?

5 A. Yes. 16:10

6 333 Q. Just in relation to Section 15; can you give the Sole
7 Member a little bit more detail on that. Have you ever
8 done that?

9 A. What's Section 15 again?

10 334 Q. With regard to the appointment of investigation 16:10
11 officers?

12 A. Yeah, Mr. O'Connor is an appointed investigating
13 officer.

14 335 Q. Okay.

15 A. As was his predecessor. So, that allows him go and 16:10
16 interview witnesses and conduct, you know -- assist me
17 in conducting investigations. So, that works quite
18 well.

19 336 Q. And it's set out in the legislation that nobody can
20 obstruct you in the course of your work. And have you 16:10
21 ever come across obstructions or can you tell the Sole
22 Member?

23 A. No. No, most people are very happy to see me if I go
24 down to -- I mean, I've always been well received in
25 the different Army barracks and that. So I've never 16:11
26 had any issue, I've never been obstructed.

27 337 Q. And, then when it comes to putting together your report
28 on the investigation, you've been asked a lot about the
29 recommendations that you make and you've been very

1 clear that you make these recommendations to the
2 Minister and you say in your statement the vast
3 majority of these recommendations have been accepted by
4 the Minister. And, in fact, just looking at the
5 reports from 2019 to 2024, I just added them up, it's 16:11
6 78 recommendations were accepted and two were rejected?

7 A. Mmm.

8 338 Q. And I think you say in relation to the two that were
9 rejected -- or where something is rejected you say you
10 give very detailed reasons for that, is that right? 16:11

11 A. Yeah.

12 339 Q. Just so the Sole Member might see an example, I'm
13 instructed that that might be where you're making a
14 personal recommendation with regard to a course or
15 promotion or a movement or service or something like 16:12
16 that, and maybe it might be paused because there may be
17 something else going on like a court-martial or a DPP
18 file or something like that; could that be an example
19 of where a recommendation might be rejected or paused?

20 A. Well, I can't remember if that's one of the two, but 16:12
21 that -- it could be something of that, or I could
22 certainly remember, I think I made a recommendation
23 that some Admin Instruction be altered and I was given
24 very good reasons why that would cause more problems
25 than it would solve. That's the only one I can 16:12
26 remember off the top of my head.

27 340 Q. And if I can just reference a section in the Act, in
28 particular, because I think there was some emphasis
29 with regard to, that these are not binding and they are

1 recommendations. And, you know, what's the level of
2 oversight with regard to the these recommendations.
3 And, I think, in Section 7(5) of the Act, you have a
4 provision there it says:

5
6 "Where it appears to be Ombudsman that the measures
7 taken are proposed to be taken in response to a
8 recommendation under subsection (3) are not
9 satisfactory..."

10
11 It says that you can make a special report on the case.
12 And you can include that in your annual report to the
13 Houses of the Oireachtas each year.

14 A. Yeah.

15 341 Q. Have you ever had cause to make a special report?

16 A. No.

17 342 Q. Okay. And in relation, then, to these reports, you
18 were asked by Mr. McCann were you a parliamentary
19 ombudsman and it is the case, and it's very clearly set
20 out in the legislation, that you do report annually and
21 directly to both Houses and you lay your reports before
22 the Houses, isn't that right?

23 A. Yeah.

24 343 Q. And in these reports, yes you have your statistics, you
25 break down the nature of cases, you break down the
26 numbers of who you're dealing with, but, interestingly,
27 you also have case summaries which are anonymised,
28 isn't that right?

29 A. Yeah.

1 344 Q. And in the case summaries I've noticed that in respect
2 of ones where you've made recommendations, you record
3 the response to the recommendation and there seemed to
4 me anyhow to be a level of follow-up. You sometimes
5 would have a paragraph saying that this was 16:14
6 implemented, that was implemented or this was changed
7 or this was not changed. So, can you just tell the
8 Sole Member about your the level of follow-up of the
9 role you have to see what has happened?

10 A. Well, in relation to every report I issue, a copy goes 16:14
11 to the Minister and the Minister will, in time, write
12 to me and indicate whether he or she accepts or rejects
13 my findings. And, I think, I can't remember ever
14 having had findings not accepted. And then in relation
15 to recommendations, a lot of those seem to take a long 16:15
16 time from the time they're made, because there's quite
17 a bit of work often on the part of the Minister and the
18 military management working out how best to deal with
19 those. So I would eventually get a letter from the
20 Minister indicating whether he or she accepts, or is 16:15
21 prepared to implement the recommendation.

22

23 I would then, or the office would then inform the
24 complainant as to what the Minister's response was.

25 MS. McGRATH: Judge Mahon, I'm sorry, I didn't realise 16:16
26 it was quarter past four, I wasn't paying attention.
27 I'll be about five more minutes, if that's okay?

28 SOLE MEMBER: That's fine from my perspective.

29 MS. McGRATH: Apologies.

1 SOLE MEMBER: I have some questions myself.

2 MR. BRADLEY: Chairperson, may I ask a number of

3 questions on behalf of women of Honour?

4 SOLE MEMBER: I believe there was a process, there was

5 an order in which counsel were to ask questions, 16:16

6 Mr. Bradley.

7 MR. BRADLEY: I was unaware of that, Chairperson.

8 SOLE MEMBER: Certainly, after Ms. McGrath you can put

9 whatever questions.

10 MS. McGRATH: Apologies, Sole Member, I thought I was 16:16

11 last.

12 SOLE MEMBER: That's fine.

13 345 Q. MS. McGRATH: I'll just be very brief, Judge Mahon. I

14 mentioned earlier - just a few closing issues I just

15 want to ask you about - your engagement with the 16:16

16 External Oversight Body and, as you say, you've made

17 submissions to them. This body was set up post IRG,

18 and it's involved with the implementation of the

19 recommendations and the transformation process,

20 effectively, that is happening right now in the Defence 16:17

21 Forces, isn't that right?

22 A. Yes.

23 346 Q. Now, I think you -- the minutes of these meetings are

24 public documents, all its work are in public. I notice

25 one of the things you mentioned to the External 16:17

26 Oversight Body was the consideration of an external

27 mediation service?

28 A. Mmm.

29 347 Q. Can you just tell the Sole Member about that?

1 A. Well, on occasion, as part of my investigation, I
2 would -- I might recommend that there be mediation.
3 Now, the Defence Forces have their own mediation
4 process and I also, I think, last year got quotations
5 from mediators, this would be external mediators, and 16:18
6 I've, certainly on one occasion, I think, made such a
7 person available to an individual who didn't want to
8 use the Defence Forces. So, mediation is important if
9 you can -- certainly in relation to the interpersonal
10 type of complaint, if it can be organised. 16:18

11 348 Q. Is this where you see your own office engaging with
12 these interpersonal issues? Mediation, we know down in
13 the Law Library, has come to the forefront,
14 effectively, of so much of litigation and do you see
15 the same thing, do you see mediation playing a bigger 16:18
16 role?

17 A. Yeah, certainly in relation to the interpersonal type
18 of complaint or at least some of them. But, mediation
19 doesn't really provide much of the solution to the
20 majority of the complaints that I'd be dealing with, 16:19
21 like, you know, promotion and course selection and
22 things of that nature.

23 349 Q. Okay. Just closing up with one of the things I wanted
24 to ask you about was your own motion or your own
25 initiative investigations which has featured here today 16:19
26 and in your statement.

27

28 It featured both in Mr. Bratli's evidence on Day 1 and
29 this morning with Mr. Anderson also. I think hearing

1 from everybody, it's described as a very powerful and
2 important tool for ombudsmen, and particularly in the
3 Defence Forces. I think those are Mr. Anderson's
4 words. Would you agree with those, a powerful and
5 important tool 16:19

6 A. Yes, I think very much so.

7 350 Q. Mr. Bratli, in his statement, did say that something
8 like this is "not always welcome." Those were the
9 words he used. But, I think, in this jurisdiction I
10 think you have communicated and been in communication 16:20
11 with the Secretary General of the Department of Defence
12 on this issue, isn't that right?

13 A. That's right, yes.

14 351 Q. And I think there is a liaison there and I think
15 there's an issue of peer reviewing and systems 16:20
16 reviewing. Are you in a position to tell the Sole
17 Member where that sits right now?

18 A. Well, I don't know. I haven't had any interaction in
19 sort of recent months in relation to it. But,
20 certainly, it was the subject of some lengthy 16:20
21 discussion between myself and the Secretary General
22 of the Department and I provided her with some peer
23 review material. I can't remember exactly when.

24 352 Q. I think it's effectively on her desk, is that right, as
25 it stands at the moment? 16:20

26 A. Yes.

27 353 Q. I think you'd accept that?

28 A. Yeah.

29 MS. McGRATH: Okay. [Short pause]. Just bear with me

1 for one moment, Judge. Thank you so much.
2 THE WITNESS: Thank you.
3 SOLE MEMBER: Thank you, Ms. McGrath. Mr. Bradley, can
4 you give me some indication of how long because I'm
5 conscious that Mr. Justice Mahon has been in the 16:21
6 witness box since two o'clock.
7 THE WITNESS: I'm fine.
8 MR. BRADLEY: I will relatively short.
9 SOLE MEMBER: Thank you very much.
10
11 MR. JUSTICE ALAN MAHON, WAS CROSS-EXAMINED BY
12 MR. BRADLEY AS FOLLOWS:
13
14 MR. BRADLEY: Good afternoon, Judge. I appear on
15 behalf of Women of Honour and my name is
16 Raymond Bradley.
17 THE STENOGRAPHER: Sorry, could you speak up?
18 MR. BRADLEY: At the outset --
19 SOLE MEMBER: Mr. Bradley, could I ask you to move the
20 microphone closer to you so the stenographer can hear 16:21
21 you. Thank you.
22 354 Q. MR. BRADLEY: At the outset, I note from your reports
23 that you indicated that you reviewed in 2022, 54
24 complaints, in 2023, 45 complaints and in 2024, 50
25 complaints. 16:22
26 A. Mmm.
27 355 Q. Also in your direct evidence you indicated that 10% of
28 the total of your complaints related to interpersonal
29 issues?

1 A. Well, roughly, 10%.

2 356 Q. Roughly. And you were more specific in your reports
3 because you indicated that 9% in one year, 10% in
4 another year and 12% in another year related to
5 interpersonal issues. That's approximately five 16:22
6 interpersonal issues in the context of abuse each year
7 that the Ombudsman addresses?

8 A. Yes.

9 SOLE MEMBER: Mr. Bradley, can I just clarify,
10 interpersonal issues may not, as I understand it, come 16:22
11 within the definition of abuse within the Terms of
12 Reference.

13 MR. BRADLEY: Correct, Chairperson.

14 SOLE MEMBER: Once we have that on the record, thank
15 you. 16:22

16 357 Q. MR. BRADLEY: But the vast majority of complaints that
17 you addressed were promotion, course selection,
18 assessment, leave issues, allowances and overseas
19 issues?

20 A. Yes, and there's a couple of other categories that 16:23
21 could be added to that but they're not of an
22 interpersonal --

23 358 Q. They're not interpersonal. And when you came to look
24 at the internal grievance requirement being exercised
25 within the Defence Forces, was that comment made in 16:23
26 relation to the nature of the complaints that you were
27 addressing rather than the more limited number of,
28 we'll use the term abuse issues within the definition
29 that exists for this Tribunal?

1 A. well, I think it applies to all types of complaints.
2 This is my suggestion as to sort of an internal system
3 and with appeal to an ombudsman? Can you clarify what
4 you're asking me and I'll --

5 359 Q. what I'm asking is that an internal grievance process, 16:24
6 that you've indicated should predate the Ombudsman
7 process?

8 A. Yes.

9 360 Q. That would seem more suited to the administrative-type 16:24
10 issues which you predominantly deal with in the context
11 of day-to-day activities?

12 A. well, no, I think if it's properly designed, it should
13 be able to deal with all complaints.

14 361 Q. The number of interpersonal issues which is, if you 16:24
15 take the statistical analysis in or around five each
16 year, because you've said 5%, 10% and 11%, it would
17 seem, considering the evidence that has already been
18 adduced before this Tribunal, to be very low?

19 A. well, it is, except -- I mean a lot of the cases, and
20 I've read the transcripts in relation to evidence 16:25
21 before this Tribunal over the last couple of weeks,
22 seem to be quite historical in nature. But I did
23 think, I mean I've said that in evidence, that I did
24 expect a spike in interpersonal-type complaints after
25 the women of Honour publicity and the IRG and the 16:25
26 establishment of this Tribunal but that really hasn't
27 happened. Now, it's -- I just noted before I -- when I
28 was looking at some documents in my office this
29 morning, that this year, I don't have exact figures,

1 but we're probably running at about instead of the
2 average 10% interpersonal complaints it's probably in
3 or about 15% so far this year, but it's only halfway
4 through the year. So whether that's a hint of a spike
5 or not, I don't know. 16:26

6 362 Q. In your report for 2024 you indicated that few in
7 number might suggest that:
8
9 "There is, over the past couple of years, an increased
10 awareness within the Defence Forces of the value in 16:26
11 maintaining good working relationships with colleagues,
12 and, particularly on the part of senior NCOs and
13 Officers, coupled with a need to quickly and
14 effectively resolve interpersonal difficulties where
15 they do occur." 16:26
16
17 From where did that metric or that statement
18 materialise? What is it based upon?
19 A. Well, from talking to NCOs and officers and
20 representative associations. That's the very clear 16:26
21 impression I have. I get a sense of a change in
22 culture.
23 363 Q. And that impression, the process that the Ombudsman's
24 Office operates is you have three personnel, as I
25 understand matters -- 16:27
26 A. And myself.
27 364 Q. -- one investigator, and one investigator?
28 A. No, I've three personnel and myself, four.
29 365 Q. Four. Sorry, I excluded you, apologies.

1
2 And it's a document-based process where statements are
3 taken?
4 A. Yes.
5 366 Q. And in the context of Mr. O'Connor, Mr. O'Connor is the 16:27
6 investigating officer who is out on site and meets
7 complainants and respondents to take statements?
8 A. Well, while it's mostly paper-based, both Mr. O'Connor
9 and I - and often we do it together - we interview
10 witnesses, not every witness and we interview, 16:28
11 occasionally, complainants, some complainants, either
12 the complaint is very complex and they need to talk it
13 through, or you have situations where some complainants
14 have difficulty in adequately expressing the details of
15 their complaints. So, we would sit down with them and 16:28
16 talk through, and Mr. O'Connor sometimes would have
17 occasion to do that on his own.
18 367 Q. We are focused in this Tribunal on the interpersonal or
19 more particularly the abuse-type complaints?
20 A. Yes. 16:28
21 368 Q. And you've had one sexual abuse complaint that didn't
22 relate to the time period when you were in office for
23 the past eight years?
24 A. That's right, yeah.
25 369 Q. So you had no experience in terms of going out to take 16:28
26 statements during that period because there were no
27 incidents reported to you?
28 A. Well, that's in relation to sexual misbehaviour.
29 370 Q. Sexual abuse?

1 A. But in terms of other types of bullying and harassment
2 and things of that nature, we have quite often spoken
3 to complainants face to face or with witnesses.

4 371 Q. But the number, in accordance with the content of your
5 report, is five per annum? 16:29

6 A. Yes, but the numbers would be small.

7 372 Q. That's fine. In terms of the recommendations that you
8 make, you deliver those recommendations to the Minister
9 and you deliver a copy of your recommendation and
10 findings to the complainant. And the Minister's 16:29
11 counsel, quite correctly, asked what happened when the
12 process occurs. What communication occurs with the
13 complainant if your recommendation is not accepted by
14 the Minister?

15 A. Well, the -- again, that's only happened on one or two 16:30
16 occasions, but in that case, the complainant would be
17 written to with that news that the Minister has, for
18 whatever reason, isn't going to implement the
19 recommendation and it stops there insofar as anything
20 like that has happened to date. It's a matter then for 16:30
21 the complainant to follow up on that if he or she
22 wishes. I don't think -- I'm not aware of that
23 happening in any case.

24

25 I mean, this is why I emphasise, there's only one or 16:31
26 two cases where the recommendation was not accepted.
27 So, it doesn't happen often.

28 373 Q. But it's a matter of confidence and perception in the
29 system?

1 A. Sorry?

2 374 Q. It's a matter of confidence and perception in the
3 system that operates. It's a written document-based
4 process, there's limited interaction with the
5 individual. It's dependent on a third party to accept 16:31
6 the recommendation, if not accepted, there's no
7 consequence?

8 A. Well, I didn't mean to convey that I felt there was a
9 lack of confidence in the recommendation side of it.
10 My comments about confidence in the grievance process 16:31
11 or the complaints process --

12 375 Q. And maybe we're at cross purposes. But my point is
13 that these are very interpersonal-type issues that
14 predominantly rests in a document manner, possibly a
15 process that had more interpersonal involvement, would 16:32
16 be more receptive and possibly the perception
17 associated with it would be that it would be
18 user-friendly and could be utilised for more of the
19 Defence Forces personnel?

20 A. I don't disagree with that but probably in the greater 16:32
21 percentage of cases where there has been one-to-one
22 engagement with either myself and Mr. O'Connor and
23 complainants and witnesses is in the small number of
24 interpersonal cases that have come to my office.

25 376 Q. Judge, I don't wish to revisit the time periods in any 16:32
26 detail, but I just want to leave you with a concept and
27 see whether you agree with it or not. The imposition
28 of time periods apply day in and day out and is
29 designed to be exclusionary. It brings people outside

1 the system. Yet in the context of the nature of the
2 issues that are to be addressed, surely it would be
3 better if there was a scenario where it was open-ended
4 or there was a right to extend so that it was
5 inclusionary and allowed the prospect of resolution? 16:33

6 A. well, that's a view that I expect a lot of people would
7 have. But it's important, also, to be able to manage a
8 complaints system to some extent. I mean, I've no
9 great -- I wouldn't argue against a longer limitation
10 period applying to interpersonal-type complaints, 16:34
11 because I think people are less inclined to rush to the
12 complaints process where their complaint is sort of
13 interpersonal.

14 377 Q. You had to bring in an administrative process to ensure
15 that complainants were notified so that their ability 16:34
16 to advance an appeal to you was not lost?

17 A. Yeah.

18 378 Q. Surely, then, the limitation period that applies was
19 more exclusionary and in no way inclusionary?

20 A. well, the purpose of the practices we now have in the 16:34
21 office of writing to people at the one-month stage and
22 the nine-month stage is to remind them that there is a
23 limitation period and it seems to work.

24 379 Q. Judge, to all credit, you have remedied the situation
25 but it doesn't instill confidence that that scenario 16:35
26 existed?

27 A. well, possibly so.

28 MR. BRADLEY: Thank you very much.

29

1 MR. JUSTICE ALAN MAHON WAS QUESTIONED BY THE SOLE
2 MEMBER, AS FOLLOWS:

3
4 380 Q. SOLE MEMBER: I hope not to keep you too long,
5 Mr. Justice Mahon, but I have a couple of questions 16:35
6 that I would like to ask you.

7
8 If we can begin with this question of the direct
9 referrals. Could I ask you whether there was any
10 reaction to your decision to open up direct access to 16:35
11 your office?

12 A. No. Well, there was no negative reaction. It was a
13 positive reaction from the Department, from the
14 representative associations and I can't remember
15 anything -- that subject coming from the Chief of 16:36
16 Staff, but, certainly, there was no objection to it.
17 There was -- for a period of time we were getting, I
18 was getting some letters from senior military people
19 saying how come you've -- you know, people aren't
20 obliged to go through the internal system first. But 16:36
21 there was nothing of a negative nature that I can
22 recall. I think it was positive.

23 381 Q. And in relation to bullying, you made a comment that
24 even minor bullying in a civilian office might be far
25 more serious in a military setting. Can you just 16:36
26 elaborate a little bit more on what you meant by that?

27 A. No, I meant the opposite to that.

28 382 Q. Okay.

29 A. Yeah, I think, even what might be considered minor

1 bullying in a civilian setting --

2 383 Q. Yes.

3 A. -- would, in a military setting be potentially far more

4 serious.

5 384 Q. That's what I understood you to say. Can you elaborate 16:37

6 a little on what you mean by that?

7 A. Well, because of the sort of military structure, the

8 rank and file structure, which you don't get,

9 obviously, in a civilian situation, so the whole thing

10 about the chain of command within the military setting, 16:37

11 so, there can be quite a significant amount of power

12 wielded by senior personnel in a military set-up to

13 their subordinates than you would, perhaps, have in a

14 civilian setting. So, also, their often living and

15 working very closely together, often in non-sociable 16:37

16 hours. So, I think it can cause -- there can be

17 more -- bullying can be more damaging, I mean it can be

18 damaging in any situation, but it can possibly be more

19 damaging in the military setting and I think that's

20 been recognised, certainly in Canada. I remember 16:38

21 reading articles about the Defence Forces in Canada

22 and, also, in the UK. So, I'm sure it's really no

23 different here.

24 385 Q. Thank you. I've listened very carefully to what you've

25 had to say about a revamped internal process. Could I 16:38

26 ask you, in the light of the very serious allegations

27 of abuse that you have read in the transcripts and I

28 must stress they're allegations and I have no power,

29 obviously, to determine the well-foundedness or

1 otherwise of those allegations, but in the light of
2 what you have read and bearing in mind in your
3 knowledge and understanding of the Section 114 Redress
4 of Wrongs procedure, which of course has developed over
5 the year, do you have a view on whether that procedure 16:39
6 would be an appropriate complaints mechanism for
7 dealing with complaints of abuse of the nature
8 described?

9 A. This is the interpersonal-type complaints.

10 386 Q. The Section 114 procedure as it exists now, do you 16:39
11 consider that, or do you have a view on whether that
12 would be an appropriate procedure for dealing with
13 complaints of abuse of the type this Tribunal has heard
14 of?

15 A. Well, I don't see why, if you simplify the procedure, 16:39
16 what we call the Section 114 procedure --

17 387 Q. Yes.

18 A. -- so that you have the involvement of the Commanding
19 Officer on day one, or the Unit Commander and then you
20 have a civilian properly-trained investigator and then, 16:40
21 after that, it goes to the Ombudsman. So, I think that
22 can be adapted. Obviously, there has to be a degree of
23 confidentiality built in.

24 388 Q. Yes. My question is more without the revamped system
25 you envisage as it stands or as it stood in 1991 before 16:40
26 the changes?

27 A. No, I don't think --

28 389 Q. Do you think that would have been appropriate as a
29 mechanism?

1 A. No, I don't think it suited that type of interpersonal
2 complaint and I think that's what gave rise to this
3 Chapter, what they call the Chapter 1 process.

4 390 Q. Yes.

5 A. Because that was designed to ensure confidentiality and 16:40
6 make it easier for people to come forward with that
7 type of complaint.

8 391 Q. And just while we're on the question of
9 confidentiality; many of the witnesses who testified
10 before the Tribunal described the unit in which they 16:41
11 operated as being very small and people, you know,
12 everybody knows everybody else's business as such and
13 when you were talking about an attraction, the
14 attraction of going to an outside body, I think you
15 said there's a fairly tight control in terms of 16:41
16 confidentiality now within the internal system. Could
17 you let me know what kind of evidential basis you have
18 for that, that it's more controlled now? Because a lot
19 of people who testified, or at least some of them, were
20 still concerned with the confidential nature of making 16:41
21 a complaint internally. The confidentiality that
22 attaches to that, surrounds the making of a complaint
23 internally?

24 A. Are you talking about interpersonal sort of abuse-type
25 complaints or different types of complaints? 16:41

26 392 Q. Complaints of abuse only, that's all I can deal with,
27 complaints of abuse?

28 A. Well, I think the current process, now I don't know how
29 well it's working is Mr. Duffy's process and I assume

1 that carries a very high level of confidentiality.

2 393 Q. And could I take you back just to before that process
3 because my understanding is that that happened after
4 the cut-off date for the Tribunal?

5 A. Yeah. So, we're talking now about the Chapter 1
6 process. 16:42

7 394 Q. We're talking about, yes, most of the Chapter 1
8 complaints or most of the complaints of this Tribunal
9 would be interpersonal?

10 A. I don't know, I would doubt that it was sufficiently 16:42
11 confidential because the people conducting the
12 investigating or the process were, by and large, Army
13 personnel, or Defence Forces personnel. So, they were
14 dealing with their own colleagues.

15 395 Q. Yes. 16:43

16 A. And I'd say there was probably a bit of a reticence on
17 the part of complainants to go into that system.

18 396 Q. Yes.

19 A. And they'd be wondering well who's going to hear about
20 this. So, I think the Chapter 1 process was probably a 16:43
21 well-intentioned attempt to deal with that, but it
22 probably -- I doubt if it dealt with it sufficiently.
23 And I think that's where Mr. Duffy probably has a bit
24 of an advantage there. And so there's probably more
25 inclination to use that system. 16:43

26 397 Q. Thank you. On the question of cultural change,
27 Mr. Anderson this morning said that the five-year
28 target for a cultural shift in the Australian Defence
29 Force wasn't achieved and that it takes longer to

1 change a culture, it's something that must be reviewed
2 on a continuous basis. I understood your evidence to
3 be that the Defence Forces now are much tougher on
4 allegations of bullying and much tougher to respond to
5 bullying is what I have noted. And, again, what 16:44
6 evidential basis do you have for that? Given that 80%
7 of them are not going through --

8 A. I don't have hard evidence as such but, certainly, I
9 talk to a lot of personnel of all ranks on different
10 occasions and it's a sense that I have that there is a 16:44
11 culture change and, now, I agree with the five-year --
12 that five years probably isn't long enough. A change
13 of culture will probably take ten or fifteen years to
14 really show results. But, I get a sense that there's a
15 greater -- and I think there's, you know, you talk even 16:44
16 to a lot of officers and they will tell you how shocked
17 they were at the revelations that came out in recent
18 years.

19 398 Q. On the question of this revamped internal process,
20 could I ask you to just explain that to me in a little 16:45
21 more detail because as I understand it you feel very
22 strongly of the view that an internal mechanism should
23 be there for what we might call the exhaustion of
24 remedies. So the resolution of an issue early on, if
25 possible. Again, a good number of those who testified 16:45
26 before the Tribunal were strongly of the view that
27 there should be an independent body. There should be
28 somebody they can go outside of the Defence Forces to
29 deal with complaints.

1 what you envisage, if I'm not mistaken, is an
2 independent civilian investigator investigating
3 completely independently of the Defence Forces, is that
4 right? And that they would produce a report that would
5 carry some weight, you said. what kind of report and 16:46
6 what kind of weight do you think is possible to
7 achieve, if you're dealing with an independent
8 investigator outside of the chain of command?

9 A. well, this is the civilian --

10 399 Q. Yes, your model, if we can call it that? 16:46

11 A. -- trained investigator who as part of the internal
12 process would make an adjudication on a complaint.

13 400 Q. Mm-hmm.

14 A. And would hopefully have the power to direct that
15 somebody be promoted who hasn't, if that's the 16:46
16 complaint, or that mediation would be made available to
17 the individuals, or that disciplinary action would be
18 considered against a particular or that the matter
19 should go to the Military Police or the Gardaí, or
20 whatever. 16:47

21 401 Q. And that power, in your view, should be independent of
22 the chain of command. So this independent investigator
23 would have the power to say to the General Officer
24 Commanding, for example, such a person should be
25 disciplined, so that that decision about discipline is 16:47
26 taken away from the General Officer Commanding?

27 A. And then there would be a right of appeal.

28 402 Q. Yes.

29 A. -- to the Ombudsman's Office from all interested

1 parties, including the Commanding Officer.

2 403 Q. Yes.

3 A. -- who mightn't like what he's being directed to do.

4 404 Q. Yes.

5 A. And that -- but by having that model, by creating that 16:47

6 model of the internal process, there is an element of

7 external oversight there.

8 405 Q. Yes.

9 A. Because one of the problems, I think, over the years

10 has been the fact that the people adjudicating on the 16:47

11 internal process complaints are Army officers.

12 406 Q. Yes.

13 A. Well-intentioned, as I know a lot of them are, but

14 there's this lack of confidence. Because, often, the

15 person being complained of is an officer, or the unit 16:48

16 in the Defence Forces that's being complained about is

17 headed by an officer.

18 407 Q. Mm-hmm?

19 A. -- as is always the case. So, I think that lack of

20 confidence, the only way to deal with that is to have 16:48

21 people, civilian HR or trained investigators who deal

22 with all these complaints.

23 408 Q. With power to make a decision and to remove the power

24 of the General Officer Commanding, for example, as to

25 what should be done, and that, you think, would require 16:48

26 obviously legislative change, but is that the type of

27 model you're talking about?

28 A. I mean, the Commanding Officer would still retain the

29 power to discipline people outside the complaints

1 process, obviously.

2 409 Q. Yes, of course, yes.

3 A. And I'm just talking about complaints.

4 410 Q. Yes.

5 A. But that the complaints process would produce some sort 16:49

6 of a binding decision, subject to an appeal to the

7 Ombudsman --

8 411 Q. Yes, by all parties.

9 A. -- or some external body.

10 412 Q. Would you envisage the office of this independent 16:49

11 investigator being situate for optical reasons outside

12 of the Defence Forces? It wouldn't be within a

13 barracks and it wouldn't be within a unit or a

14 particular command?

15 A. Well, I mean, you have to allow for the fact that there 16:49

16 are barracks in Cork and Galway and Donegal and County

17 Louth, so whether it's practical to have a sort of a

18 unit in different -- so, I don't see why they can't

19 operate within a barracks structure. Most of the

20 barracks are vast and so there's plenty of room. So, I 16:49

21 think it probably would be better working within the

22 barracks or maybe having two or three of these units

23 around the country.

24 413 Q. For accessibility purposes?

25 A. Yes, yeah. But I don't see any great need to have them 16:50

26 in a completely separate building, say, like the

27 Ombudsman's Office.

28 414 Q. Mm-hmm. Some of the witnesses testified that if they

29 were seen going into a building, they would be

1 identified as 'Here's a person making a complaint', and
2 that that in itself may have adverse consequences for
3 them and it was for that reason they considered an
4 external premises would be preferable?

5 A. Yeah, well, I can see that point. I didn't really 16:50
6 think.. But maybe that could be sorted by having maybe
7 two or three offices not quite within barracks, but
8 within --

9 415 Q. Close proximity?

10 A. Yeah. 16:50

11 416 Q. On the question of retaliation, the head of the
12 Chaplaincy Service testified that whilst he had no
13 personal experience of retaliation on foot of making a
14 complaint, there was, in his view, a sense of a fear of
15 reprisal amongst members of the Defence Force 16:51
16 personnel, that if they made a complaint, there would
17 be a reprisal of some form, and that might be not being
18 chosen for overseas duties or not getting whatever they
19 were entitled to. Do you have any sense from the
20 persons who complained to you that there are concerns 16:51
21 about repercussions or reprisal for having made a
22 complaint?

23 A. Yeah, I think some have expressed that concern almost
24 in passing, you know, maybe without evidence that that
25 has occurred. It's very difficult to identify evidence 16:51
26 there, but I think there is some concern amongst some,
27 you know, with some complainants. And I know, years
28 ago, I remember talking to a group of officers - this
29 is maybe six or seven years ago, when it was made quite

1 clear to me that officers are -- it's frowned upon with
2 the officer rank to be seen going to the Ombudsman
3 because it was seen as going outside the system. Now,
4 I don't think that's true at all now and, in fact, I
5 think last year or the year before - I can't remember - 16:52
6 we had a huge number of officer complaints, whereas
7 when I started initially, they were quite rare. So, I
8 don't think that's there. But I think there is a
9 concern of repercussions. Now, I haven't -- I can't
10 recall any case where there was clear evidence that 16:52
11 that had occurred, but obviously it's going to be a
12 concern and fear on anyone's part who is making a
13 complaint.

14 417 Q. Then, finally, in relation to the recommendations that
15 you make to the Minister, you say recommendations seem 16:53
16 to take a long time from the time they're made because
17 it takes a lot of work, and I understand your evidence
18 was you'd eventually get a letter from the Minister as
19 to whether he or she was prepared to implement the
20 recommendations. When you say "eventually", have you 16:53
21 any idea of the timeframe that it would take the
22 Minister to respond?

23 A. Sometimes weeks. Sometimes months. It depends,
24 really, on the sort of recommendation. My practice
25 always has been to only make recommendations where 16:53
26 they're really warranted. Otherwise, you might be seen
27 as crying wolf, almost, if you make recommendations
28 about every little thing.

29 418 Q. Yes.

1 A. So, some take longer than others, but usually because
2 there's some good, practical reason.

3 SOLE MEMBER: That's great. Mr. Justice Mahon, thank
4 you very much for the evidence you have given to the
5 Tribunal today. It's very much appreciated.

16:54

6 THE WITNESS: Thank you.

7 SOLE MEMBER: we'll meet tomorrow at 10:30.

8

9 THE TRIBUNAL WAS THEN ADJOURNED UNTIL WEDNESDAY, 15TH
10 JULY 2026 AT 10:30 A.M.

16:54

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