

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

PUBLIC HEARING OF THE TRIBUNAL OF INQUIRY BEFORE
THE SOLE MEMBER, MS. JUSTICE ANN POWER,
AT THE INFINITY BUILDING, THIRD FLOOR,
GEORGE'S COURT, GEORGE'S LANE, SMITHFIELD, DUBLIN 7
ON WEDNESDAY, 15TH JULY 2026 - DAY 25

25

Gwen Malone Stenography
Services certify the
following to be a
verbatim transcript of
their stenographic notes
in the above-named
action.

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1 THE TRIBUNAL RESUMED ON WEDNESDAY, 15TH JULY 2026 AS
2 FOLLOWS:

3
4 SOLE MEMBER: Good morning, everybody.

5 MS. PILLAY: Good morning, Judge.

10:30

6 SOLE MEMBER: Good morning.

7 MS. PILLAY: The first witness this morning is
8 Sgt. Rena Kennedy. I'll call Sgt. Kennedy, please.

9
10 SGT. RENA KENNEDY, HAVING BEEN SWORN, WAS DIRECTLY
11 EXAMINED BY MS. PILLAY, AS FOLLOWS:

10:30

12
13 1 Q. MS. PILLAY: Sgt. Kennedy, as you are aware, the
14 Tribunal is investigating the effectiveness of the
15 complaints processes and the culture within the Defence
16 Forces in relation to complaints of abuse. It is not
17 permitted to make findings in relation to the
18 well-foundedness of complaints of abuse and, for that
19 reason, you are required to refrain from disclosing the
20 names of any alleged perpetrators in your evidence
21 today. Where it is necessary to refer to such
22 individual, you must do so by using their rank only.
23 Do you understand that?

24 A. I understand.

25 2 Q. And, Sgt. Kennedy, please address your answers to the
26 Judge.

10:31

27
28 I think you provided a statement to the Tribunal and
29 you attended for two interviews with Counsel to the

1 Tribunal, is that correct?

2 A. That's correct.

3 MS. PILLAY: Judge, these documents can be found in

4 Booklet Part 1 at page 948 and Booklet Part 10 at

5 page 5308. 10:31

6 SOLE MEMBER: Thank you.

7 3 Q. MS. PILLAY: We might start now, Sgt. Kennedy, with a

8 general overview of your career in the Defence Forces

9 to date. So you might confirm a few details for the

10 Tribunal. 10:32

11

12 I think you enlisted in the Army in 1994 and that was

13 at the age of 21, after you graduated from college, is

14 that correct?

15 A. That's correct. 10:32

16 4 Q. And upon completion of your basic training in Cathal

17 Brugha Barracks, you were posted to the 2nd Infantry

18 Battalion, is that correct?

19 A. That's correct.

20 5 Q. I think you completed your first promotion course in 10:32

21 1998 and you became a corporal after that?

22 A. That's correct.

23 6 Q. And I think you completed a further promotion course in

24 2000 and you were promoted to sergeant after that, is

25 that right? 10:32

26 A. That's correct.

27 7 Q. And I think you said you were the only female on both

28 of those promotion courses, is that right?

29 A. Yes, it is right, yeah.

1 15 Q. I think, again, you were the only female on this
2 promotion course?

3 A. Yeah, there was no other female students; nor were
4 there female instructors.

5 16 Q. And I think you said that you felt you were targeted 10:34
6 during this course by a superior officer?

7 A. I was, for a prolonged period, in my experience, yeah.

8 17 Q. And, just to clarify, this was 1998, isn't that right?

9 A. That's right.

10 18 Q. And what rank was this superior officer? 10:34
11 A. He was a lieutenant at the time.

12 19 Q. That's fine. And I think, at interview, you indicated
13 that he seemed to have an issue with your physical
14 strength and your speed and that he singled you out
15 every day after training, is that correct? 10:34
16 A. That is correct, yeah.

17 20 Q. And can you explain to the Judge just a little bit
18 about that please?

19 A. Okay. So this first promotion course, it's very
20 intensive -- long hours, very busy programme, but, ehm, 10:34
21 this is what I really wanted to do. I felt very, I
22 suppose, privileged and proud that, ehm, I was so new
23 in the Defence Forces but I was singled out as having
24 certain leadership qualities that myself and only two
25 others with such short service were placed on this 10:35
26 course. That was the belief the unit had in us and in
27 our abilities. So, obviously, I was hugely delighted
28 and proud to have a chance to start my career and to
29 start to climb the promotion ladder just after a few

1 short years of experience.

2
3 Ehm, I was looking forward to it. I really was excited
4 about it. And, you know, you can't just go onto a
5 course -- you have to do certain preparation, you have 10:35
6 to prepare mentally, physically, academically. I did
7 all that and to a degree where I won my place on the
8 course or secured it fair and square against, you
9 know -- all the applicants would have been
10 over-subscribed, but I secured my place through the 10:35
11 selection process the same as everybody else had done,
12 and passed whatever tests and reached different grades
13 that were required before you started the course.

14
15 So, on this course, I felt I deserved to be there. I 10:36
16 felt that I belonged there, that I had earned my place.
17 But it became, ehm, clear, very quickly that other
18 people didn't share... Sorry.

19 21 Q. Just take your time, Sgt. Kennedy.

20 A. -- that some people, especially the platoon commander, 10:36
21 didn't probably share the same view. And from very
22 early in the course, I made it -- he made it abundantly
23 clear that, ehm, he felt that I wasn't physically
24 strong enough, physically fast enough to, ehm, complete
25 the course. 10:36

26
27 So during and after physical training on a daily basis
28 -- it was part of the syllabus on a daily basis and not
29 something I shied away from. I never missed a

1 programme item, I never missed a day on the course, I
2 never missed an hour on the course, ehm, because I felt
3 if this person only had one thing and one item to
4 target me for, that I could, perhaps, get through the
5 rest of the course.

10:37

6
7 So, ehm, my lesson plans were always really great
8 standard. My uniform, my kit, my turnout, everything
9 that was expected and required of me was done to a very
10 high standard.

10:37

11
12 So, ehm, every day, most days at half eleven there
13 would be an hour's PET session and there would be 42
14 people, 41 men and myself, some -- one or two were
15 younger, but mostly were older than me, and with
16 varying degrees of service from the two with me, who
17 were quite junior in service, to people with maybe 15
18 and 20 years' service. So the physical aspect of it, I
19 knew I would find tough but, ehm, I wasn't daunted by
20 it. It was an acceptable part of military training.
21 It is tough. So, ehm, very clearly, he singled me out,
22 you know, almost on day one and this followed a
23 pattern, relentless pattern for six months.

10:37

10:37

24
25 We would start on our run in military formation - in a
26 block, it's called - and he would say -- he would take
27 off so fast that it was impossible to keep up with him.
28 He's about six foot four. And as soon as they got
29 around a corner and if he knew that I had fallen out of

10:38

1 the block, he'd slow down. But it was never enough for
2 me to catch up. So, every run I would have completed,
3 I completed every single one on my own, wondering and
4 waiting, tormenting myself with what was going to be
5 said at the end of this, because every single day we 10:38
6 would be on the square in front of the cookhouse doing
7 our cool-down and stretches and, of course, everybody
8 would be in the circle and then I would come up towards
9 the end and join in. There was always a fairly large
10 crowd there because it coincided with lunchtime and 10:39
11 there would be a queue outside, so there could have
12 been anything upwards of 10, 20, 40 people and the
13 Lieutenant would stand me to attention in the middle of
14 the square -- all my peers, the people on the course
15 were free to go for their showers and free to go for 10:39
16 their food for the hour, and he would stand me to
17 attention and demand answers as to why I didn't keep up
18 with him for that day. You know, the questions that he
19 used to ask were -- I was just being set up to fail on
20 a daily basis at half eleven to half twelve every day. 10:39
21
22 So, that continued and, I mean, it was relentless.
23 Ehm, he would -- it was just, it was just non-stop with
24 him. It was always felt the eye was on me. Ehm, if
25 anybody at the start of the runs, when he was really 10:40
26 taking off, if some of the men tried to help me, they
27 then would become, you know, under his scrutiny and
28 attention, and after a while they stopped helping me.
29 22 Q. Sgt. Kennedy, I might just bring you back... Take your

1 time. I might bring you back to what you said a moment
2 ago. When you would go on a run, the Lieutenant would
3 take off quite quickly so you couldn't keep up --
4 A. Yeah.
5 23 Q. And I think you said that other students on the run 10:40
6 told you about comments he made?
7 A. Yeah, that 'She's gone now, we can go for our run.'
8 24 Q. Can you repeat that?
9 A. Sorry, that 'She's gone now' or 'She's fallen out now
10 -- we can go -- now we can go for our run.' So it was 10:40
11 a deliberate attempt to get rid of me out of the block
12 of the platoon every day.
13 25 Q. And he would slow down then, is that right?
14 A. Oh, yeah, he would absolutely slow down the pace, but
15 it was -- 10:41
16 26 Q. I think --
17 A. Yeah, sorry, go ahead.
18 27 Q. I think you said that he also punished you for the way
19 you gave orders and there was an incident about getting
20 into the water, and you might just tell the Judge about 10:41
21 that particular incident?
22 A. So, in the course, as I said, it was quite intensive
23 and there was a four-week tactical phase where you go
24 to the Glen of Imaal in Wicklow and you're tested. So
25 you go down for two weeks, back for two weeks, and then 10:41
26 back down for two weeks. And it was broken into
27 offensive and defensive operations, training etc.
28
29 So, ehm, we would prepare to lead what's called a

1 section in attack, and it's the very basic of, you
2 know, a tactical battle. So, to be a corporal, you had
3 to be able to lead one of these and do all the drills
4 correctly. And there are certain stages in the section
5 in attack -- there's six stages and you have to pass 10:42
6 each one and it has to be done in order. So, the very
7 first part of that is your battle preparation and your
8 orders, so that means that when you're putting your
9 camouflage cream on you, you know, concealing yourself
10 with extra bit of foliage on your uniform, which all 10:42
11 comes under the battle prep; and then you issue from a
12 document called the "tac aid", a tactical aid, you
13 issue your orders to the team that you are leading into
14 battle, essentially.

15
16 So, it was November. It was wet and it was cold, as it
17 always is in the Glen of Imaal, and, you know, there is
18 certain pressure on you to get this done. It is very
19 physically draining and demanding, but there is a sense
20 of that you're all in this together and it's draining 10:42
21 and demanding and physically hard for everybody, not
22 just me. So, at this particular time, it was my turn
23 to give my orders, ehm, and, you know, I was nervous,
24 it was probably my first or second time doing this with
25 what's called DS staff, directional staff -- so these 10:43
26 are additional staff looking and observing, some
27 offering advice on how to improve, and others just, ehm
28 -- you know, generally the directional staff were very
29 helpful and encouraging etc. etc.

1
2 So this particular time, nerves got a little bit the
3 better of me and I had a significant, I think, stammer
4 throughout the orders phase. But he just lost patience
5 with me, brought me to the river and told me to get in 10:43
6 and that -- you know, in the training environment, you
7 expect additional pressure, I do, I'm not saying that
8 that type of pressure shouldn't happen because you're
9 training to be a soldier and a leader in high
10 pressurised environment, you're training for that. So, 10:43
11 yes, there is absolutely an expected level of pressure,
12 but this was just made so personal. Like, other people
13 couldn't remember the words of the orders, other people
14 made huge, you know, bigger mistakes, more serious
15 mistakes than me and nothing was done, said etc. etc. 10:44
16 And just as a punishment -- you were wet and cold
17 anyway, it didn't really make that much of a
18 difference, but it was just the act of punishing me for
19 something that I couldn't really control at the time.
20 I was trying my best to get through the set of orders. 10:44

21
22 When I got into the river then, I looked down and there
23 was a dead sheep, you know, and I was in the same water
24 as... I just -- I thought it was just so degrading. He
25 was standing on the bank, he could see what was in 10:44
26 river and picked a point that I was to go into. So
27 there was just -- it was just an additional layer of
28 pressure and punishment from him I did nothing to
29 deserve, and I do feel it was levelled at me because of

1 my physical differences and, probably, if I'm perfectly
2 honest, because of my gender, which I just don't see as
3 fair

4 28 Q. Sgt. Kennedy, you said that the Lieutenant pointed to a
5 part of the river for you to get into? 10:45

6 A. Yeah.

7 29 Q. And was this near the dead sheep you just referred to?

8 A. Yeah, it was. I can't remember the exact distance, but
9 it was very close to where the dead sheep was lying in
10 the river. 10:45

11 30 Q. And did you understand that he wanted you --

12 A. He was testing me, he was testing me to see would I
13 obey his order, to see would I get into the river at
14 that spot or whether I would refuse. And it was all
15 leading to give him a mechanism or give him an excuse 10:45
16 to try and punish me more or to try and get rid of me
17 off the course, or to try and make life even more
18 difficult for me. That's what I felt at the time.

19 31 Q. And you indicated there, and just correct me if I'm
20 wrong on this, were you of the belief that he was 10:46
21 treating you this way because of your gender?

22 A. Yes. At the time, maybe I didn't, but hindsight and
23 experience and life experience and my -- yes, well,
24 looking back, without a shadow of a doubt because
25 nobody else on that course was exposed to the level of 10:46
26 cold treatment and isolation etc. You know, it was one
27 thing dealing with him as pressure and additional
28 pressure; it was another thing, though, when my own
29 peers couldn't help me because then they were exposed

1 to the same. That was a very hard thing to deal with
2 because you were -- I was on my own for every part of
3 it, every hard part of it. It was just very lonely.

4 32 Q. And I think when you were about halfway through this
5 course, a staff officer complained to the commanding
6 officer about the treatment that he witnessed you were
7 suffering?

10:46

8 A. Yeah. So, an officer from a different unit completely,
9 ehm, just observed, I suppose, on a daily basis what
10 was happening and he -- I don't know if it was a
11 complaint, but he certainly brought it to the attention
12 of the commanding officer of the training institution
13 where it was happening. And I was brought up then to
14 the CO to see, you know, did I have to, you know, did I
15 have a complaint to make etc. etc. and I just knew that
16 was career suicide if I said anything about what was
17 happening or how I felt I was being treated because,
18 ehm, it wasn't done, it wasn't welcome. You didn't do
19 it. There was no real mechanism for you to complain
20 about individualised treatment and almost forensic
21 level treatment that I was getting from him on a
22 prolonged and daily basis for the reasons I think I
23 outlined.

10:47

10:47

10:47

24
25 But I went into the room or into the office and I was
26 asked did I want to make a statement or a complaint on
27 this matter, and I said I didn't, I had no complaint to
28 make because I just -- the fear of making a complaint
29 and the fear of not being believed, the fear of being

10:48

1 kicked off this promotion course just far outweighed my
2 ability to be truthful at that time and say, 'Yeah, I
3 have got a complaint.'

4 33 Q. And can you explain why you had this fear that you
5 might be kicked off the course, or you might not be 10:48
6 believed?

7 A. Well, such was the culture and that was the norm that,
8 ehm, you know, if you complained, you couldn't hack it,
9 you couldn't manage, you couldn't -- you were
10 complaining; you were, you know, whingeing. It didn't 10:49
11 matter, there was no mechanism, there was no place to
12 say, ehm, 'I'm sorry, but I think you're singling me
13 out.' 'I'm sorry, but I think you're bullying me.'
14 There was no mechanism at any part during that course.
15 It was almost accepted that this was the behaviour to 10:49
16 be levelled at you on this course, and put up and shut
17 up and get on with it if you want to pass your course.

18 34 Q. And when you were called into the Commanding Officer's
19 office and asked if you had a complaint to make about
20 it, do you remember who else was in the office at the 10:49
21 time?

22 A. Ehm, these situations are very official. You're
23 marched in and you're mark time and you stop, and then
24 you're ordered to cortège/salute in front of the CO.
25 And he asked then did I have a complaint to make and I 10:50
26 said "No". But on the way out, I saw the Platoon
27 Commander at the back of the room, so I was just
28 grateful that I kept my mouth shut because if I had
29 said anything at that stage, I don't know what would

1 have -- how it would have manifested after that if he
2 had witnessed me making that complaint because, ehm --
3 yeah, that was -- I couldn't believe he was allowed do
4 that or that he was actually there. It just felt like
5 people were trying to catch me out and a little bit of 10:50
6 a conspiracy. Again, it was the isolation piece that,
7 you know, was just hard, very difficult.

8 35 Q. And that platoon commander, that's the Lieutenant that
9 you were speaking about who was targeting you?

10 A. Yes, sorry, yeah. 10:50

11 36 Q. And did you ever consider complaining about what
12 happened on this course at any later stage?

13 A. No, I didn't. No.

14 37 Q. And were you aware, at the time, of the Redress of
15 Wrongs procedure? 10:51

16 A. Ehm, only by name. Ehm, you know, you hear the
17 military language and military speak, it is a language
18 to itself, you know, there's nothing equates to it in
19 civvy street. And you're aware of certain phrases of,
20 you know, disciplinary action, charges, A7, Redress of 10:51
21 Wrongs, but I didn't know what a Redress of Wrongs was.
22 I didn't know the terminology, I didn't know the
23 mechanism. But even if I did -- and even now, you
24 know, and I only have a limited knowledge of the
25 system, you know, the Defence Forces Regulations and 10:51
26 administrative documents, they're not the most
27 user-friendly of items to find your way through, but at
28 the time I certainly didn't know what a Redress of
29 Wrongs was. But any -- it doesn't matter that it was

1 there, there was no way that in any circumstances that
2 you would have used it. Absolutely not. That was, as
3 I said, career suicide.

4 38 Q. Thank you, Sgt. Kennedy. We'll move on now to the
5 second incident in which you told us you were isolated, 10:52
6 and I think this was in 2001. And I think in 2001, you
7 were posted as a platoon sergeant, is that right?

8 A. That's correct, yeah, platoon sergeant to train a Two
9 to Three Star course.

10 39 Q. I think you had a role in the training of recruits on a 10:52
11 Three Star course --

12 A. Yeah.

13 40 Q. And I think you said you were the first female sergeant
14 in the Defence Forces to train troops, is that correct?

15 A. Yeah, like, I was -- yes, correct, that's correct, 10:52
16 yeah.

17 41 Q. And there was a serious event in the Glen of Imaal
18 during the training exercise and that related to the
19 accidental discharge of live ammunition and resulted in
20 the non-fatal wounding of a soldier? 10:52

21 A. Mm-hmm.

22 42 Q. I think you were one of the persons involved in the
23 training exercise that day and you felt you were
24 unfairly scapegoated. And I think you understand that
25 the Tribunal is not looking at the event in the Glen of 10:53
26 Imaal itself and is not permitted to look at
27 accountability for that event, but what I do want to
28 ask you about is what happened afterwards in relation
29 to the isolating treatment that you experienced. So I

1 think you felt that you were isolated, is that correct?

2 A. Yeah, almost immediately, you get a sense that this is
3 not going as it should go. You know, you're part of a
4 unit, you're part of a platoon, a company, a battalion
5 and there's a chain of command there and, that's fine, 10:53
6 and everybody has their role. But in the aftermath of
7 this, of the incident, ehm, it became clear very, very
8 quickly that, ehm, that the boss, essentially, didn't
9 want to know anything that had happened. He didn't
10 want to hear an account of it. He didn't want to know 10:54
11 about the aftermath in the Glen area. And I found that
12 very strange. I said, 'But surely you need to know
13 that what has happened from A to B' and, you know,
14 'I'll make a report and fill out a report and speak to
15 this' and, you know, he just never engaged with me, and 10:54
16 this was the man responsible for the company. He never
17 engaged with me. He couldn't maintain any kind of eye
18 contact with me. Just, really, within days, it became
19 very, very clear -- and, of course, this was behaviour
20 that -- I had some experience now at this stage and I 10:54
21 spotted it very, very quickly, that this was probably
22 going to be the way it was going. It was, eh, just
23 again the isolation piece, the feeling of being
24 completely alone. Ehm, nobody to talk to. I was left
25 in that individual's chain of command until he decided 10:55
26 to leave the unit. So, the very fact that any
27 complaint I might make had to go through him, even
28 though it was about him, was so dysfunctional. There
29 was no other route, so rigid is the chain of command.

1 And, yeah, the days and months I think for 15 months
2 after that, it was an incredibly low time.

3 43 Q. And I think in the months after that, you did hear
4 negative and unwanted comments relating to you and your
5 gender? 10:55

6 A. Yeah, I suppose while we're not talking about the
7 incident, I knew exactly the failings that led to that,
8 and those failings were not mine. And then for the
9 blame to be apportioned to me the way it was and then
10 'Sure, what do you expect when you put a woman in 10:55
11 charge?' was, ehm, you know -- it was if one person
12 was saying it, it meant more people were saying it and
13 believing it as well.

14 44 Q. Just to go back to what you said a moment ago,
15 Sgt. Kennedy, I think the source of this isolating 10:56
16 conduct that you perceived as inappropriate, that was
17 from the superior officers that you would have had to
18 complain to, is that right?

19 A. Yeah, it was from the Commandant in the most part, and
20 I did look to move from that particular sub-unit to a 10:56
21 different sub-unit within, eh, the parent unit and it
22 wasn't -- my request wasn't granted because, ehm, I
23 felt at least if I got away from him on a day-to-day
24 basis that I could just go about my work maybe a little
25 bit better, instead of being in the -- you know, it was 10:56
26 just, it was just really tough going in every day, ehm,
27 being exposed and, I suppose, isolated by him. He was
28 my boss and he was meant to be, you know, the person
29 looking after the company and not treating me in the

1 way he was treating me.

2 45 Q. And did you complain to any other superior of his about
3 the isolating treatment that you were experiencing,
4 and, if not, can you tell the Judge why not?

5 A. No. Again, it's the difference in rank. It's -- you 10:57
6 don't -- at the time, you don't get to complain about
7 one officer to another officer because -- I don't want
8 to be really harsh in saying that it's, you know, it's
9 one club against another club because that's maybe not,
10 essentially, true, but in this case, I do feel it was. 10:57
11 I do think there was ties between the Battalion
12 Commander, the Company Commander and the Lieutenant
13 that was involved and it was all articulated to me at a
14 later date how exactly they were all connected, and
15 then it became very clear as to how the charges were 10:58
16 preferred against me at the time and not against, ehm,
17 the Company Commander, who had overall responsibility
18 for the training exercise.

19 46 Q. I think you did speak to the barracks chaplain in 2003?

20 A. Yeah, about 15 months after the incident, it was an 10:58
21 extremely low point. I got no information about how an
22 investigation was progressing. Ehm, it then turned out
23 that, eh, charges were being preferred against me, that
24 I was being charged under a certain section of a
25 document, and that line was predicated by another part 10:58
26 of the document that --

27 47 Q. well, we'll just move back to the chaplain, sorry --

28 A. Sorry.

29 48 Q. Did you find he was helpful in progressing matters?

1 A. Yeah, the chaplain was amazing. He was very, very good
2 and did progress my concerns to the Battalion Commander
3 in a really fast manner. I think maybe four to six
4 weeks after I spoke to chaplain, I was in then on
5 orders in front of the Barrack Commander. So he was 10:59
6 very, very helpful. Yeah, he was good.

7 49 Q. Thank you, Sgt. Kennedy. And there was one final
8 incident that you experienced that you told us about at
9 interview, and I think this was when you went to the
10 aid of a young female private in 2004. And you don't 10:59
11 need to identify the details of her role, but I think
12 she was a private in her very early years of her career
13 and she was working for you at the time, is that right?

14 A. Yeah, she was and she was, ehm, she was a really good
15 girl. She was up in the office, and a busy office, so 10:59
16 I gave her lots of responsibility, which she really
17 responded to and we had a really good working
18 relationship. And on one particular day, I was away on
19 an operational tasking and I knew I wouldn't be in the
20 following morning to open up. So if I wasn't in, she 11:00
21 would normally open up the key battalion offices. So
22 another sergeant in the office beside me had asked her
23 to open up his offices as well. On that day in
24 question, the young private was expecting her first
25 child, so she felt unwell and availed of an uncertified 11:00
26 sick day in work, which she was well within her rights
27 to do so. And the next day when I came into work, I
28 encountered loud voices and lots of shouting as I was
29 making my way up the stairs. So, I hurried up and when

1 I turned onto the landing, I could see the young
2 private who worked with me stood to attention with a
3 male, you know, really shouting into her face --
4 really, really angry, red in the face. He was
5 completely out of control and she was standing there 11:00
6 shaking at his treatment of her.

7
8 So, I went in and I intervened. I threw him out of the
9 office and focused my attention on her. I called the
10 medics and got her treated there and then because I 11:01
11 knew her condition and, you know, she was extremely,
12 extremely upset about that experience and she was very,
13 very young.

14
15 So, after -- 11:01

16 50 Q. And, sorry, what rank was the male?

17 A. He was a sergeant, the same as me.

18 51 Q. And then I think you said she was very upset. Did you
19 make any report on the conduct of the sergeant or the
20 private? 11:01

21 A. Yeah, I was asked, actually, I was asked by the
22 battalion 2IC, so the Second-in-Command of the
23 battalion of the rank of commandant what had happened,
24 and I outlined really clearly what had happened and I
25 didn't hold anything back. I told the truth to him 11:01
26 about what I saw and what I witnessed, what I heard and
27 the state of the young private afterwards. And the
28 body language of the sergeant was just, ehm -- I went
29 into detail in all of that etc. So --

1 52 Q. And I think after you reported the sergeant, you had an
2 interaction with that sergeant?
3 A. Yeah, I did. So, the sergeant, eh, when he was
4 reported, he -- it wasn't that he was disciplined,
5 there was some action carried out, but he took a real 11:02
6 issue with me having told the truth as to what happened
7 and, ehm...
8 53 Q. Take your time, Sergeant.
9 A. There was one evening I encountered him and he just
10 grabbed me and threw me against a wall and onto the 11:02
11 ground.
12 54 Q. And did you ever complain about this sergeant
13 assaulting you?
14 A. No, because this was the third incident that I had
15 experienced in this unit in a very short space of time 11:03
16 and, given my experience of the other two incidents in
17 this barracks, ehm, whatever hope I might have had of
18 something happening where there was witnesses around,
19 there was absolutely no hope of me complaining about
20 this because I just felt I would not be believed. He 11:03
21 was a popular guy, ehm, and, no, I made a decision then
22 not to complain or not to even report because it would
23 have been more of the same behaviour to me. I would
24 have been isolated. I would have been the one cast
25 aside. And I just wasn't prepared to go through that 11:03
26 for a third time so I just thought it's a waste of
27 time.
28 55 Q. I think you said you are aware that for the sergeant's
29 conduct to the private, there was some form of

1 repercussion for him, is that right?

2 A. Yeah, I was told after the event that he was sent on a

3 course of anger management classes.

4 56 Q. And can you say why you were able to report the

5 sergeant's behaviour to the private, but you were 11:04

6 unable to report the assault against you?

7 A. I felt I had a responsibility to that young private,

8 and that is a responsibility of a platoon sergeant.

9 You learn this on your courses. They go through

10 various leadership doctrine and etc. etc. and I felt 11:04

11 very much loyal to that young worker and it was

12 absolutely wrong what happened her and I wasn't going

13 to accept that that's what happened to her.

14

15 But in my experience, for me, as I said, the timeframe 11:04

16 of all these events is very close together and no third

17 party had ever really supported me in previous events,

18 and I just think that (a) I wouldn't be believed; (b)

19 it is just too hard to prove when it was my word

20 against his; and the fallout again, personally, when 11:05

21 you make any kind of a complaint, it was just too much

22 to -- you're just vilified, you're just so isolated,

23 you're on your own, you're avoided, you're talked

24 about, you're sneered at, and I just couldn't go

25 through it again. I just couldn't. 11:05

26 57 Q. And just to bring you back to your training,

27 Sgt. Kennedy, I think it started with your basic

28 training in Cathal Brugha Barracks. Do you recall if

29 you had training on the complaints processes in

1 relation to complaints of abuse in Cathal Brugha
2 Barracks?

3 A. I honestly -- I can't recall. We did get lectures, you
4 know, we had briefs, lectures in the auditorium on
5 various aspects of Defence Forces Regulations and -- 11:06
6 but I can't recall the specifics of what lectures we
7 would have got or what to do in an event like, ehm, if
8 you have a complaint to make, I cannot recall.

9 58 Q. Okay. And do you recall training on either of the two
10 promotion courses on complaints processes in relation 11:06
11 to complaints of abuse?

12 A. No, I can't recall receiving -- I'm assuming it did
13 happen because we did get a series of PowerPoint
14 presentations on different staffing issues, like, you
15 know, maintaining parade states and operating ration 11:06
16 indents, ehm, but I cannot recall specifically on what
17 you've asked me.

18 59 Q. And do you know when you learned about the Redress of
19 Wrongs procedure or the Chapter 1, A7 procedures during
20 your time in the Defence Forces? 11:07

21 A. I think I do. The one time I actually remember the A7
22 procedures was when we were trained soldiers, say, in
23 the unit in the first, maybe, 18 months to two years,
24 we had to attend lectures, ehm -- like, you know,
25 you're detailed to attend -- like, say, you go to the 11:07
26 range, you have to go, you do your medical, you have to
27 do it. So you're ordered to attend certain lectures.
28 And I do recall, I think, that A7 was relatively new, I
29 think, eh, and we had to go and receive a lecture on A7

1 in an auditorium setting. But that's about all I can
2 recall.

3 60 Q. And you mentioned during your second interview that the
4 DFRs are meant to be published weekly in Routine Orders
5 and put up on a noticeboard, and I think this is a 11:08
6 method of communicating that information to soldiers,
7 is that right?

8 A. Yeah. Again, like, I'm not an expert on the
9 administrative processes and procedures within the
10 Defence Forces, but, yeah, there is what's called a 11:08
11 Routine Order that is, eh, written weekly and
12 distributed electronically now at this stage. And,
13 ehm, extracts of Defence Forces Regulations, ehm, I
14 think are meant to appear in these on a weekly basis,
15 yeah. 11:08

16 61 Q. I think, sorry, I heard you say "electronically" there.
17 I know you mentioned at your interview that the
18 conveying of information on the noticeboards, you
19 indicated it seemed outdated?

20 A. Yeah, look, this has, ehm, I suppose, changed over time 11:08
21 with the advances in internal communications methods,
22 and company offices over the years would have had cork
23 noticeboards where all course notifications,
24 advertisements, Routine Orders would have been placed
25 physically for people to see. It is done 11:09
26 electronically by e-mail, but not everybody has e-mail,
27 and it is done electronically as well on our workplace
28 app, but, again, not everybody needs to be signed up to
29 that... So I do think all methods of internal

1 communication, however archaic, are still utilised to
2 make sure it reaches the maximum audience.

3 62 Q. Do you have an opinion on any other way the Defence
4 Forces might be able to improve communicating DFRs?

5 A. I suppose at all inductions, be it recruit training, 11:09
6 cadet training, ehm, and then, you know, as a trained
7 soldier on your first or second or third promotion
8 course, that it should be very routine briefs and
9 lectures and people should be very aware of the
10 mechanisms available in making complaints. Ehm, I 11:10
11 don't think it's acceptable that we get told once in 20
12 years etc. So I just think more routine publications,
13 more routine briefs on this type of thing. I'm not
14 sure if that occurs. I'm in a bit of a unique unit in
15 Defence Forces Headquarters - I'm not in a line unit - 11:10
16 so that that could happen in practice, I'm not sure.

17 63 Q. And, again, I think you said 33 years' service next
18 week?

19 A. In two weeks, yeah.

20 64 Q. In about two weeks. Can you tell the Tribunal what 11:10
21 changes you would like to see in terms of the
22 complaints systems within the Defence Forces for
23 dealing with complaints of abuse?

24 A. I think very strongly, first of all, that military
25 traditions and the chain of command and military 11:10
26 discipline should not be a barrier and, in my
27 experience, it has been a barrier in dealing with
28 complaints. So, just because there's a rank system in
29 place, that should not hide or shadow or disguise the

1 need to make a complaint of any kind. I think, also,
2 that there needs to be an independence in relation to
3 complaints that serving soldiers should not be
4 investigating serving soldiers. I think there's a bias
5 there. Ehm, it probably can't be helped. And I also 11:11
6 think that the transparency aspect for me is really
7 important that, again, the willingness to investigate,
8 it shouldn't be -- there should be no barriers. People
9 should go to the very best of their efforts to make
10 sure a complaint is heard, a complaint is investigated, 11:11
11 and then there should be an absolute certainty of a
12 consequence. It's not necessarily the severity of any
13 consequence, but I think it's a certainty of a
14 consequence of poor behaviour that may end up being
15 investigated through a complaints system, and I think 11:12
16 vast improvements need to be made in those areas for
17 any kind of trust to be built back up in our culture.
18 You know, ministers change, military management change,
19 you know, in my experience and my decades of service,
20 but incidents keep happening. Reports are made, 11:12
21 headlines are written. A crisis is dealt with again
22 and again and again.

23
24 And I feel, looking back over the three decades, that
25 while there are improvements in some areas, it's not 11:12
26 the overall complete and utter revolution that is
27 required and, ehm, culturally, I think we have a long
28 way to go, but in the immediate term, I would just like
29 that -- yeah, military traditions, respect for the

1 chain of command. The disciplinary system that we
2 adhere by and live by should not be a barrier for any
3 complaint to be made, to be heard, and to be dealt
4 with.

5 MS. PILLAY: Thank you, Sgt. Kennedy. You might answer 11:13
6 any questions that anyone else has.

7 SOLE MEMBER: Thank you, Ms. Pillay.

8 MS. PILLAY: Thank you.

9 SOLE MEMBER: Now, there is a sequence to the parties
10 who wish to put questions to Sgt. Kennedy. Does 11:13
11 anybody wish to do so?

12 MR. B. GORDON: I have no questions. Good morning,
13 Judge. I have no questions at the moment. I would
14 like to reserve my position, though, in case something
15 crops up. 11:13

16 SOLE MEMBER: Very good. Okay, thank you very much,
17 Mr. Gordon. Yes, Mr. Lehane.

18
19 SGT. RENA KENNEDY WAS CROSS-EXAMINED BY MR. LEHANE, AS
20 FOLLOWS: 11:13

21
22 65 Q. MR. LEHANE: Good morning, Sole Member. Good morning,
23 Sergeant. My name is Darren Lehane, I'm a barrister on
24 behalf of the Defence Forces and I'm going to ask you a
25 few questions. I want to say at the start I 11:14
26 acknowledge that giving evidence in public in a
27 tribunal of inquiry is a stressful process and, if you
28 don't understand anything that I'm saying, just ask me
29 to repeat myself, and I won't be put out if you do

1 that. It's just very important to me that you
2 understand what I'm asking you so that the Sole Member
3 can get your answers, okay. So I just want to say that
4 at the start.

5 A. It's hard to hear you. 11:14

6 66 Q. Sorry?

7 A. It's hard to hear you.

8 67 Q. No, no, I'll speak into the microphone. So, that's an
9 example of what I'm talking about! If you can't follow
10 something I'm saying, tell me -- and I won't be with 11:14
11 you very long.

12

13 I think it's fair to say that you found your
14 involvement in the Tribunal process to be quite a
15 positive one in that you responded to the Sole Member's 11:14
16 call for statements and you provided a statement?

17 A. Yes, indeed. Ehm, I felt I had a long time to think
18 about the incidents referred to here today and I felt
19 that, given my length of service and the fact that,
20 ehm, I've more served than that's ahead of me, that 11:15
21 this was probably my only opportunity to reflect and to
22 contribute to what I do think is a very important tool
23 and mechanism and process.

24 68 Q. And I think, given that you're two weeks away from 33
25 years of service in the Defence Forces, your service in 11:15
26 the Defence Forces occupies a very considerable period
27 of time which the Sole Member has to investigate under
28 her Terms of Reference. So, your experience to her is
29 quite valuable in terms of giving an overview of what

1 was happening for 33 years of the -- well, sorry, 32
2 years of the 40-odd years she has to investigate.

3 A. Okay.

4 69 Q. Okay. And, again, you provided a very detailed
5 statement, but the reason I'm asking about the value of 11:16
6 the process is, again, when you were being interviewed
7 by Counsel for the Tribunal on the two occasions you
8 were being interviewed, I think that process was quite
9 helpful in allowing you to articulate your account of
10 the things that had happened to you over your 33 years 11:16
11 of service?

12 A. Yes, it was helpful.

13 70 Q. The questions and answers, I think, enabled you to
14 bring to the Tribunal's attention events or incidents
15 that weren't in your statement, for example? 11:16

16 A. I don't understand.

17 71 Q. In that in your statement that you provided to the
18 Tribunal on 30th September 2024, you deal largely with
19 the Glen of Imaal incident. I'm not being critically
20 in any way, right, I'm just saying you deal mainly with 11:16
21 the Glen of Imaal incident. When you came in to do
22 your first interview in 2025, I think in preparation
23 for that interview and in response to the questions
24 from Tribunal Counsel, you were able to tell the
25 Tribunal about the third of the three incidents that 11:17
26 you were talking about?

27 A. Mm-hmm. Okay.

28 72 Q. Because, again, at the start of that interview, and I'm
29 not going to ask it to be put up on the screen, the

1 Tribunal Counsel said to you that other than the Glen
2 of Imaal incident, you didn't have any other major
3 complaints, and then that enabled you to articulate to
4 the Tribunal Counsel and to the Tribunal ultimately
5 about the occasion that you stood up for the other 11:17
6 female colleague?

7 A. Mm-hmm, yeah, that's correct.

8 73 Q. And you did that and you've explained it again here
9 today. And I think, again, as a result of the
10 preparation for the second interview that you had this 11:17
11 year, again building on the experience and the trust,
12 obviously, that you developed with the Tribunal Counsel
13 and your confidence in the Tribunal process, you were
14 able to relay to Tribunal Counsel the third incident,
15 which is actually the first in time, the bullying, if I 11:17
16 can call it that, during your training?

17 A. Yeah, the process with the teams, ehm, it did -- I
18 suppose, for the first time, I felt I was being
19 listened to and given an opportunity to outline my
20 experiences. Ehm, I also acknowledge that, to use the 11:18
21 terminology, the cross I bear is significantly smaller
22 than many others who have sat in this seat, and many
23 more to come, I'm sure. But it's all relative and I'm
24 still a very proud soldier after all of that time, and
25 it's not easy to criticise an organisation and a career 11:18
26 that I love.

27 74 Q. And I think that very much comes across from your
28 statement, the transcript of the two interviews and,
29 indeed, your evidence this morning, that you've had a

1 very successful career in the Defence Forces and you've
2 served your country with distinction --

3 A. Well, I haven't, I haven't really because I remain the
4 same rank as I did at that time because my career
5 finished back then, as far as I'm concerned, where 11:19
6 other people involved in all three instances have
7 reached the pinnacle of their careers, the very top
8 level of their careers. I felt I couldn't put myself
9 through the training environment and expose myself to
10 that type of training. So, while I've had a long 11:19
11 career, I'm at the same rank as I was 27/28 years ago,
12 which is disappointing to me.

13 75 Q. But, again, in terms of the period of time that you
14 have been in the Defence Forces, the ability that you
15 -- that has obviously grown during the course of your 11:19
16 interaction with the Tribunal and the Tribunal process
17 -- I think the three incidents that you complain of,
18 leaving aside the obvious impact that you feel these
19 incidents have had on you - I have listened very
20 carefully to your powerful testimony in that regard - 11:20
21 but, other than those three incidents, I don't think
22 you're drawing the Sole Member's attention to any other
23 incidents of abuse, are you, complaints of abuse?

24 A. No.

25 MR. LEHANE: Thank you. 11:20

26 SOLE MEMBER: Thank you, Mr. Lehane.

27 MR. MCGARRY: We don't have any questions.

28 SOLE MEMBER: Thank you, Mr. McGarry.

29 MR. HARTY: I don't have any questions.

1 SOLE MEMBER: Thank you. So, no questions --

2 MR. MASTERSON: Sorry, I beg your pardon, Judge, I do.

3 SOLE MEMBER: Yes, Mr. Masterson.

4

5 SGT. RENA KENNEDY WAS CROSS-EXAMINED BY MR. MASTERSON, 11:20

6 AS FOLLOWS:

7

8 76 Q. MR. MASTERSON: Sgt. Kennedy, good morning. My name is

9 Louis Masterson. I appear instructed -- can you hear

10 me? 11:20

11 A. Not really.

12 77 Q. Sorry. Can you hear me -- is that any better?

13 A. That's perfect, yeah.

14 78 Q. My name is Louis Masterson. I appear instructed on

15 behalf of a number of your former colleagues and, 11:20

16 indeed, some of your current colleagues, particularly

17 with regard to this module in relation to the Army

18 Apprentice School. Now, I listened very carefully to

19 your evidence, your, frankly, very candid evidence in

20 response to Ms. Pillay's questions, and one of the 11:21

21 items that you discussed, Ms. Pillay asked you were you

22 aware of the Redress of Wrongs, to which you replied:

23

24 "Only by name. I didn't know the terminology or the

25 mechanism and I still only have a limited knowledge of 11:21

26 the system."

27

28 And during your discussion of the incident in the Glen

29 of Imaal, you said there was no real mechanism to

1 complain about individualised treatment. Now, to me,
2 that suggests that you were very much aware of the
3 existence of a complaints mechanism, but that you
4 didn't see it as open to you; is that correct to say?

5 A. I don't know what -- the military system and 11:22
6 regulations and documents and administrative
7 guidelines, ehm, because I've never worked in that
8 environment, while I'm aware that there is a Redress of
9 Wrongs, at that time I would have barely known what
10 that meant. You know, military language and military 11:22
11 speak is very unique and, you know, you would have
12 heard it referred to as a redress, a redress of wrongs,
13 a redress, and what do you do, or how do you go about
14 it etc. etc. So while I'm familiar with it as a term,
15 I would have to go and, ehm, research, even to this 11:22
16 day, the steps to follow if I was to submit a Redress
17 of Wrongs etc. I'm not sure if that answers your
18 question.

19 79 Q. well, can I ask you, to that end, if you could assist
20 the Tribunal; is there any way that you can think of 11:23
21 that would promote a better knowledge or a better
22 understanding of how somebody could make a complaint?

23 A. There are various definitions available that you can
24 look up the different terminology and you could read
25 etc. etc. However, ehm, I'm in the communications 11:23
26 business in work and while I'm at the most part in the
27 Press Office, I have done a lot of work in internal
28 communications and the barrier is, I suppose, the one
29 size fits all, the channel, there's no one channel that

1 really reaches everybody that you can 100% say
2 everybody has been informed or everybody knows how to
3 do this etc. So, while people have e-mails, there's
4 only probably, you know, 3,000 actual PCs in work, so
5 if you're relying on e-mail as a tool, you're
6 significantly reduced in the people you reach. Ehm,
7 you're only reaching the desk-based population by using
8 e-mail. If you use Routine Orders, which is the
9 noticeboard etc. etc., it's up to the individual to
10 seek out and read those for their own learning.

11:24

11:24

11
12 If you use the app that we have the last couple of
13 years, it is a great improvement in communicating and
14 in reaching the non-desk-based employees. However, not
15 everybody -- it's not compulsory to sign up to, so not
16 everybody, again, is guaranteed to read or to receive a
17 key message like, 'This is what you do to make a
18 complaint.'

11:24

19
20 So, I do think it's more routine. We approach our
21 weapons training, our range practices with
22 pre-training, with a pre-test -- you need to pass a
23 test before you go on the range and you get almost
24 constant revision in safety etc. etc. So I think if an
25 approach was made certainly in the very early years of
26 one's career from the induction phase of either recruit
27 training or cadet training and in those, you know, the
28 start of someone's career, that the frequency of
29 briefings, the frequency of infographics, the frequency

11:24

11:25

1 of, you know, maybe breaking down the military language
2 into more layman terms for an 18-year-old, a
3 19-year-old, for that 20-year-old or 21-year-old that I
4 was, to break it down into more simpler terms for
5 everybody to understand. And if it needs to get into 11:25
6 terminology like "Terms of Reference", like "A: Admin
7 Instruction", what's the difference between an
8 instruction and a regulation -- that's all very
9 military management jargon that is a barrier to a young
10 soldier. So what I would like is that it's made much 11:26
11 more simpler in the explanation part of if you have a
12 complaint.

13
14 Now, there are examples of where this has been done,
15 but I still think the frequency of instruction is just 11:26
16 not often enough for it to sink in, for people to know.
17 Any soldier today would know how to clear a blockage
18 from their weapon because you're drilled in it until
19 you cannot get it wrong. So, I think if the same
20 approach was made to items in the cultural environment, 11:26
21 like how to make a complaint, how to differentiate
22 terms of reference from, you know, from what would sit
23 or what would fit, I do think that would be very
24 beneficial, especially to the non-desk-based younger
25 cohort of our organisation 11:26

26 80 Q. And, finally, Sgt. Kennedy, part of the sole Member's
27 remit is to suggest certain recommendations and I
28 wonder can you assist the sole Member in that? During
29 the course of your evidence, I heard you mention fear

1 several times, and I took certain notes of it but --

2 MS. PILLAY: Sorry, Judge, I apologise for
3 interrupting, but Mr. Masterson doesn't represent this
4 particular witness and I wonder under which of the six
5 categories of legal representation he's applying to
6 cross-examine Mr. Gordon's client. 11:27

7 SOLE MEMBER: The six categories of?

8 MS. PILLAY: Of legal representation. So, this witness
9 hasn't made any allegation in relation to the good name
10 or reputation of any of Mr. Masterson's clients. 11:27

11 SOLE MEMBER: Yes. Mr. Masterson?

12 MR. MASTERSON: Well, my motivation in my questioning
13 of Sgt. Kennedy is purely to assist the Tribunal. This
14 was my last question and, if it is being objected to,
15 so be it. But my motivation, as I said, was one of
16 assistance. 11:28

17 SOLE MEMBER: I didn't quite interpret it as
18 cross-examination, I interpreted it in the way that
19 Mr. Masterson has described. But perhaps if you would
20 put your last question briefly. 11:28

21 81 Q. MR. MASTERSON: Certainly. Sgt. Kennedy, can I ask
22 you, firstly, given the position that you indicated was
23 one that you described as being quite fearful -- fear
24 of being kicked off a promotion course and fear of
25 career suicide are two of the fears that you referenced 11:28
26 -- can I ask what motivated you to provide evidence
27 today and what assisted you to overcome your fear, so
28 that the Tribunal may, perhaps, make certain
29 recommendations to help others who were fearful?

1 A. I'm not afraid anymore, but that has come with many
2 years of life experience. And, I suppose, I feel a
3 certain amount of vindication in having these
4 complaints, that they're still very, very valid in that
5 they weren't dealt with or that I couldn't expose them 11:29
6 at the time because such was the culture in the Defence
7 Forces. Ehm, there are improvements, slow and all as
8 they may seem, but the lack of fear purely comes with
9 my service and my life experience. It's not as if --
10 and I know I'm being essentially harsh here on the 11:29
11 organisation -- it's not that they have changed so
12 greatly that they are accommodating the complaints in a
13 more transparent way; it's a combination of my life
14 experience, my age, my service, that there's no fear
15 anymore. 11:30
16 MR. MASTERSON: Thank you very much, Sgt. Kennedy.
17 SOLE MEMBER: Thank you, Mr. Masterson. Ms. Mylotte.
18
19 SGT. RENA KENNEDY WAS CROSS-EXAMINED BY MS. MYLOTTE, AS
20 FOLLOWS: 11:30
21
22 82 Q. MS. MYLOTTE: Ms. Kennedy, my name is Ruth Mylotte --
23 SOLE MEMBER: Can I ask you to move your microphone
24 closer to you, please, Ms. Mylotte?
25 MS. MYLOTTE: Apologies. Thank you. My names is Ruth 11:30
26 Mylotte, Ms. Kennedy, and I appear for the Minister for
27 Defence.
28 SOLE MEMBER: Is your microphone on?
29 MS. MYLOTTE: It is, Sole Member.

1 SOLE MEMBER: Thank you.

2 83 Q. MS. MYLOTTE: I only have one or two questions for you
3 and I just -- I suppose you dealt with it there. You
4 mentioned that there had been recently some
5 improvement, I suppose, in the complaint processes. 11:30
6 And I also note your evidence that soldiers should not
7 be investigating soldiers that you gave to the Sole
8 Member earlier, and I suppose I just want to mention to
9 you, obviously now, as of 2026, there is an Ombudsman
10 for the Defence Forces that I appreciate wasn't around 11:30
11 in the 1990s or the early noughties, and also the
12 Interim Grievance Manager, and I know you mentioned
13 access to the Interim Grievance Manager yourself in
14 your interviews, but both of those processes, I
15 suppose, are external to the Defence Forces, that is 11:31
16 correct, isn't it, Ms. Kennedy?

17 A. Yeah, the Ombudsman was appointed after, I think --

18 84 Q. I think 2005?

19 A. 2004 or 2005, yeah, after that, and the Interim
20 Grievance Manager is quite a new addition. I think in 11:31
21 the aftermath of Women of Honour and the IRG, I think
22 the Interim Grievance Manager is one of the new
23 additions to the complaints process, yes.

24 85 Q. And I suppose they might be improvements -- the
25 improvements that you refer to, would they be included 11:31
26 in that, Ms. Kennedy?

27 A. I think any appointment of new procedures or new
28 appointments that -- I do find at times that not all
29 incidences will ever be catered for -- that Terms of

1 Reference are defined and it sets out very clearly I
2 think in the case, maybe, of the Interim Grievance
3 Manager the Terms of Reference and particular
4 definitions are there, and I'm not sure they go far
5 enough at times. And I feel that, ehm, you know, the 11:32
6 rigidity of life in the Defence Forces, that even
7 though these are civilian appointments, that maybe some
8 of that rigid application has crossed over into
9 civilianised appointments like the Ombudsman and like
10 the Interim Grievance Manager. And, again, the use of 11:32
11 language, the language used -- and they are definitions
12 and I know they need to be that way, but they're not
13 entirely user-friendly to a person 30 years younger
14 than me etc. And, again, the process of using them, it
15 is advertised, I will acknowledge that it is 11:32
16 advertised, and a serving soldier who avails of the
17 current Act that we have, it is clear on that channel
18 about how you can complain through the Interim
19 Grievance Manager etc. etc. But the actual day-to-day
20 use of it, I would find it's a little bit all-consuming 11:33
21 for a younger person, and even a person who's not
22 experienced at dealing with military regulations and
23 military admin instructions, the user-friendly version
24 needs to be devised, I think.

25 86 Q. Thank you, Sgt. Kennedy. Just finally as well, you 11:33
26 mentioned the importance of cultural change, and I
27 suppose I just wanted to bring your attention to the
28 fact that, obviously, this cultural change is one of
29 the five, I suppose, core pillars in the strategic

1 framework, and it is also, I suppose, part of the role
2 of the External Oversight Body that they oversee
3 cultural change, and I suppose their recent changes
4 that have come into being, you are aware of those,
5 Sgt. Kennedy?

11:34

6 A. Yeah, after the Women of Honour and before the
7 Independent Review Group, I was one of a select members
8 of the Defence Forces -- there was about approximately
9 ten of us who had a series of high level meetings with
10 military management, Department of Defence management,
11 all the way to the Taoiseach and Minister for Defence,
12 and we met with them in small numbers on numerous
13 occasions and I would have articulated to them, ehm,
14 you know, the incidences, not my personal cases that
15 are articulated here, but generally the problems. And,
16 also, being a Press Officer for 21 years, every
17 headline lands in my e-mail account, and that's what,
18 you know, my experience is, that the headlines are too
19 repetitive over that period that I'm there and the
20 culture change, the appointment of the oversight body,
21 you know, I was intrinsically involved in the
22 communications team for the transformation programme on
23 a part-time basis for two years, so the culture and HR
24 part were actually the chapter that I was most focused
25 on and, I suppose, I had a lot of input into that, or a
26 lot of opportunity to advise and make recommendations
27 from an enlisted personnel's point of view, and also
28 from a female point of view.

11:34

11:34

11:34

11:35

1 Again, the culture change is visible; eh, at the same
2 time, though, that certainty of consequence, that
3 transparency, that needs to improve, eh, hugely before
4 there is significant, meaningful -- that we can
5 actually even call it cultural change.

11:35

6 MS. MYLOTTE: Thank you, Sgt. Kennedy.

7 SOLE MEMBER: Thank you, Ms. Mylotte. I don't have any
8 questions for you. I think, actually, Ms. Pillay was
9 correct to draw my attention to the fact that only
10 parties against whom allegations are made should be
11 permitted to cross-examine a person on the evidence.
12 Perhaps I was allowing Mr. Masterson to ask questions
13 that I wanted to ask you, and it is for me to ask those
14 questions going forward.

11:36

15
16 I don't have any questions now in the light of all the
17 questions that have been answered, but I do want to
18 thank you, Sgt. Kennedy, for your contribution to the
19 work of this inquiry. As I've said previously, unless
20 people do as you have done, the Tribunal couldn't
21 conduct this investigation, and I want to thank you
22 very sincerely for coming here today.

11:36

23 THE WITNESS: No problem, Ma'am. Thank you.

24 SOLE MEMBER: Thank you very much. We'll rise for five
25 minutes. Thank you.

11:36

26
27 THE TRIBUNAL ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

28
29 SOLE MEMBER: Good morning, again.

1 MR. McGOVERN: Good morning, Judge. The next witness
2 is Mr. Bratli. You may recall that he gave evidence on
3 the first day, that was 3rd June. His statements are
4 in Book 7, page 4161, and in Book 8, 4488. Mr. Bratli,
5 please.

11:46

6 SOLE MEMBER: Now, Mr. Bratli.

7 THE WITNESS: Thank you.

8 SOLE MEMBER: Mr. Bratli, I will just remind you that
9 you did make an affirmation to tell the truth and you
10 remain under that obligation. Thank you very much. In 11:47
11 terms of -- sorry, yes, Mr. McGovern?

12 MR. McGOVERN: Not at all, Judge, I was just going to
13 say, Judge, that Mr. Bratli's direct evidence is
14 finished, so it's just a question of re-examination.

15 SOLE MEMBER: Exactly. And I would ask any party who 11:47
16 wishes to make an application to question Cpt. Bratli,
17 that they ensure that the questions remain focused on
18 the Terms of Reference, the seven questions that I have
19 to answer, and maybe not to indulge in a wide-ranging
20 discussion of the Defence Forces generally or matters 11:47
21 like that.

22
23 So please bear in mind the seven questions that I have
24 to answer when it comes to the Terms of Reference.
25 Thank you. Does anybody wish to apply to put questions 11:47
26 to Cpt. Bratli?

27 MR. McGARRY: We don't have any questions.

28 SOLE MEMBER: You don't have any questions,
29 Mr. McGarry, thank you for that clarification.

1 MR. HARTY: I don't have any questions.

2 SOLE MEMBER: You don't have any questions. Thank you,
3 Mr. Harty. Mr. Marron?

4 MR. MARRON: Yes, Sole Member, I just have two, but I
5 might just outline what those questions are before I
6 ask them, in case, maybe, you feel it's better if you
7 ask them.

11:48

8 SOLE MEMBER: Yes.

9
10 CPT. KJELL ARNE BRATLI WAS CROSS-EXAMINED BY

11:48

11 MR. MARRON, AS FOLLOWS:

12
13 87 Q. MR. MARRON: I have two questions, Cpt. Bratli -- and
14 good morning and it's nice to meet you again. One is
15 in relation to training, and that's in relation to
16 training of people who investigate, but also training
17 of people in general and not just in relation to
18 complaints procedures, but in relation to what
19 constitutes misconduct for abuse. And the second
20 question is just a brief question in relation to what
21 Mr. Bratli had said in relation to the fact that it
22 shouldn't be read into the fact if there's a small
23 number of complaints, that that doesn't indicate that
24 there's not a more serious problem of incidence of
25 misconduct.

11:48

11:48

11:49

26 SOLE MEMBER: Yes. I think your second question,
27 Mr. Marron, is related to what Mr. Cpt. Bratli gave in
28 evidence or what he said in evidence. The first
29 question, I'm not sure -- and if you can direct him to

1 the evidence that he has given --
2 MR. MARRON: Indeed, yes.
3 SOLE MEMBER: -- and to raise a question in relation to
4 that evidence on training, that might be helpful, thank
5 you. 11:49
6 88 Q. MR. MARRON: Yes, in relation to the first question,
7 Cpt. Bratli, it's -- sorry, I can't see you. It's
8 better if I --
9 A. I'm sorry, I'm in full volume.
10 89 Q. Can you hear me now? 11:49
11 A. Yes.
12 90 Q. Okay. Yes. It's something you said both in your
13 report and it's also raised in your -- it's in the
14 transcript of your evidence at page, I think it's 62,
15 but it's in your report, which is on page 4491. And -- 11:49
16 sorry, that's actually the wrong reference. But it's
17 in relation to your comments in regard to the Redress
18 of wrongs and you say one of its difficulties is that
19 an officer has to deal with every single matter whether
20 from the smallest to the most grave. And I think you 11:50
21 see that as a failing. It's an expectation that an
22 officer can deal with everything from smallest to the
23 most grave, and --
24 SOLE MEMBER: Are you in a position to point
25 Cpt. Bratli to the transcript of Day 1 or something 11:50
26 that was in his report so that he can have his memory
27 refreshed? I do appreciate it's some time since
28 Cpt. Bratli gave his evidence.
29 MR. MARRON: It is. I'm sorry, I had marked it, but

1 I've --
2 MR. McCANN: I'll tell you now in one second.
3 MR. MARRON: And it's a question from --
4 MR. McCANN: Page 56, I think, line 16 to 18.
5 SOLE MEMBER: Thank you. Page 56, line 16. 11:50
6 MR. McCANN: If I'm reading my handwriting correctly!
7 SOLE MEMBER: Thank you very much.
8 MR. McCANN: "I have a difficulty finding that officer"
9 -- is that the point?
10 91 Q. MR. MARRON: Just in relation to that -- and it also -- 11:50
11 SOLE MEMBER: Sorry, could you actually read out what
12 it is you're putting to him? Is that it, Mr. MacCann?
13 MR. McCANN: Sorry, I have a note here which I think
14 sounded like the question Mr. Marron was getting at.
15 Let me see do I have it correct here... 11:51
16 SOLE MEMBER: If you use your microphone as well, that
17 would also help, thank you.
18 MR. McCANN: I beg your pardon. [Short pause]. I
19 thought I was going to helpful! I certainly had a note
20 that -- I thought I had the right page for it. 11:51
21 MR. MARRON: Sorry, I do apologise, I had this marked
22 and I've deleted the mark.
23 SOLE MEMBER: That's okay, Mr. Marron. You just --
24 MR. MARRON: And it's in relation to the Redress of
25 wrongs and it should be somewhere on this... 11:51
26 MR. HOGAN: I think it's on page 50, Judge.
27 SOLE MEMBER: 50, thank you.
28 MR. HOGAN: At line 16.
29 SOLE MEMBER: Thank you, Mr. Hogan. Okay, perhaps you

1 could read it? It's page 15, line 16.

2 MR. MARRON: Indeed. And it says --

3 SOLE MEMBER: Do you have the transcript?

4 92 Q. MR. MARRON: Yes, the question is:

5 11:52

6 "Q. So the fact that it's based or rooted in the chain
7 of command and lacks independent oversight are the
8 limitations in your view?"

9

10 And you answer that question to say:

11 11:52

12 "A. Well, absolutely limitation and an expectation that
13 an officer are capable of dealing with everything from
14 the smallest to the most grave things, I have a
15 difficulty finding that officer, I have to confess
16 that."

17

18 And it, also, it strikes me because when Mr. Justice
19 Mahon was here yesterday, he also talked about the
20 training of military investigation officers and I do
21 have the page, Judge, of that, and that's yesterday's
22 transcript at the very top of page 94, and I'm struck
23 by Mr. Justice Mahon's phrasing. He says:

24

25 "and you can see it in the handful of cases that have
26 gone through the full internal system, and they've now
27 been referred to me because the individual wasn't happy
28 with the outcome..."

29

1 -- and this is the relevant bit:
2
3 "...but you can see there's a certain quality creeping
4 into the investigation reports..."
5 11:53
6 So the point, I suppose, I'm making and I'm asking you
7 to comment on is do you think training is essential,
8 not just in the Redress of Wrongs, but in all aspects
9 of the -- in any complaints system?
10 A. Can you please repeat the last? 11:53
11 93 Q. So, you made that comment in relation to your
12 assessment of the Redress of Wrongs?
13 A. Right.
14 94 Q. And it was a comment based on the fact that it's one of
15 the disadvantages of the chain of command, and maybe 11:53
16 I'm paraphrasing. But do you think that difficulty
17 in -- do you think training in that regard is a key
18 component of any complaint system, specific training?
19 A. Well, I think I have to say absolutely that training is
20 absolutely necessary. 11:54
21 95 Q. Yeah.
22 A. What I started with here in general was that
23 expectation to an officer -- I mean, we are trained for
24 another purpose, an expectation that you can have every
25 aspect of Redress of Wrongs, of the more complex cases, 11:54
26 I think that's almost impossible and I think the
27 expectations are too high on any officer. And can we
28 really expect that an officer, an active officer can
29 deal with all kinds of minor and more grave and more

1 complex situations, more complex complaints? I'm not
2 sure about that. That's what I'm actually addressing.
3 And, of course, we are training for the purpose of not
4 waging war, but preserving the peace, training for
5 active duty.

11:55

6
7 And then you add also the type of training that you
8 shall deal with almost all types of complaints, and
9 that is not easy, and that is what I'm addressing
10 actually.

11:55

11 96 Q. Indeed. And just on that, do you think that complaints
12 of serious misconduct or abuse, do you think they
13 should always be dealt with in a different system,
14 because there is -- there seems to be quite a split
15 between what are administrative matters, and I know the
16 Ombudsman here categorises them in various ways, but do
17 you think that complaints of whether they're called
18 misconduct or abuse should always be dealt with in a
19 different way?

11:55

20 A. What I do think is that every officer should have some
21 kind of training in attitudes and culture, absolutely.
22 And that type of course, that should be implemented in
23 the Defence Forces.

11:56

24 97 Q. And that was my next follow-on question, it was beyond
25 training for the actual carrying out of an
26 investigation, do you think there is an important role
27 for training, both for officers and enlisted soldiers,
28 but also for complainants and investigators in relation
29 to what actually constitutes misconduct or abuse? And

11:56

1 I know that we've heard evidence this morning even
2 where Sgt. Kennedy says she's aware that, you know,
3 training involves stressful situations, it can involve
4 difficult situations. In the last couple of weeks,
5 we've heard a lot of evidence of very young soldiers 11:57
6 who were put into difficult situations; do you think
7 it's important that there is training for people to
8 actually -- because I think it's -- sorry, it may be a
9 fine line between what constitutes legitimate training
10 and abuse; do you think that training has a role? 11:57
11 SOLE MEMBER: I'm sorry, I don't understand the
12 question, Mr. Marron. When you say there may be a fine
13 line between what constitutes legitimate training and
14 abuse, legitimate training and abuse seem to be two
15 totally different things -- 11:58
16 MR. MARRON: No, well, what I'm saying is where people
17 -- we've heard evidence, as I said, both this morning
18 and in the last couple of weeks where people realise
19 that what they've signed up for and what they've
20 enlisted involves different training -- 11:58
21 SOLE MEMBER: Yes.
22 MR. MARRON: -- and Cpt. Bratli at the start of his
23 evidence the last day did say that certainly employment
24 in a military is very different from civilian
25 employment. 11:58
26 SOLE MEMBER: Yes.
27 MR. MARRON: And in that context, where training can
28 oftentimes, there can be, you know, very difficult,
29 stressful --

1 SOLE MEMBER: Yes, rigorous --
2 MR. MARRON: Rigorous, exactly.
3 SOLE MEMBER: Yes, yes.
4 MR. MARRON: -- which in another situation, in another
5 employment, in a civilian employment would not be 11:58
6 appropriate, but it is necessary in the military.
7 SOLE MEMBER: Yes.
8 MR. MARRON: So, I suppose, the point is that it can be
9 difficult sometimes to discern what is actually abuse
10 and, therefore, if people don't know whether that line 11:59
11 has been crossed, they won't know whether to make a
12 complaint or not, or it might deter them from making a
13 complaint if there's any -- if they are not sure
14 whether that actually constitutes a abuse. So I'm
15 saying -- 11:59
16 SOLE MEMBER: So your question is?
17 MR. MARRON: Does training into actually what
18 constitutes abuse have a role?
19 SOLE MEMBER: Yes. Do you understand the question?
20 where a soldier is being trained in a very rigorous 11:59
21 environment, tough training, you know, is the -- the
22 question: Does training into what actually constitutes
23 abuse have a role or play a part?
24 THE WITNESS: That's a tricky one, I would say, and
25 definitely a very, very fine line. There will be units 11:59
26 where you are absolutely on the borderline of abuse,
27 that you will have a framework for that training. You
28 will know beforehand what the training will be and,
29 yeah, you know the boundaries. And I think that's the

1 best answer I can give, that you need to have a
2 framework of good conduct, even in a situation where
3 you are training special forces or type-like training,
4 I would say.

5 98 Q. MR. MARRON: Thank you. And then just finally, and I 12:00
6 do have -- it's page 55 of the transcript and I think
7 it's Q. 82 and you make the point that relatively low
8 numbers of complaints should not be read as a low
9 prevalence of misconduct. And I'm saying is there
10 anything -- and is that a feature across all -- sorry, 12:01
11 actually, I'll take you to it. It's page 4491 of the
12 booklet.

13
14 "The practical consequence of structural limitations
15 was persistent and significant underreporting. The low 12:01
16 numbers of formal complaints in relation to
17 unacceptable behaviour, particularly the serious forms,
18 throughout most of the period under review should not
19 be read as evidence of a low prevalence of misconduct."

20 12:02
21 SOLE MEMBER: which paragraph are you dealing with on
22 that page?

23 MR. MARRON: Sorry, it's the second last paragraph
24 above process number 3.

25 SOLE MEMBER: The paragraph beginning "The practical 12:02
26 consequence..." --

27 MR. MARRON: Yes.

28 SOLE MEMBER: Okay, could you just give the Captain an
29 opportunity to read that and then put a question to

1 him?

2 MR. MARRON: Sure. [Short pause].

3 THE WITNESS: Okay. Can you repeat a question?

4 99 Q. MR. MARRON: Sorry -- I don't think I had even asked a 12:02

5 question! The question is: what practically can be

6 done to overcome that problem? And, I suppose,

7 specifically, what we heard was one of the differences

8 between the Ombudsman system here and the Ombudsman

9 system elsewhere is the idea of an own-volition inquiry

10 where the Ombudsman can actually take it upon 12:03

11 themselves to investigate things. Do you think that's

12 a practical measure that can actually address that

13 issue?

14 A. The way I wrote this paragraph, to me it's much more an

15 observation about underreporting. And even if -- when 12:03

16 you have small numbers and when you talk with people,

17 they will mention that 'I didn't report', for some

18 reason, 'I didn't report'. So, that is what I'm trying

19 to say here when I looked at the annual reports, and

20 there is an understanding of underreporting, so I'm not 12:03

21 quite following your questioning here, actually, so

22 that...

23 100 Q. Well, I suppose the question is, and it's inelegantly

24 put probably - it's inelegantly put, I think, but you

25 did say that a difference between what's the 12:04

26 Ombudsman's power here is and other ombudsmen -- and we

27 heard from Mr. Anderson yesterday from Australia that

28 other ombudsmen have a power to initiate investigations

29 themselves, and do you think that's a way which maybe

1 overcomes the issue of underreporting?

2 A. I'm not sure I have any other answer than what's

3 written --

4 101 Q. Yes, indeed. Okay.

5 A. Sorry about that. 12:04

6 MR. MARRON: Thank you.

7 SOLE MEMBER: Thank you, Mr. Marron. Now, thank you,

8 Mr. McCann.

9

10 CPT. KJELL ARNE BRATLI, WAS CROSS-EXAMINED BY 12:04

11 MR. McCANN AS FOLLOWS:

12

13 102 Q. MR. McCANN: "Cpt. Bratli" or "Mr. Bratli", which would

14 you prefer?

15 A. I respond to both, yeah! 12:05

16 103 Q. well, let's go with Cpt. Bratli and I'll see can I keep

17 that going.

18 SOLE MEMBER: Mr. McCann, just for housekeeping

19 purposes, I'm sorry, could you give me some indication

20 of time because I'm aware the Captain would like to 12:05

21 return home this evening, if at all possible, and I'm

22 willing to sit late and maybe work through lunchtime or

23 at least take a shorter lunch break.

24 MR. McCANN: I hope to finish by lunchtime.

25 SOLE MEMBER: That's great. Thank you. 12:05

26 104 Q. MR. McCANN: So, Cpt. Bratli, I introduced myself to

27 you earlier. My name is Patrick McCann - I'll do that

28 again - and I'm appearing for the Defence Forces, I'm

29 one of the barristers for the Defence Forces. Can you

1 hear me all right -- that I'm here, the microphone
2 here, and can you hear me reasonably well?

3 A. I do.

4 105 Q. Brilliant. And again just some preliminary questions,
5 Cpt. Bratli. I know that you have written several 12:05
6 books. There may be a book on history, maybe Norwegian
7 history, and another book on military history. And
8 then, of course, you've served as a member of the
9 Defence Forces and you served as Parliamentary
10 Ombudsman in Norway, and they're obviously areas of 12:06
11 expertise of yours, isn't that right?

12 A. Probably, yes.

13 106 Q. Probably. And I think you've also written a book on
14 golf, but I won't ask you about expertise in that area!
15 I think you've also written a book on religion as well, 12:06
16 and I think it's best to leave that to one side as well
17 also.

18

19 Then just dealing with -- the first topic I'll address
20 with you is the Ombudsman for the Defence Forces in 12:06
21 Ireland, if you follow me. We had Judge Mahon here
22 yesterday, who is the Ombudsman for the Defence Forces.
23 I don't know whether you were aware of that. Judge
24 Mahon. And I think when you were asked by Counsel for
25 the Tribunal about your own role, you were described as 12:06
26 the Norwegian Parliamentary Ombudsman, and counsel
27 said:
28

29 "In particular, for the Defence Forces."

1
2 So, did that role, was it solely focused on the Defence
3 Forces, or did you have other responsibilities as well
4 as Parliamentary Ombudsman was the question I had for
5 you? 12:07
6 A. Partly also civilians.
7 107 Q. Civilians --
8 A. But, partly.
9 108 Q. But was it civilians in the Defence Forces or civilians
10 more generally? 12:07
11 A. In the Defence Forces, yes.
12 109 Q. Yes, all right.
13 A. But also conscripts that - and this was in the earlier
14 days - that didn't want to serve in the Armed Forces,
15 they had a special service as civilians. 12:07
16 110 Q. I follow you. But, in other words, you weren't a
17 general ombudsman. Maybe there's another title for
18 that in Norway, and you weren't fulfilling that
19 function, am I right?
20 A. No, and, today, it's -- one is called the Civilian 12:08
21 Ombudsman and the other the Military Ombudsman.
22 111 Q. Thank you very much for that. That clarifies that.
23 And just in terms of -- the only question I have for
24 you in relation to your role as the Norwegian
25 Parliamentary Ombudsman then is you described how you 12:08
26 reported to the Norwegian Parliament, am I correct
27 about that?
28 A. Yes.
29 112 Q. And could the Minister for Defence ask you to report on

1 matters, or ask you questions where you had to answer
2 him as a matter of law, can you recall? Could he ask
3 for a report from you in relation to this or that?
4 A. Never happened.
5 113 Q. Never happened? 12:08
6 A. No.
7 114 Q. And in the legislation, do you think is that written in
8 as a right, or maybe you can't recall?
9 A. I think it would be strange.
10 115 Q. It would be strange if it happened? 12:08
11 A. Yes.
12 116 Q. All right. Okay. And, again, we're not going to fall
13 out over anything, Cpt. Bratli, but just -- I just want
14 to address the independence of the Irish Defence Forces
15 Ombudsman with you. You said in the transcript at 12:09
16 page 58, if I've got this right, and lines 1 to 6 --
17 maybe, Ms. Heavey, that might be helpful for
18 Cpt. Bratli to have that brought up so he can just see
19 what he has said and it might help us all.
20 REGISTRAR: What's the page number? 12:09
21 117 Q. MR. McCANN: Sorry, page 58, Day 1. The first
22 paragraph there, Cpt. Bratli, you were talking about:
23
24 "And the other..."
25 12:09
26 -- and on the previous page, you had referred to
27 limitations, and I will just read it for you:
28
29 "And the other, of course, is that it's the

1 perceivment, it's perceived as an independent
2 structure and it's still inside the Defence Forces
3 structure, inside the Department of Defence."
4
5 And that's the first point I'd ask you just to note in 12:10
6 your head. And then the second point is that people
7 will also ask:-
8
9 "...people who want to complain, is it independent
10 enough?" 12:10
11
12 And just for clarification, and feel free to disagree
13 with me if you want, the Ombudsman, the Judge, the
14 former Judge who gave evidence yesterday, he explained
15 that as a matter of Irish law he was independent and 12:10
16 appointed by statute, and I assume you're not
17 disagreeing with me on that? It may be new information
18 to you --
19 A. [Witness nods].
20 118 Q. Yes, all right, that's a "yes". 12:10
21 A. That's a "yes".
22 SOLE MEMBER: What's a "yes", that he's independent?
23 MR. McCANN: Yes, indeed, that's a "yes".
24 SOLE MEMBER: Thank you.
25 119 Q. MR. McCANN: Again, Cpt. Bratli, he also explained the 12:11
26 way the Irish legislation works is that he is appointed
27 by the President on the recommendation of the
28 Government and he holds an independent statutory
29 office. Again, that was his evidence yesterday, and I

1 don't think we'll disagree about this either, but you'd
2 accept that's also the case if I told it to you --
3 A. [Witness nods].
4 120 Q. -- in a sufficiently authoritative way. All right,
5 Cpt. Bratli. And, again, to be clear and fair to you, 12:11
6 just going back to the questions I asked you earlier,
7 the Minister for Defence can ask him for reports --
8 that's in the Act, so just to note that relationship
9 with the Department of Defence and the Minister for
10 Defence, and we'll note that. He also was anxious to 12:11
11 stress to the -- I shouldn't be over-characterising his
12 evidence. He said that it was important for him that
13 the premises of the Ombudsman - and it's only, I think,
14 four people in the office in Ireland - is not on
15 Defence -- it's not on Department of Defence property, 12:12
16 and it's not on Defence Forces property. Again, you'll
17 accept that that was his evidence, I'm sure. And he
18 said that assists with perception, he hopes.
19
20 And he also explained that, in fact, he does have -- I 12:12
21 think they're relatively limited, but there are
22 reporting duties to Parliament in this sense, that,
23 first of all, the public -- one committee that looks
24 after money can call him to ask him how he's spending
25 his money. And then, more generally, other committees 12:12
26 - this is, I think, section 12 of the Act, Sole Member
27 - can ask him to come into Parliament to explain what
28 work he's doing, and he said he's done that. And I
29 asked him would it be fair to describe himself as, in

1 that sense, a parliamentary ombudsman and that he was,
2 at least in that sense, answerable to Parliament. And
3 I think the sole Member will see what his answer was --
4 I think he said "yes".

12:13

6 But if I'm right about all those things, would that
7 ease some of your concerns about the perception of
8 independence for the Ombudsman? That's the question.

9 A. A couple of objections arise. The Irish Ombudsman for
10 the Defence Forces, she and he, they have worked
11 independently, definitely. And then we had the
12 exception from this, which I talked about last time,
13 when Tony McCourt, the budgets were diminishing, he was
14 set on a three days week instead of a five days week
15 and, in that sense, the Minister, of course, is making
16 him less independent.

12:13

12:14

17 121 Q. Yes.

18 A. And then you have the perception from the members of
19 the Armed Forces -- are they perceiving, are they
20 looking at the Ombudsman as an independent ombudsman?
21 And even if he is -- in some ways you can feel him as a
22 parliamentary ombudsman, he is not, he's not part of
23 the control system from the Parliament. He's part of a
24 system in the Defence Forces. But I accept that he's
25 working independently, absolutely.

12:14

12:14

26 122 Q. All right.

27 A. And as far as I can see, there haven't been any -- I
28 don't know all the cases, of course, but he has not had
29 the same active role, the initiative role as we did.

1 123 Q. I accept that. And he made that point yesterday to the
2 Sole Member, and that's one of the expansion of his
3 functions that he's looking for, I think, from the
4 Minister, maybe via the Sole Member, ultimately. All
5 right.

12:15

6
7 On the budget question, maybe Mr. McGuinness will be
8 able to address that, but I think, in fact, the Sole
9 Member -- sorry, Judge Mahon explained yesterday that,
10 in fact, he says he has a budget of we'll say it's X
11 and he's spending less than that every year at the
12 moment. And I don't know how many days a week he's
13 working -- maybe I should have asked him that.

12:15

14
15 All right, they were the only questions I wanted to ask
16 you about the Ombudsman. And then I might go on to, if
17 I may, the Redress of Wrongs procedure and really
18 looking at the -- I won't be spending a long time doing
19 this, you'll be glad to hear, Cpt. Bratli.

12:15

20
21 But just looking at the history, really, of the Redress
22 of Wrongs, and I think in the transcript on page 47,
23 for assistance - I don't think we need to bring it up -
24 at page 47, line 18 to 22 of your evidence to the
25 Tribunal, you said that the problem was that the Chief
26 of Staff was at the top of the process, and that was
27 until 2005.

12:16

28
29 And I just want to look at the Reference Book 1, if

12:16

1 Ms. Heavey might bring it up, and it's page 77 of that
2 book. We might just look at the Act, if you wouldn't
3 mind?

4 A. Did I actually say that bluntly that he was the
5 problem?

12:17

6 124 Q. No, no, no --

7 A. Hopefully not!

8 125 Q. I put it -- let me correct myself. I'm sure you
9 didn't. Well, maybe we'll get it up. Sorry, just bear
10 with me and I'll say exactly what you said. I'm sure
11 you put it in a much more -- in a much better way.
12 [Short pause]. Yeah, you said, and I'll just read it
13 out, but we can get it up, if necessary:

12:17

14
15 "For the Process No. 1..."

16
17 - that's the Redress of Wrongs process -

18
19 "...definitely the oldest process, it was rooted in
20 military law that predates the Defence Act 1954 itself.
21 And as far I see, this is the foundation on which
22 everything else was built."

23
24 And then you continue:

25
26 "Under the system, any member could, with a grievance,
27 submit a written complaint through the chain of command
28 which is then investigated and adjudicated internally.
29 And as far as I can read, with the Chief of Staff at

1 the top of the process."
2
3 All right?
4 A. Okay.
5 126 Q. And, again, I think it's -- it's obvious, I think, you 12:17
6 know, you're not a lawyer, I don't think; correct?
7 A. Correct.
8 127 Q. And you're definitely not an Irish lawyer; correct?
9 A. Definitely.
10 128 Q. All right. So if we look just at Section 114, if we 12:18
11 just track down and see can we read this together --
12 114(2), I think, if Ms. Heavey might track down to
13 that? Yes. And, Cpt. Bratli, can you remember looking
14 at -- and maybe you didn't look at the Section 114.
15 This is the Redress of Wrongs part of the Act. Was 12:18
16 that shown to you or did you have a chance to look at
17 that? Anyway, we'll look at it together, in any event,
18 all right, if we might?
19 A. It's been a long time since I looked at it, yes.
20 129 Q. I know. Of course! And it's all very easy for me to 12:18
21 say when I have it in front of me. And I think this,
22 again, Cpt. Bratli, we'll do just fine here.
23
24 If I just shorten it, it says you complain to the
25 commanding officer and, if you're not happy with the 12:19
26 commanding officer, you go... Now, I can't read it!
27
28 "...he may complain to his commanding officer, and if
29 he thinks himself wronged by the commanding officer, he

1 may complain to the..."

2

3 -- and it says Chief of Staff there. Do you see if we

4 move from page 69 to 70 and it says "Chief of Staff" --

5 do you see that there? Do you see that, Chief of 12:19

6 Staff?

7 A. Yeah.

8 130 Q. And, again, you'll to trust me on this, Cpt. Bratli --

9 A. I do.

10 131 Q. Right, so far anyhow! Until 2005, it had "the 12:19

11 Minister" in there, so that the grievance process was

12 internal, and then if you were happy with the result

13 from the Commanding Officer, you had an option of going

14 to the Minister; do you follow that? Were you aware of

15 that? And maybe you weren't. Were you aware of that 12:19

16 or can you recall?

17 A. I believe I had a notion or a question about that the

18 last time, yes.

19 132 Q. Yes, all right. Okay. So, again, assuming I'm right -

20 of course I can be wrong - and this is again going back 12:20

21 to pre-2005, so, again, this is -- but your report is

22 historical -- it would appear that from 1954, before

23 the beginning of the Tribunal's Terms of Reference, but

24 from 1954 until 2005, there was a complaints process,

25 for all its imperfections, which meant that, 12:20

26 ultimately, you could complain to the Minister, so

27 that, in fact, there was a civilian at the top of the

28 process. And, again, there was a -- again, I think you

29 told us, or maybe I read it, you worked -- did you work

1 as a special adviser for a Minister for Defence, is
2 that right?

3 A. I did.

4 133 Q. And then he went on to become the Parliamentary
5 President or something? 12:21

6 A. Yes, Speaker of Parliament later.

7 134 Q. Okay, so you know about -- I think you spent a lot of
8 time in politics in Norway, I think that's correct as
9 well? Some time.

10 A. I wouldn't say politics, but I worked for politicians. 12:21

11 135 Q. Worked for politicians, all right. And did the
12 politician you worked for, had he served in the Defence
13 Forces? Obviously, he had done conscription training,
14 but he wasn't a professional soldier?

15 A. Only by conscript in the Air Force, yes. 12:21

16 136 Q. All right. And, of course, if there's a politician at
17 the top of the system, we're dealing with people who
18 are responsive to their constituency. They're
19 responsive to voters, correct?

20 A. The responsibility is to Parliaments. 12:21

21 137 Q. The responsibility is to Parliament?

22 A. Yes.

23 138 Q. But responsive to voters?

24 A. Yes.

25 139 Q. And, of course, the Department, the people who do 12:22
26 assist the Minister, give him or her - her at the
27 moment - in relation to their work, they are also,
28 under the Irish system, civilians; correct?

29 A. Yeah.

1 140 Q. And so the people at the -- and so even in the Redress
2 of wrongs going back to before 2005, there was, at the
3 top of that process, there was, in fact, until 2005, a
4 civilian politician. And, again, if I'm right about
5 how you've described it, I think that's correct? 12:22

6 A. I have to say probably. I haven't looked into the
7 finesse here around the Chief of Staff.

8 141 Q. Absolutely.

9 A. Yeah, okay.

10 142 Q. And I'm not complaining about that. 12:22

11 A. Okay.

12 143 Q. I'm not complaining about -- this is fine detail. And
13 you're giving, of great assistance to the Sole Member,
14 you're giving a high level view; correct?

15 A. Yes. 12:23

16 144 Q. Yes. And then, again, since 2005 -- we heard evidence
17 from the Ombudsman yesterday that, from 2005 -- again,
18 the page, the Act has gone away, but you'll remember
19 that you had the Redress of wrongs would up, up, up,
20 and then, finally, you went to the Chief of Staff. And 12:23

21 then there's an appeal from that to the Ombudsman from
22 2005 - again, a civilian, by definition, in Ireland?

23 A. Is it an appeal or...

24 145 Q. It's an appeal.

25 A. Okay. 12:23

26 146 Q. Sorry, I think it's two things. It was interpreted as
27 being an appeal only in 2005 --

28 A. Mmm.

29 147 Q. But the new Ombudsman has looked at the law again, and

1 he's decided there's a right of direct complaint to
2 him?

3 A. Yeah.

4 148 Q. But that interpretation has only become public since
5 2021, if I have the dates correct. But, in any event, 12:24
6 at the top of the process there was the Minister until
7 2005 and another civilian, the Ombudsman, from 2005
8 onwards, at the top of the Redress of Wrongs process.
9 And would that civilian input ease some of your
10 concerns about the Redress of Wrongs process, is the 12:24
11 question?

12 A. My concerns about Redress of Wrongs is in the chain of
13 command, actually.

14 149 Q. All right. The lower level?

15 A. And it's still there. It's still there. 12:24

16 150 Q. All right, okay. And then that brings me on to the
17 next area then. You've anticipated where -- we're
18 going look then at the Redress of Wrongs lower down the
19 chain, if I might. I think this is where the Sole
20 Member on page 77 of Cpt. Bratli's transcript at 12:24
21 line 28, you said that the Redress of Wrongs was
22 structurally unsuited and, and you said that -- and you
23 identified problems as being that the investigating
24 officer is drawn often from the same unit. And then at
25 line 17 you said that it has structural limitations. 12:25
26 All right?

27 A. [Witness nods].

28 151 Q. So Ms. Heavey might bring up for us just the first
29 Article 7, the first version of Administrative

Instruction 7, Chapter 2, from 1996 and at page 354, please, if we might just look at this together, Cpt. Bratli? So, the reference book is Reference Book 1, I beg your pardon, and it's page 352, and this is just one of the Redress of Wrongs. We'll just look at the document together. Just the first page, Cpt. Bratli, you'll see there that it's dated 14th May 1996, do you see that?

A. There it is, yes.

152 Q. Very helpful. And that locates it in time. And then
if we move to page 354 of the same book -- sorry, I'll
make sure I have the right page myself. I just can't
see the page number, the Tribunal page number. Oh,
there we go. Thanks very much.

If we just go back up then and if we just look at (1)? So, again, I'm trying to be as fair to you as I should be, Cpt. Bratli, so again this document is the complaint process, the details of the complaint process. It's 1996 --

SOLE MEMBER: And it's Chapter 2, just to be clear, is it, that you're dealing with?

MR. McCANN: Chapter 2, yes. Yes, thank you, sole Member.

SOLE MEMBER: Thank you.

153 Q. MR. McCANN: I will just look at two things, really.
So here in the first paragraph, it says:

"The GOC..."

1
2 - that's a high-ranking person in the Irish Military -

3
4 "...on receipt of the complaint, will appoint an
5 independent senior officer..." 12:27

6
7 - do you see that there -

8
9 "...to investigate the complaint."

10 12:27
11 Right? So we just note that. And then if we go to
12 page 359, paragraph 14, so you see here at
13 paragraph 14, Cpt. Bratli:

14
15 "The GOC, on receipt of the complaint, shall promptly 12:28
16 either address the complaint or appoint an officer not
17 below the rank of commandant to investigate and report
18 on it."

19
20 And then it says, and this is the bit that I would ask 12:28
21 you to address your mind, experience to and expertise
22 to:

23
24 "The officer shall not have any direct interest or
25 prior involvement in the subject matter of the 12:28
26 complaint and shall not be a member of the same unit as
27 the complainant or the subject of the complaint."

28
29 So, again, it would appear, again if I'm right --

1 sorry, if this was, in fact, implemented, and there
2 might be a question mark over that, but it would appear
3 that one of the risks you identified about the person
4 investigating being in the same unit, that, in fact,
5 had been addressed and had been, at least on paper, 12:29
6 taken out of the equation?

7 A. On paper, everything is absolutely very correct and
8 very good.

9 154 Q. All right.

10 A. In practical terms, I'm not sure that this is always 12:29
11 followed.

12 155 Q. All right. And, again, Cpt. Bratli, I think I have to
13 ask you, and again we won't -- but when you say, "in
14 practical terms", you've a concern about whether it was
15 actually followed, and I have to ask you what your 12:29
16 basis for that is?

17 A. Most of all, the experience. And I would also say that
18 from the work we did in DCAF with a different
19 Ombudsman, that would be -- I think they would tell
20 more or less the same story. 12:30

21 156 Q. All right.

22 A. Even it's not from the same unit, we are talking about
23 a small environment coming from the same background,
24 same culture, and I would say also the same human
25 nature. 12:30
26

27 So, if it's implemented, absolutely, it's very good.
28 But it's just the Redress of Wrongs for a complex
29 situation, grave situations, I'm not sure that this is

1 the right... And that is -- I'm not disputing it, but
2 I'm questioning it.

3 157 Q. Oh, no, I accept all that. And it's just the last bit
4 we'll look in relation to Chapter 2, yes, is just
5 page 362, if the Registrar wouldn't mind... Yeah. 12:31
6 Sorry, maybe 360, first of all.
7

8 Yes, so it would appear at paragraph 19 and, again,
9 just you'll recall we discussed how the Minister had an
10 involvement until 2005 at the top of the mountain, so 12:31
11 to speak. And you'll see here that the Minister had an
12 option of either dealing with a complaint himself or he
13 could appoint a Complaints Inquiry Officer to deal with
14 it, and that would appear to be another civilian and I
15 don't know whether you've been aware of that, 12:31
16 Cpt. Bratli, and maybe not?

17 A. I've read it.

18 158 Q. You did.

19 A. I've read it, yes.

20 159 Q. All right, okay, that's fine. And, again, would that, 12:32
21 the fact that the Minister is a civilian and that for
22 these complaints and appeals they make their way up to
23 the top of the chain - he can appoint a civilian
24 complaints officer - would that ease some of your
25 concerns or would it have eased some of your concerns 12:32
26 looking back in time?

27 A. I would say so.

28 160 Q. All right. Okay. Okay. And, again, I'm happy to
29 agree to disagree with you in that respect. All right.

1
2 And, again, I was trying to be helpful to Mr. Marron by
3 identifying where you had said "I have a difficulty
4 finding that officer", but, in any event, Mr. Hogan has
5 helped me out and I was unable to read my own
6 handwriting.

12:32

7
8 So, page 50, line 16 to 18 -- and, again, you dealt
9 with this just a few moments ago in your exchanges with
10 Mr. Marron -- you're talking about officers
11 investigating these matters and that they're dealing
12 with promotions one day, overseas courses the next day,
13 some accommodation problems the next day, and then they
14 have a matter of -- again, you were here for the
15 evidence this morning; you could be dealing with a very
16 difficult case where there's an -- I think it better to
17 neutralise it entirely, but -- let's neutralise it
18 entirely and forget I talked about evidence this
19 morning! But you can imagine circumstances where an
20 officer is asked to deal with a complaint where there's
21 an alleged assault, there's no witnesses, and the
22 person is denying it -- and that's obviously in every
23 workplace, and indeed in courts, that's obviously a
24 difficult situation; correct?

12:33

12:33

12:33

25 A. [Witness nods].

12:33

26 161 Q. I think we can all agree on that. And you said to the
27 Sole Member on the last occasion that it would be
28 difficult -- and I think you have to acknowledge the
29 essential correctness of it, that it's difficult to

1 find an officer who can deal with all these matters,
2 simple matters and very complicated and very sensitive
3 matters, and very forensically difficult matters,
4 difficult to prove, difficult to disprove, and I just
5 wanted to see if we could look at the statement of the 12:34
6 Ombudsman on page 3866 of the book. We might just look
7 at this together. He's talked about improved training.
8 So if we just look at (vi), Cpt. Bratli --
9 A. (vi)?
10 162 Q. (vi). 12:35
11 A. Okay.
12 163 Q. And I'll just read what the Ombudsman said here:
13
14 "It has also been stated to me in the past by officers
15 in casual 'off the record' conversations that many 12:35
16 officers are apprehensive of being appointed as
17 Military Investigation Officers because of lack of
18 training and the fact that the investigations can be
19 extremely time-consuming and complex, and yet they are
20 expected to undertake their normal duties at the same 12:35
21 time. I stress 'in the past' as I think it is likely
22 that this view would be less prevalent now because of
23 improved training and other newly introduced supportive
24 measures for Military Investigation Officers."
25 12:35
26 And, again, I think I'm told that there is training,
27 formal training for investigation officers for the last
28 three years, that's since 2023. And would that - and I
29 just had one further detail - the Ombudsman said that

1 he could see -- this was his evidence yesterday, from
2 recollection -- he could see an improvement in the
3 quality of reports that he was reviewing since training
4 was put in place, and would that ease some of your
5 concerns, Cpt. Bratli?

12:36

6 A. I think I should support that. I would see it as
7 actually the same thing, that it has really improved.

8 164 Q. All right. And then, again, looking at the question of
9 confidence in the complaints process, and again asking
10 you to stay on that page, Ms. Heavey, or thereabouts,
11 3865, and again this is the report that the Ombudsman
12 prepared for the Tribunal and we might just look at it
13 together. So we'll look, maybe, at -- yes, I think
14 it's fair if we look at -- and then we go on to
15 page 3866 -- is that 3866? Just the next page, please,
16 Ms. Heavey. Thanks very much. So, 3866, (iii), we'll
17 just look at this together, and I think the Ombudsman
18 is echoing some of the remarks you've made,
19 Cpt. Bratli. He says:

12:36

12:37

20
21 "I believe a significant lack of confidence in the
22 current internal complaints process stems from the fact
23 that the appointed investigators of complaints (MIOs)
24 are officers, while at the same time the majority of
25 personnel who are the subject of complaints are also
26 officers, often of the same rank, and it is frequently
27 the case that the officers complained about are senior
28 in rank to the investigating officer (usually a
29 commandant)."

12:37

12:37

1
2 I think that echoes the views you have been expressing
3 to the Tribunal, isn't that so? Consistent with your
4 view, there or thereabouts, but feel free to he tell
5 the Sole Member if you -- 12:37

6 A. No, no, I would say not 100%, but --

7 165 Q. All right.

8 A. But, of course, I understand what he is saying. And --

9 166 Q. You think it's -- sorry, I don't want to interrupt you.

10 A. Both lack of and confidence, and it's almost 12:38
11 impossible, but I take it for what is words, that's
12 what he said.

13 SOLE MEMBER: I'm sorry, I didn't understand what you
14 said. Could you repeat it? Here, Mr. Justice Mahon is
15 talking about a lack of confidence, his belief that 12:38
16 there is a lack of confidence because investigators who
17 are appointed may be investigating other officers --
18 it's officers investigating officers, and sometimes
19 often of the same rank, or the person being
20 investigated is of a senior rank, and I understand 12:38
21 Mr. McCann's question is do you share that view?

22 MR. McCANN: Yes, exactly.

23 THE WITNESS: More or less, I would say, yes. I'm not
24 sure that would have been my final answer, but,
25 absolutely, for many that would be a lack of confidence 12:39
26 because you are investigated or judged by your fellow
27 officers. Yes.

28 167 Q. MR. McCANN: All right. Then we'll just look at (iv)
29 then, Cpt. Bratli, and maybe I'll read it out because

1 this might help:

2

3 "This understandably..."

4

5 -- and this question of the links between people which 12:39

6 the Tribunal knows all too well about:

7

8 "This understandably fuels a general perception of the

9 investigator and the investigated being too closely

10 connected (possibly, personal friends, cadet classmates 12:39

11 or work colleagues). Consequently, there is a

12 perception of a lack of impartiality, and an inability

13 or unwillingness to make an adverse finding against

14 fellow officers, or more senior officers (more senior

15 to the investigating officer)." 12:40

16

17 Again, is that something similar? Do you agree with

18 that again, more or less?

19 A. I agree.

20 168 Q. You agree? 12:40

21 A. Yes, absolutely.

22 169 Q. And then this is the bit where I'm asking you to agree

23 with me in relation to number (v). It says -- the

24 Ombudsman, in his report to the Tribunal, and in his

25 evidence yesterday, he said: 12:40

26

27 "I am aware since the appointment of the Civilian Head

28 of Strategic HR..."

29

1 - and he was named yesterday -

2
3 "...last year..."

4
5 - I think it must have been 2023 -

12:40

6
7 "...significant improvements in the training of the
8 Investigating Officers for investigative work have been
9 put in place, and this is most welcome."

10
11 I take it --

12 SOLE MEMBER: Could you check the time? I'm sorry,

13 Mr. McCann, I'm not sure it's 2023, but perhaps --

14 MR. McCANN: Just let me look at the end. Sorry, 2024.

15 Sorry, you're quite right. So he said it was last year

12:40

16 -- sorry, I worked it out this way, Judge --

17 SOLE MEMBER: Are we sure? Because I would like to

18 know the date of the appointment of the Head of

19 Strategic HR.

20 MR. McGOVERN: Mr. Justice Mahon's report, if it's of

12:40

21 assistance, was December '25 --

22 SOLE MEMBER: Yes.

23 MR. McGOVERN: So he is referring, therefore, to '24.

24 SOLE MEMBER: He's referring to '24, thank you.

25 MR. McCANN: I have something in my head that it was

12:41

26 2023, but we will check that out. I keep on saying

27 that, but I'm not sure I always do it! But maybe

28 Mr. McGuinness will help me with that or somebody could

29 tell me something from the back.

1 SOLE MEMBER: okay.

2 170 Q. MR. McCANN: And then just looking at number (vi)

3 then -- sorry, we looked at that already. And then

4 number (vii):

5

6 "I am strongly of the view that the Defence Forces,

7 both in its capacity as a large employer and because of

8 its military structure and purpose, should have its own

9 internal grievance management system in order to

10 facilitate complaint submissions from its personnel." 12:41

11

12 Do you see that there, Cpt. Bratli? He's saying that

13 there should be, at least at first call, there should

14 be an internal system, and he described to the Sole

15 Member how that might work yesterday with civilian 12:41

16 investigators and civilian decision-makers, I think, as

17 well -- I think as well, yes. Do you have any view in

18 relation to that?

19 A. I don't feel here at any point suggested that we should

20 abandon the Redress of Wrongs -- 12:42

21 171 Q. I understand. And you're not suggesting that, are you?

22 A. No, no.

23 172 Q. All right. And, again, that would be... Yeah, all

24 right. That's what I wanted to ask you in relation to

25 that then. 12:42

26

27 Just in relation to -- I've just three more topics,

28 Cpt. Bratli, if you just bear with me, please. And you

29 dealt with these in your evidence very briefly, but I

1 just want to address them with you. So you were
2 dealing with court-martials and the operation of a
3 separate criminal code within the Defence Forces, I'll
4 describe it in those terms. And I think you dealt with
5 this on page 77, line 2. And, again, Counsel for the 12:43
6 Tribunal explained to you, and indeed explained to me,
7 how there were different types of court-martials --
8 there were summary court-martials, limited
9 court-martials, general court-martials, and you
10 described how those were constituted. And then you 12:43
11 asked at page 77, line 2: Is it functioning well
12 enough? Is it appropriate in an open, democratic
13 society? Do you remember that, Cpt. Bratli? You had
14 sentiments in that regard. And that seemed to be
15 suggesting that there shouldn't be a military, a 12:43
16 separate criminal code for members of the military
17 separate from the civilian code. Did I understand your
18 evidence correctly in that respect?

19 A. I believe what I said is that I have trust in the
20 civilian system, actually. And, just to make one 12:44
21 point, my brief to the Tribunal, that is the main
22 paper. And then, which was my notes, is the seven
23 processes became a part of that. That was from my read
24 only.

25 173 Q. Okay. 12:44
26 A. -- originally, so to speak. But I stand by what is
27 written there.

28 174 Q. Okay. And, again, we won't spend a lot of time on
29 this, but just to -- you may want to comment on this

1 and I'll just give you an opportunity to comment on it.
2 So, for example, Col. Coakley on Day 2 - page 70 for
3 the Sole Member - said that as a result of an amendment
4 to the Defence Act, a 2024 amendment to the Defence
5 Act, that, for example, all alleged sexual offences are 12:45
6 now referred to the Civilian Police. And would that
7 ease some of your concerns, Cpt. Bratli?
8 A. Absolutely. And I think that's a good thing.
9 175 Q. All right. And then -- and he also explained at
10 page 71 to the Sole Member that, before 2024, alleged 12:45
11 rapes would have been referred to, again, the Civilian
12 Police Force. I think that's the state of the
13 evidence. He also explained, because it was relevant
14 and is relevant to the module which the Tribunal is
15 working on at the moment, that the Civilian Police 12:45
16 Force have primary investigative responsibility where
17 there's been a fatality in the Defence Forces, an
18 unlawful killing or an accidental killing, or whatever?
19 A. That has been a good and sound development, I would
20 say. 12:46
21 176 Q. And I think that's been the position for some time?
22 A. Mmm.
23 177 Q. And then, again, Mr. Fitzmaurice, who gave evidence on
24 Day 21, and this appears to be the state of the
25 evidence, said that for those alleged offences -- so, 12:46
26 let's say something like theft, which could be -- it's
27 an offence that's a matter of civilian law, and it's
28 also an offence or it can be an offence as a matter of
29 military law, and Mr. Fitzmaurice - on page 37 for the

1 Sole Member - said that in circumstances where an
2 individual may be charged with a civilian crime, the
3 Guards must authorise or give permission to the
4 Military Police dealing with it in their own system.
5 And, again, that would seem to be something which you 12:46
6 -- I mean, you're saying there should be no military
7 system, but if there is to be a military system, that's
8 giving primacy to the Civilian Police Force, isn't that
9 right? And, Cpt. Bratli, would you accept that there
10 could be, especially in a country like Ireland which 12:47
11 you explained to me earlier you're well familiar with,
12 but it's not based on that, but for this reason -- so
13 let's say everybody in Norway, almost everybody in
14 Norway has been in the military for 18 months or so --
15 perhaps longer for the -- maybe conscription was 12:47
16 longer, it might have been three years at some point?
17 I don't know whether I'm right or wrong about that but
18 --

19 A. You're wrong about that.

20 178 Q. All right! And is there something to be said for -- 12:47
21 again, Mr. Fitzmaurice gave an example, he was a member
22 of the Military Police, I think he was a member of the
23 Military Police in Ireland and he explained how he
24 might be investigating some theft from a filling
25 station, a military filling station, all right, and is 12:48
26 there something to be said for a military criminal code
27 and a military investigation system so that the police
28 don't have to worry about understanding how the Defence
29 Forces work, how the Defence Forces are organised,

1 where they live, how they address each other, how they
2 live with each other -- that all those things which are
3 built into the Norwegian experience, they would be part
4 of the Irish experience? I thought I had...

5 A. Is what you're asking is taking disciplinary action or 12:48
6 --

7 179 Q. No, criminal action. So let's say theft, and is there
8 something to be said for the military -- there could be
9 circumstances where the Military Police know how their
10 depots work, how logistics work, how ranks work, how 12:49
11 they inter-relate to each other, who has
12 responsibilities, what the duties of the platoon
13 commanders are and so on and so forth, that's there's
14 something to be said for having a specialist group
15 doing that in Ireland, which is different than in 12:49
16 Norway because, in Norway, you have conscription and
17 everybody has 18 months' military training under their
18 belt?

19 A. I think I have to say I'm not here for trying to
20 dismantle the military system! 12:49

21 180 Q. All right. Okay. And, again, maybe just three
22 comments in relation to the military system. I'm told
23 that both the UK and Canadian Military Justice Systems
24 have both recently undergone civilian judge-led reviews
25 and neither resulted in a recommendation of a move to a 12:50
26 greater use of civilian courts. I don't know whether
27 you're aware of that?

28 A. I am aware of, yes.

29 181 Q. You are aware, all right. And then, of course, there

1 is a civilian element to the existing military criminal
2 system in that there is, for example, a civilian judge
3 advocate general, who again I'm told is senior counsel,
4 and she -- it was a she, I'm not sure if it is still a
5 she -- she, again, is a person appointed by the
6 President on the advice of the Government. And she's
7 responsible for supervising the court-martial system
8 and appointing the Court-Martial Administrator. So
9 that's civilian oversight. And, similarly, the Courts
10 have civilian oversight, so there's a Court of
11 Appeal -- there's a Military Court of Appeal, which has
12 civilian oversight as well. And you're not disputing
13 that, I'm sure. All right.

12:50

12:50

14
15 And then just on protected disclosures, this is the
16 last area I want to discuss with you, Cpt. Bratli, if I
17 may, I think you identified - I think it was on page 70
18 -- yes, you identified -- well, I think counsel
19 identified and you agreed with him on page 70 of your
20 transcript that you were concerned that the protected
21 disclosures were dealt with within the organisation,
22 and I might just focus on that phrase there, "within
23 the organisation". And, again, you may or may not be
24 aware, but there is, in fact, a joint office between
25 the Defence Forces and the Department of Defence, and
26 that's where protected disclosures go to in Ireland.
27 So, it's certainly not within the Defence Forces per se
28 and it's not within the Department per se; it's a joint
29 office. So would that ease some of your concerns in

12:51

12:51

12:51

1 that respect?

2 A. As long as there's a protected pipeline, I would say
3 it's good.

4 182 Q. Absolutely. And then this is the last point, that the
5 Defence Forces Protected Disclosures Officer operates 12:52
6 outside the chain of command. And, again, that would
7 give you some reassurance, I assume; correct or
8 incorrect?

9 A. That's correct.

10 MR. McCANN: All right. Okay. And they're my only 12:52
11 questions for you. Thank you very much. Sorry, just
12 bear with me one second. Oh, yes, then Mr. McGuinness
13 very helpfully tells me that the appointment of the HR
14 Officer was September, 4th September 2023, if that
15 helps you, Sole Member. 12:53

16 SOLE MEMBER: Thank you for that.

17 MR. McCANN: Thank you very much, Cpt. Bratli.

18 THE WITNESS: Thank you.

19 SOLE MEMBER: Could I have some indication how long you
20 propose to be? I don't know is it Mr. McGuinness or 12:53
21 Ms. McGrath?

22 MR. McGUINNESS: Yes, Judge, I can give you a cast iron
23 assurance we will be finished within the normal working
24 hours, if not shorter. I'm proposing to take I hope a
25 speedy and economic route, which won't entail the 12:53
26 opening of many documents insofar as I can avoid it.

27 SOLE MEMBER: That's excellent. So, it's ten to one --
28 no, it's not, it's seven minutes to one now. Would you
29 like to begin or would you like to come back a little

1 earlier - say, at ten to two - would that be easier for
2 you, rather than break your stride?

3 MR. McGUINNESS: Yes, Judge, I think that probably
4 would be better, to come back at ten to two.

5 SOLE MEMBER: Very good. So if we could return at
6 13:50 today, thank you.

12:54

7
8 THE TRIBUNAL ADJOURNED FOR LUNCH AND CONTINUED AS
9 FOLLOWS:

10
11 SOLE MEMBER: Good afternoon. Now, Mr. McGuinness.

13:55

12 MR. McGUINNESS: Thank you.

13
14 CPT. BRATLI WAS CROSS-EXAMINED BY MR. McGUINNESS, AS
15 FOLLOWS:

13:55

16
17 183 Q. MR. McGUINNESS: Cpt. Bratli, my name is Diarmaid
18 McGuinness and I'm one of the counsel for the Minister
19 for Defence in the matter. If I drop my voice at any
20 time, would you let me know? Thank you.

13:55

21 A. Fine.

22 184 Q. Could I ask that your first statement be put up at
23 page 4162? This is your document headed "Assessment of
24 the Appropriateness of the Complaints Process Within
25 the Irish Defence Forces". Just in relation to the
26 first paragraph there, you state:

13:55

27
28 "This brief is based on reviews and research, official
29 documents, public reports, and the ODF's Annual Reports

1 2006-2024, as well as my work experience as an officer
2 and as an ombudsman.
3
4 In addition, it draws on my personal experience and
5 knowledge of an internal military complaints system, 13:56
6 including my perspective as a representative for
7 officer candidates 1972-73, later as a junior officer,
8 and as a senior officer."
9
10 And I'm going to ask all sorts of inquisitive questions 13:56
11 that I hope are helpful to the Sole Member. Can I ask
12 you, firstly, can you identify what reviews you're
13 referring to there in the first paragraph?
14 A. Well, it's -- the reviews I've referred to here is
15 mostly from the OCCE and the DCAF and, in general, the 13:56
16 papers I also got from the Tribunal in the beginning.
17 185 Q. The research referred to, is that research of your own
18 or is it already published research?
19 A. Most of that would also be in the DCAF family actually.
20 186 Q. In the DCAF? 13:57
21 A. Yeah.
22 187 Q. And official documents, can you help me there as to
23 which ones you're talking about?
24 A. The official documents is the documents I have received
25 from the Tribunal and, also, the official documents 13:57
26 from Norway --
27 188 Q. Yes.
28 A. And I will guess also from Germany mostly, yes.
29 189 Q. Yes. "Public reports", what's included in that?

1 A. In public reports? Almost everything. It's almost
2 like in the Ombudsman's report. It's, in a broad
3 sense, it contains most of what you will find in my
4 brief.

5 190 Q. All right. When you gave evidence on June 3rd, I think 13:58
6 you mentioned Mr. Clonan's research, you mentioned the
7 Doyle Report --

8 A. Yes.

9 191 Q. And you mentioned IMG and IRG?

10 A. Yes. 13:58

11 192 Q. And may I take it that you've read IRG and all the
12 IMGs?

13 A. Not read everything, but scanned through whatever I
14 had.

15 193 Q. Okay. And the Gleason Report was the first State 13:58
16 Commission looking into the Defence Forces' pay and
17 conditions and terms of remuneration etc. since the
18 State was founded. Did you see the Gleason Report at
19 any stage?

20 A. I'm not sure. I cannot recall. I would have to go 13:59
21 back and look in my notes.

22 194 Q. Yes. If I could be this inquisitive, were you given a
23 list of material by the Tribunal to consider as the
24 basis for your assessment?

25 A. Then I would have to go back to see what I received. 13:59

26 195 Q. Pardon?

27 A. A definite list, I cannot recall that.

28 196 Q. Okay. Could I ask that the Tribunal put up 8064?
29 While we're waiting for that, you did see some

1 obviously legislation relating to the Irish situation
2 and some of the Chapter 1 and Chapter 2 material, isn't
3 that right?

4 A. I've read --

5 197 Q. Could we scroll up the page up to the index, in fact? 13:59
6 It's actually the index to that Book 12, which should
7 precede page 8064. It may be separately on the system.
8 Book 11, I beg your pardon. Book 11, my mistake. I
9 wonder could I ask the Registrar to enlarge that, if
10 possible, just to make it more visible? That's a list 14:00
11 of documents that have been recently circulated and if
12 I might just ask you whether you've seen them or not,
13 the response to The Challenge of a Workplace, that's
14 the first IMG Report following upon Dr. Doyle's report,
15 can you say that you've clearly read that or...? 14:01

16 A. I'm not sure about that one.

17 198 Q. Okay.

18 A. I'm sure about the Doyle, but not --

19 199 Q. No. 3 on the list then, the second report of the IMG
20 group? 14:01

21 A. I believe that's on my list, Judge, I believe that.
22 MR. McGOVERN: Sorry, Judge, to interfere, but just I
23 think it should be clear that these documents to which
24 Mr. McGuinness is now referring, they were furnished in
25 recent days by the Minister's team to the Tribunal. 14:01
26 They're not necessarily documents that this witness has
27 seen.

28 SOLE MEMBER: Yes. And I think it's quite easy to
29 ascertain and, if I'm not mistaken, you did ask what

1 documents were given to Cpt. Bratli, and those were the
2 complaints processes as they developed over the time as
3 listed in the Terms of Reference?

4 MR. McGUINNESS: Yes. I mean, what I want to avoid is
5 asking Cpt. Bratli about documents he hasn't read. I 14:02
6 don't intend to do that. So I'm trying to narrow the
7 focus this way. And these were documents which have
8 all formed part of the discovery already made quite
9 some time ago, that's the context in which the Tribunal
10 has received them. 14:02

11 SOLE MEMBER: But I think it has been confirmed to you
12 that the complaints processes as listed in the Terms of
13 Reference were the documents furnished to Cpt. Bratli.

14 MR. McGUINNESS: Oh, right, sorry, I hadn't understood
15 it was that clear, sorry. 14:02

16 SOLE MEMBER: I had understood you had asked or the
17 CSSO had asked and that the response or the reply was
18 given, but I could be mistaken on that.

19 MR. McGUINNESS: Thank you.

20 SOLE MEMBER: Thank you. 14:02

21 200 Q. MR. McGUINNESS: I'm just interested then, there's a
22 couple of studies mentioned there at 4 and 5, and have
23 you any recollection of having seen them or read them
24 at any stage in your deliberation, as it were?

25 A. I believe that I read 5, "Workplace Climate in the 14:03
26 Defence Forces". I'm not sure that I can recollect
27 Phase 2 and --

28 201 Q. Yes, all right. And then there's two more recent ones.
29 There was a commission of the Defence Forces which

1 reported in 2022, and then a detailed implementation
2 plan was established. And, at the same time or shortly
3 afterwards, there was a strategic framework
4 transformation plan, and I wonder have you any
5 recollection of having seen those -- or read them, I 14:03
6 mean?

7 A. Seen or seen something about them. I mean, the last
8 one, I'm really not sure, that's after what I --

9 202 Q. Okay.

10 A. -- the time I worked with. 14:03

11 203 Q. Yes. There are Norwegian Army studies, and I'll come
12 to those in a few moments, but have you had a chance to
13 read those? They're abstracts, in fact, from --

14 A. I think those are from the Defence Research Institution
15 and I probably have read them, all of them. 14:04

16 204 Q. Yes, we'll come back to them, thank you. You have very
17 substantial experience as a military man - I think
18 you've told the Tribunal over 50 years - and you've had
19 eight years as an ombudsman as well, and other valuable
20 experience too. And can I just ask you to help clarify 14:04
21 some matters about your own experience in the Norwegian
22 Army situation or the Navy, as it were, in dealing with
23 complaints? How are complaints of abuse, as it were,
24 serious complaints handled?

25 A. Serious abuse were not handled. That was handled by a 14:04
26 military lawyer recommended either in the disciplinary
27 system, or then sent off to the civilian. So, what we
28 dealt with was minor complaints, I would say -- Redress
29 of wrongs, primarily.

1 205 Q. Yes. Can I just touch on that then? Did that exclude
2 bullying and harassment or did it include it?

3 A. No, it did not. No, it did not.

4 206 Q. So, could you make a complaint of that within your
5 Redress of Wrongs system in any way? 14:05

6 A. I'm sorry?

7 207 Q. Could you make a complaint of bullying and harassment
8 within your Redress of Wrongs system?

9 A. You could.

10 208 Q. You could? 14:05

11 A. Yes.

12 209 Q. But did it have to be made initially or was it
13 envisaged as being done through the chain of command?

14 A. It didn't have to go through the chain of command. You
15 could complain directly to the Ombudsman, for example, 14:05
16 for the same thing.

17 210 Q. And was that always an option from the beginning from
18 when you came in?

19 A. Absolutely, yes.

20 211 Q. So, what I'm interested in seeing is alternative 14:06
21 pathways and you could stay within the system, as it
22 were, or go to the Ombudsman, is that correct?

23 A. You could.

24 212 Q. I'll come back to that in a moment. Could I go back to
25 page 4162 of the papers? This is, again, your own 14:06
26 assessment document. And, at the end of the document
27 there, bottom paragraph on the left:
28
29 "During my eight years as Ombudsman and a further four

1 years as a member of the DCAF Advisory Board, I gained
2 valuable insight into Armed Forces and oversight
3 systems of a number of countries, including Ireland,
4 and the men and women serving in the Irish Defence
5 Forces. They contribute to a professional force that 14:06
6 is widely respected, particularly for its peace-keeping
7 role overseas. Irish personnel - both male and female
8 - have established a strong reputation in missions
9 under the United Nations for their calm approach,
10 adaptability and ability to work effectively with local 14:07
11 communities."

12
13 And that, presumably, is your current view, obviously?

14 A. Absolutely.

15 213 Q.

16 "while reviewing the conduct of many and the
17 misconduct of a few, it is important to keep in mind
18 the positive aspect of service. Among these is the
19 growing integration and collaboration between men and
20 women across roles. Over time, this has strengthened 14:07
21 team work, broadened perspectives in decision-making
22 and contributed to a more modern and capable
23 organisation."

24
25 And you also then refer to the issues of: 14:07

26
27 "The contribution of both men and women reflect the
28 shared ethos with duty, cooperation and public
29 service."

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A. Yes.

214 Q. And that it:

"...continues to shape the identity and effectiveness
of the Defence Forces and contributes to the
development of a more positive and professional
military culture."

14:07

You go on then to identify, on the following page, sort
of core aspects of the military which are its
fundamental values. And I think they're of interest to
the Tribunal in every respect as being the values that
ought to guide the leadership in the military, the
behaviour of the military, and the processes that exist
or should exist or should be amended to ensure that
those are achieved. And that's a pretty fundamental
proposition that nobody could disagree with, I think,
those values. You'd agree with that?

14:08

14:08

A. It has been part of my values too, yes.

14:08

215 Q. Yes. You then refer to the brothers-in-arms mentality
in the following terms:

"Brother-in-arms mentality: Strong within. Soldiers
must be able to trust completely the person beside
them, someone who may in theory be responsible for
saving their life. This bond of trust can be strained
if there is a complaint or whistleblowing cases
involved. There is an underlying belief that one

14:09

1 should not expose fellow soldiers to such situations.
2 Reporting on a fellow cadet from the military academy
3 or a fellow officer is often avoided out of fear that
4 it would harm that individual's future career. This is
5 a key element of the military's brotherhood culture." 14:09

6
7 And then you go on to say what that results in.

8
9 I don't know if you were here for Sgt. Kennedy's
10 evidence this morning? 14:09

11 A. No.

12 216 Q. No. All right. Well, I'll just say that the Tribunal
13 heard evidence from a serving sergeant who gave very
14 clear evidence of circumstances such as is envisaged
15 here which prevented her from making a report, the 14:09
16 fears and retribution, career etc. That's a very
17 common feature of military organisations and I take it
18 you'd agree it's very hard to change that culture?

19 A. How hard it is? I believe that everything is
20 changeable -- 14:10

21 217 Q. Yes.

22 A. For the better.

23 218 Q. Yes. But in terms of making a complaint, I mean this
24 seems to be a behavioural attitude which is not, in the
25 first instance, related to a process or procedure which 14:10
26 is designed for complaints; it's an attitude related to
27 your fellow soldiers and how they will treat you if you
28 rock the boat, as it were. Would that be a fair way of
29 describing it?

1 A. Yes, probably.

2 219 Q. And is one of the difficulties that it's inherent in
3 any complaints system, whether internal or external, if
4 a person makes a complaint, it ought to be
5 investigated; you'd agree with that. And if it's 14:11
6 investigated, it's extremely likely that the fact of
7 the complaint and the subject matter of it becomes
8 known very quickly once the investigation starts. And
9 is there any way to avoid that, in your view, or
10 minimise it? 14:11

11 A. If you want to minimise it, you have to work with the
12 attitudes on cultural aspects. That's the only way.
13 And, of course, you have to make a robust framework
14 around people. So, you know, you have to create an
15 environmental of openness/trust and that you really 14:12
16 feel free from fear. I agree that is difficult, but
17 it's makeable.

18 220 Q. I mean, just a simple example: A soldier wishes to
19 make a complaint. Cpl. Jones says that Cpl. Smith hit
20 him. Two others joined in, and five others witnessed 14:12
21 it. In practical terms, if he makes that complaint and
22 there's an investigation, the people ought to be called
23 in and called to account and challenged about their
24 behaviour, and, if it's abusive behaviour, to put it in
25 a crude way, you'd agree that it should be stopped and 14:12
26 rooted out and prevented from occurring?

27 A. It depends. I don't think I should go into those type
28 of examples. That would be a speculation.

29 221 Q. Yes, but I'm talking about a complaints process?

1 A. Yeah, okay.

2 222 Q. And you've expressed views about the chain of command

3 --

4 A. Yeah.

5 223 Q. And certainly the way you've expressed it suggests that 14:13

6 obviously the chain of command can itself sometimes be

7 the problem, isn't that right?

8 A. Absolutely.

9 224 Q. And, in that instance, in principle, would you agree 14:13

10 that an alternative reporting mechanism is a strategy

11 or an avenue that could be left open to a person who

12 doesn't want to avail of the chain of command?

13 A. Absolutely. Absolutely. As I said, in Norway, we can

14 also complain directly to the Ombudsman, or outside. I

15 think that's a system that is challenging, not well 14:13

16 enough, and this not well enough is also because

17 there's a lot of self-censoring for why or when you are

18 complaining.

19 225 Q. I mean, would you agree with me it differs, obviously,

20 from a commercial institution or any other non-State 14:14

21 body, but Defence Forces tend to be large organisations

22 with a structured management. And from the point of

23 view of any abuse or any wrong that could be the

24 subject matter of a complaint, isn't it better, in

25 principle, for the management to become aware of it at 14:14

26 the earliest possible time to have it addressed in a

27 timely way?

28 A. Compared to what?

29 226 Q. Pardon?

1 A. Compared to what? Well, they will be aware of it, of
2 course.

3 227 Q. Yes. But what I'm envisaging is that you're not
4 excluding the chain of command as an appropriate and
5 immediate avenue for complaining? 14:15

6 A. No.

7 228 Q. And you haven't done so in Norway?

8 A. No.

9 229 Q. No.

10 A. I haven't. 14:15

11 230 Q. Yes.

12 A. But I would like to see that there is an another option
13 that's only one way -- than only one way.

14 231 Q. Yes. So, if there's a problem with one way, it seems
15 logical and reasonable and necessary to construct 14:15
16 another alternative possible way?

17 A. That's not for me to give advice to the Irish Defence
18 Forces in this matter.

19 232 Q. Yes. Well, I suppose --

20 A. It is possible, of course. 14:15

21 233 Q. I do want to acknowledge that you're not here to either
22 make decisions or make recommendations, but you're
23 giving observations which are very helpful.

24 A. Yes.

25 234 Q. But certainly the other way it's been done, and it 14:16
26 seems the only other way it's been done in Norway is to
27 have the option to go to the Ombudsman as well, is that
28 right?

29 A. That's a usual option anyway, yes.

1 235 Q. Okay. And would you agree with me, therefore, that, in
2 principle, having a chain of command option for either
3 a Redress of Wrongs wrong or another form of wrong in
4 the context of abuse is a reasonable step to take if
5 one can take steps to ensure that it's a safe way to 14:16
6 pursue a complaint?

7 A. I would agree.

8 236 Q. Can I ask you about your experience as an Ombudsman in
9 dealing with serious complaints, what type of
10 complaints did you deal with? 14:17

11 A. I have to say almost everything, but not the type of
12 complaints that went to the grave criminal cases. That
13 would go directly -- that never entered to the
14 Ombudsman. Some put questions to the Ombudsman on how
15 to deal with things, and they got advice how to deal 14:17
16 with it.

17 237 Q. Yes.

18 A. And the Ombudsman did not deal with this. If it was a
19 clear criminal case, it was -- they were, of course,
20 asked or advised to go to the police. 14:18

21 238 Q. Yes. And you'd expect that to be done. If there's any
22 suspicion or complaint of a serious criminal offence,
23 it should be referred to the police?

24 A. I think so, yes.

25 239 Q. And Mr. McCann, when he was asking you questions on 14:18
26 behalf of the Defence Forces, referred to the change in
27 relation to rape cases and sexual assault cases no
28 longer being dealt with by the military justice system.
29 That was brought about, do you know, as a result of one

1 of the IRG recommendations, and the Tánaiste and
2 Minister for Defence at the time arranged that -- the
3 Chief of Staff agreed that from that date after the
4 publication of the report, all cases would
5 automatically go to An Garda Síochána, our Police, and 14:18
6 then that was given effect to by change in the law,
7 which took away the jurisdictions of the court-martials
8 to try those cases. And, presumably, you viewed that
9 as a very good development?

10 A. Mmm. [witness nods]. 14:19

11 240 Q. Thank you. You go in, in your assessment, to refer to
12 another, a number of other countries - Germany,
13 Austria, United Kingdom and then Norway - and you refer
14 to the Norwegian study on page 4164. That's at the top
15 of page 3 of your assessment document there, and that's 14:19
16 published by the Norwegian Defence Research
17 Establishment and that's a part of the defence
18 architecture in Norway, effectively. It's a State
19 body?

20 A. It is directly under the Minister for Defence, yes. 14:20

21 241 Q. And you show there different aspects of the problem of
22 gender and age effect in relation to experiencing
23 bullying and sexual harassment and, at the end of the
24 paragraph:
25
26 "Young people, especially young women, are more likely
27 to experience bullying and sexual harassment."
28
29 And the next paragraph:

1
2 "Even though for decades there have been strong
3 structural strength in the Norwegian Armed Forces in
4 handling complaints, cultural challenges still exist."
5 14:20
6 what do you see as the cultural challenges that might
7 be relevant?
8 A. I'm not sure what you are asking.
9 242 Q. well, I'm asking what you mean there. Do you see the
10 third paragraph down, the paragraph beginning "Even 14:21
11 though for decades..." --
12 A. Yes, I'm reading, yeah.
13 243 Q. Yes, "...cultural challenges still exist." what did
14 you have in mind there, in particular?
15 A. I think I had the structure, the unit structure mostly, 14:21
16 and also going back to a brother in arms, more or less,
17 I would say.
18 244 Q. Yes. Okay. Could I ask you to look at the other
19 Norwegian studies that have been made available.
20 Page 8751, it states: 14:22
21
22 "Several studies have shown that both women and men
23 experience bullying and sexual harassment in the
24 Norwegian Armed Forces. This has unfortunate
25 consequences for those who are exposed to these actions
26 and is harmful to the Norwegian Armed Forces' ability
27 to utilize and retain competent personnel. In addition,
28 the unwanted behavior may negatively affect the
29 reputation of the Norwegian Armed Forces with the

1 possibility of reduced recruitment."

2
3 So would you agree that it's in everyone's interest to
4 establish protective and preventative measures to try
5 and train them and keep everyone trained in respecting 14:22
6 people's dignity and protecting them from this type of
7 behaviour?

8 A. Absolutely, yes.

9 245 Q. You go on to say:

10
11 "Therefore, both the political and military leadership
12 desire to implement relevant measures for the
13 prevention of bullying and sexual harassment."

14
15 And, again, it's necessary to have both political and 14:23
16 military leadership on board for that totally, isn't
17 that right? It goes into the details of the study
18 there at the bottom, but four lines up, they're
19 suggesting what the study should consist of:

20
21 "We suggest that the study consists of three parts: 1)
22 analysis of anonymous case reports from the Norwegian
23 Armed Forces' Occupational Safety and Health
24 Administration, 2) a comprehensive quantitative survey
25 in the Norwegian Armed Forces that can also be used to
26 further develop the measurement instruments, and 3)
27 qualitative case studies in units with both high and
28 low incidence of bullying and sexual harassment.
29 Guidelines and methods for the prevention of bullying

1 and sexual harassment should be developed on the basis
2 of the knowledge provided through the proposed study."
3

4 Now, you're not the author of the report?

5 A. No.

14:24

6 246 Q. But can you, firstly, confirm that this is a document
7 published by the Norwegian Defence Research
8 Establishment?

9 A. It is.

10 247 Q. And do you know how that has developed over the
11 succeeding years?

14:24

12 A. I'm not 100% sure about that.

13 248 Q. Okay.

14 A. But there has been, I would say, a very positive
15 development in the recent years. The service started a
16 long time ago and it started with the Ombudsman and
17 with the association for the conscripts, and then it
18 was to develop into the more methodical service from
19 the Defence Research Institution.

20 249 Q. The next reported abstract does seem to relate to the
21 conscripts. If we could turn to the next page, 8752,
22 it recites that:

14:25

23
24 "In the autumn of 2020, the Norwegian Armed Forces
25 surveyed bullying and sexual harassment behaviors among
26 its military and civilian employees and conscripts.
27 The purpose of the study was to develop a better and
28 more precise knowledge base for the ongoing protective
29 and preventive work in the Armed Forces. The Norwegian

1 Defence Research Establishment (FFI) has analyzed the
2 results of the study, which had 10,118 respondents and
3 a total answering percent of 54."

4
5 And it goes on then into the methodology and the types
6 of bullying experienced etc. But the Tribunal may be
7 more interested in your views on the reasoning of the
8 non-reporting. If we look at six lines from the
9 bottom, the sentence beginning "Both women and men...":

14:25

10
11 "Both women and men stated that they did not experience
12 the behaviour to be serious enough, that they believed
13 a report would not change anything, or that they were
14 afraid of the consequences of reporting. Among those
15 who did report, most have done so to their nearest
16 leader/manager or to a colleague/fellow soldier."

17
18 And it goes on to say:

19
20 "More respondents have reported bullying than sexual
21 harassment. The frequency of both bullying and sexual
22 harassment in the Armed Forces has decreased since
23 2018, when a similar study was completed. The decrease
24 is, however, lowest among women in the youngest age
25 group, where the frequency was the highest."

26
27 what I'm interested in there is the sentence which
28 notes that most who reported did so to their nearest
29 leader or manager --

1 A. Yes.

2 250 Q. would that seem to emphasise that the availability of
3 reporting through your chain of command should be
4 preserved for those who wish to use it?

5 A. well, that line of reporting is there. 14:27

6 251 Q. Yes. But would you agree that that is obviously
7 something that's useful and should be available, even
8 if there's an entitlement to go to an ombudsman
9 directly?

10 A. well, for me, that's quite natural. It's been there 14:27
11 all the time. I would add, though, that even though
12 that many didn't report, many of those reported to the
13 Ombudsman -- or also to their unions. So there's lots
14 of reporting going on that you will not find in the
15 Defence Research Institution study that -- so there are 14:28
16 more complaints than you actually will see, and that's
17 also in the sentence here that they're afraid of
18 consequences of reporting, but they did report, but
19 they did report through another pipeline.

20 252 Q. Yes. The previous abstract referred to anonymous case 14:28
21 reports from the Norwegian Armed Forces' Occupational
22 Safety and Health Administration. Do you know anything
23 about the way that that would have been done or the
24 purpose for which it might have been used in dealing
25 with prevention or education methods? 14:28

26 A. No. In general, what I do know is that it's been a
27 huge political awareness that these kind of services
28 and studies shall be done and should be followed up.
29 But the methods and the mechanism in that survey, I'm

1 not quite sure.

2 253 Q. Yes. The following report on 8751, again it's a
3 one-page abstract and, I mean, we're grateful to have
4 these in English on the website there available. It's
5 notable, again, four lines from the bottom that most 14:29
6 have reported it to their immediate supervisor. This
7 didn't relate directly to the military, but to military
8 material agencies and Defence Estates Agency etc.

9
10 The fourth report, which relates to 2025 based upon the 14:29
11 2024 survey, is at 8754. And again it's reporting from
12 the top line, as it were:

13
14 "This report presents the results from an evaluation of
15 measures against sexual harassment in the Norwegian
16 Army in 2024. The evaluation covers initiatives from
17 "Comprehensive Plan against Bullying and Sexual
18 Harassment in the Armed Forces") as well as the Army's
19 own measures, focusing specifically on conscripts and
20 their squad leaders. This is the first time the
21 effects of the Armed Forces' anti-harassment measures
22 have been systematically studied."

23
24 And it goes through the methodology there. But, at the
25 end, it says: 14:30

26
27 "We recommend strengthening preventive efforts
28 specifically targeting gender-based harassment, working
29 systematically to reinforce social norms and zero

1 tolerance for harassment, and improving the continuity
2 between early preventive lessons and ongoing
3 squad-level discussions."
4

5 So there is an continuous effort being made there in 14:30
6 your own country to deal with these?

7 A. Absolutely.

8 254 Q. But, again, it seems to be difficult to eradicate it,
9 in a sense. Are you familiar with what the latest
10 steps they've taken to achieve that are, yourself? 14:31

11 A. I'm not following it --

12 255 Q. Yes, all right. Just, finally, leaving this issue, the
13 utility of such a research establishment, Mr. Anderson,
14 who was here yesterday, the Australian Armed Forces
15 Ombudsman, laid some degree of stress upon the 14:31
16 collection and recording of data, its analysis and use
17 and being of major benefit in planning to take
18 necessary measures.

19

20 From your knowledge of the Institute, is it something 14:31
21 that is of significant value to the Norwegian Armed
22 Forces in carrying out research of all sorts of
23 matters? Now, the Tribunal isn't interested in all
24 sorts of matters, but it carries out this sort of
25 research, and would you endorse the carrying out of all 14:32
26 necessary researches to achieve these objectives by a
27 specially tasked body?

28 A. First and foremost, the Defence Research Institute is
29 an institute for military and veteran military planning

1 and such --

2 256 Q. Yes.

3 A. And in the later years, it also dealt with more the
4 human resources on the personnel side of it. And they
5 are doing a very good job of this, of collecting data, 14:32
6 absolutely. Doing service, absolutely. And it could
7 be that this is an example that Ireland could do the
8 same, yes.

9 257 Q. All right. Just leaving that, then, you go on to look
10 on the following page with how Norway copes with 14:33
11 different matters and, if we could turn to page 4165,
12 you set out -- this is really a table of information
13 relating to accountability of the military, isn't that
14 right, in different respects, on the left-hand side of
15 the page. But you say in the middle: 14:33

16
17 "Personnel have access to multiple reporting pathways

18
19 • Chain of command
20 • Independent oversight bodies 14:33
21 • Civilian legal mechanisms."

22

23 A. Yes.

24 258 Q. Now, I understand what you've told me about complaints
25 of abuse not being of a serious nature not really going 14:33
26 up the chain of command, but apart from the formal
27 processing of a complaint, does the information about
28 them go up the chain of command so that the military
29 knows what's going on, even if they can't deal with it?

1 A. In former days I would say, definitely, yes. I'm not
2 quite sure these days but I guess it's the same.

3 259 Q. Okay.

4 A. That it will have knowledge.

5 260 Q. Yes. And independent oversight bodies, now, you're not 14:34
6 explicitly referring, it would seem, there to the
7 Ombudsman. Are there other bodies that have that same
8 oversight?

9 A. Yes, if you look above it you will also see the
10 Civilian Ombudsman is dealing with many cases, you can 14:34
11 complain directly to the Civilian Ombudsman. Anything
12 relating to security, security clearance, things like
13 that, you are directed to a Parliamentary Committee, or
14 to the Ombudsman for the Defence Forces. So we have
15 many options. 14:35

16 261 Q. And then the civilian legal mechanisms there; is that
17 the Human Rights Commission or is it other --

18 A. Or directed to the Attorney General. That's always a
19 possibility.

20 262 Q. And has the Attorney General been given a specific 14:35
21 function --

22 A. Yes.

23 263 Q. -- to deal with the military complaints?

24 A. Yes. What used to be Military Attorney General, that
25 system is now at the Civilian Attorney General. 14:35

26 264 Q. Okay. So he's taken over that responsibility?

27 A. Yes.

28 265 Q. Or she?

29 A. Yes.

1 266 Q. Yeah.
2 A. As top man or woman of the system, of course.
3 267 Q. Yes. Thank you. Now, you go on to deal with the role
4 of the Ombudsman and Mr. McCann has asked you lots of
5 questions about the Ombudsman and I don't think I need 14:36
6 to ask you anything further other than that. The issue
7 about a past remit and own-volition inquiries,
8 obviously, when you came into your position in 2006,
9 your office had been established since 1952, I think,
10 is that correct? 14:36
11 A. [Witness nods].
12 268 Q. And did I understand your evidence to be that you did
13 go back before, not just your appointment but before
14 the existence of the Ombudsman, as such, into the past
15 before 1952? 14:36
16 A. I'm sorry?
17 269 Q. I think you gave an example of one of your
18 own-initiative investigations --
19 A. Yes.
20 270 Q. -- going back in time? 14:36
21 A. Yes.
22 271 Q. And did I understand you to say that it went back
23 before 1952?
24 A. 1946.
25 272 Q. 1946? 14:36
26 A. Yeah.
27 273 Q. And I better not convey any opprobrium; what was the
28 jurisdiction for that?
29 A. There's no time limits for a complaint to the

1 Ombudsman.

2 274 Q. I see.

3 A. Yes.

4 275 Q. And can I ask you this; did you have criteria laid down
5 for making a decision about what sort of own-volition, 14:37
6 own-initiative investigations you would do?

7 A. That was not done by an initiative, that was a
8 complaint coming, and we had one in '46 and we have a
9 couple from the '53s, 1953, due to tuberculosis and
10 also loss of hearing. And that was a complaint coming 14:37
11 and, of course, it's very difficult to establish what
12 exactly happened but the complaints were in such a
13 shape that you could establish that it could have
14 happened.

15 276 Q. Yes. 14:38

16 A. And then you have, as an ombudsman you also had in
17 Norway then you had the responsibility to recommend
18 direct to Parliament that they could be a formal
19 evaluation from Parliament and I'm not sure about the
20 institute for a payout, I don't know the exact name and 14:38
21 I have to find a translator for that. But there's a
22 possibility that Parliament may have an arrangement
23 that they could actually make a payout for something
24 that happened a long time ago.

25 277 Q. Yes. 14:39

26 A. So, that could be a recommendation from the Ombudsman
27 for that.

28

29 Then the '46 case, that was -- what he asked for was

1 something he meant was a wrongdoing and he wanted an
2 apology, actually, from a high-ranking officer or the
3 Prime Minister, or whatever. We took the case in the
4 sense that we are taking people seriously. That's how
5 it is.

14:39

6
7 So, if you have served in the Norwegian Armed Forces
8 there is no time limit at all for when you can
9 complain.

10 278 Q. Yes. But, obviously, you refer to that as being,
11 certainly the first one being a complaint-triggered
12 one, but can you give the Tribunal any examples of your
13 own-volition investigation or inquiry that you decided
14 and are there limits or criteria set down that you have
15 to satisfy or seek the consent of the Defence Forces,
16 or...

14:39

17 A. After my time there is a new Military Ombudsman's law
18 and I would say, I wouldn't call it a restriction but
19 more formalised of when and where and how you can take
20 an initiative. In my time I actually could take
21 initiative for everything.

14:40

14:40

22
23 We had a situation in Afghanistan for medevac. We
24 didn't bring our own helicopters, for example. We were
25 in cooperation with the German forces and their
26 helicopters. I'm not bad mouthing the Germans but they
27 were not flying in the same way and always in at night
28 like our boys did. And then we took an initiative, I
29 went to France then and made an inspection and

14:40

1 recommended them to the Minister of Defence and also to
2 Parliament that we should bring our own squadrons to
3 Afghanistan. And that was an operational matter more
4 than most. But, at the same time, very valuable for
5 the arrangement of medevac. So that was one thing.

14:41

6
7 From an inspection we see experienced old barracks, not
8 up to standard, today's standard, that would be typical
9 for taking an initiative, proposing and it also reports
10 to Parliament because it's very much about funding.

14:42

11 So, as ombudsmen we take an initiative on almost
12 everything.

13 279 Q. okay. In theory almost everything.

14 A. Correct.

15 280 Q. Right. And leaving that, then, at page 4168 and 4169
16 you have part of this, Part 5 headed:

14:42

17
18 "Historical patterns of abuse and bullying."
19

20 A. Yes.

14:42

21 281 Q. There's many different judgements and assertions in
22 those nine paragraphs and is that simply based upon
23 your reading around the subject?

24 A. Much reading but, also, direct thoughts with former
25 ombudsmen. I knew only two of them. So, much reading
26 but, also, direct talks with the Irish Ombudsman, the
27 former Ombudsman.

14:42

28 282 Q. This is your judgement based upon your reading of
29 whatever material you did read?

1 A. Partly, absolutely. And, also, I would say also the
2 Irish Defence Forces is not that different from the
3 Norwegian military environment.

4 283 Q. So, are you saying that you saw things that you,
5 perhaps, expected to see or find or read about or hear 14:43
6 about?

7 A. Sorry?

8 284 Q. Are you saying that you heard things that you had
9 expected to hear about, things that you'd read about?

10 A. I wouldn't put it that way, no. 14:43

11 285 Q. All right. You talk about the evolution of procedures
12 then on the page across there. And I mentioned the
13 Gleason Commission earlier, which reported in 1990 and
14 out of that came the A7 procedures. There was the
15 newly established representative associations, and that 14:44
16 led, in 1996, to the publishing of the first Chapter 1
17 and Chapter 2. But did you understand that they had
18 been agreed by the representative associations in a
19 conciliation and arbitration process that the
20 representatives of the enlisted men and officers had 14:44
21 agreed to those?

22 A. Yes.

23 286 Q. And they, presumably, thought they were fit for purpose
24 at the time?

25 A. I think that's been very clear that they have been 14:44
26 involved.

27 287 Q. Yes.

28 A. Not in the same strict sense as the -- I mean, the
29 Irish unions are different from the Norwegian unions

1 which is much more trade unions in addition to being
2 associations for military people.

3 288 Q. Yes. Mr. McCann drew attention to the first element of
4 the 1996 A7, the introduction of a civilian in the
5 sense that a Complaints Inquiry Officer was authorised 14:45
6 under Regulation 19/2021 to be tasked by the Minister
7 to inquire into complaints that had been made. And
8 were you aware that that Complaints Inquiry Officer was
9 a civilian and was the subject matter of agreement with
10 the associations, again, participating in the agreement 14:45
11 of the nominated person?

12 A. I'm not sure that I recollect that exactly, no.

13 289 Q. It would seem to give an extra, on one view an extra
14 sort of legitimacy to an externalised person giving an
15 independent view possibly to the Minister about 14:46
16 complaints by someone who had been confirmed, as it
17 were, with the agreement of the representative
18 association; would you have seen that as an important
19 step at the time, or now?

20 A. I'm not the one to rank a civilian advice compared to 14:46
21 military advice.

22 290 Q. In any event, the Complaints Inquiry Officer reported
23 annually to the Minister --

24 A. Yeah.

25 291 Q. -- until it was replaced by the Ombudsman system and 14:46
26 all of those Complaints Inquiry Officer reports have
27 been discovered to the Tribunal to assist the Tribunal
28 in its evaluation. You, presumably, haven't seen any
29 of those in the course of your research or preparation?

1 A. I looked through some papers but not everything, no.

2 292 Q. And I don't expect you to have gone through everything
3 and I'm not being critical?

4 A. No, no, no, no.

5 293 Q. Thank you. You do refer to the Doyle Report in your 14:47
6 statement and in your evidence, indeed. I'm not going
7 to ask you to go deep-diving into all these reports as
8 we go along but I'm going to refer you to the statement
9 to the Tribunal made by the Secretary General of the
10 Department, and if I could ask you to look at 14:47
11 page 8088. Oh, sorry... it's 8099. 8099, that's it
12 there. It just recites at the top:
13

14 "The Minister for Defence invited Dr. Eileen Doyle, who
15 had chaired the Government's task force on the 14:48
16 prevention of workplace bullying, to lead an external
17 advisory committee."
18

19 Its purpose is set out there and the members are set
20 out there. And it reported. The Committee reported 14:48
21 and if we control down, Ms. Heavey:
22

23 "The Minister for Defence wrote to the Chief of Staff,
24 where he advised 'the recommendations of the report
25 must now be comprehensively built into the general 14:49
26 employee relations, human resources managed system
27 right across and through the Defence Forces, i.e. all
28 ranks all services and corps, PDF and RDF."
29

1 That led, then, to the establishment of the management
2 company, the IMG Group with Dr. Doyle presiding. That
3 went through three different iterations. Would you
4 agree with me that they are consistent with a committed
5 ministerial political level to achieve the 14:49
6 modernisation and changing the culture of the Defence
7 Forces, particularly in relation to education in the
8 context of dignity and anti-bullying issues?

9 A. I don't recall exactly but I believe that in my
10 conclusions, in my conclusion, I write something about 14:50
11 it's been a very good development through the years, a
12 very positive development and I would say a high
13 awareness both from the political side and the military
14 side for the Defence Forces in Ireland. Somewhere I
15 would have wrote something about that. 14:50

16 294 Q. Yes.

17 A. Yes, I agree that this is a good awareness from the
18 Minister, yes.

19 295 Q. Again, the IMG reported, 1 and 2, and the second one
20 led to the first climate survey that I've referred to, 14:50
21 then further studies. And you'd agree with me that
22 they're valuable pieces of work to do to assess, from
23 the members' point of view, to get a clear perspective
24 on how the Defence Forces is behaving, and it is a fact
25 that a substantial percentage, 47%, were dissatisfied 14:51
26 with the Redress of Wrongs procedure and you've
27 probably seen that in the course of you reading. You
28 wouldn't be surprised by that, I think, at the time?

29 A. No, I wouldn't.

1 296 Q. [Short pause]. The third IMG Report and the Secretary
2 General describes that at page 8106, and if one sees in
3 the middle of the page there she states:
4
5 "2014 IMG also recommended that a further independently 14:52
6 chaired review process in the context of workplace
7 dignity, bullying harassment, sexual harassment, and
8 discrimination in the Defence Forces be conducted
9 within a period of 60 months from the publication of
10 the IMG Report. These 60 months expired mid 2019." 14:52
11
12 And she goes on to say:
13
14 "As Secretary General, I was requested in October 2020
15 by the Defence Forces to consider establishing new IMG 14:52
16 under an independent chairperson. Having reviewed the
17 situation, I engaged with the Chief of Staff -
18 comprehensive correspondence has been provided to the
19 Tribunal..."
20 14:53
21 But she goes on to report:
22
23 "However, I took the view that in 2020 the abuse,
24 harassment, disrespect and gaslighting in the workplace
25 remained an issue and continued to be very prevalent in 14:53
26 the Defence Forces. A number of individual cases at
27 that time highlighted the need for a 'back-to-basics'
28 assessment rather than a fourth iteration of the IMG
29 Reporting process. While the Defence Forces wanted to

1 continue with the IMG process, this did not accord with
2 the view of the Department of Defence. IMG IV did not
3 proceed as it was felt in its current format and
4 iteration it would not address the serious issues that
5 emerged. This position was not accepted by the Chief
6 of Staff and military management. Extensive
7 discussions took place between the Department of
8 Defence and the Defence Forces during the course of
9 2020 and early 2021, on the next appropriate steps."

14:53

10
11 The 'back-to-basics' approach there envisaged by the
12 Secretary General was adopted by the Minister and the
13 preparation for that was at an advanced stage when the
14 Women of Honour programme was broadcast. And the
15 Secretary General, at the bottom of the next page,
16 8107, says the following:

14:53

14:54

17
18 "The broadcasting and content were very powerful and
19 brought significant scrutiny to the issue. In the
20 aftermath of the broadcast in October 2001, with the
21 Minister's agreement, Raiseaconcern was engaged by the
22 Department, as a confidential contact person to assist
23 both serving and former members of the Defence Forces
24 in documenting their allegations to provide guidance to
25 follow-on options. Raiseaconcern has considerable
26 experience of working with both private and public
27 sector bodies and is a recognised body for the
28 provision of a safe, secure, confidential and impartial
29 service for which concerns can be raised about

14:54

14:54

1 workplace wrongdoing. In addition, significant
2 interaction with the Women of Honour Group commenced
3 together with internal Defence Forces female members."
4

5 And, eventually, as you know, I think you heard or saw 14:55
6 the women of Honour broadcast?

7 A. I heard them on the radio.

8 297 Q. And I think you became aware that the Government
9 appointed a judge-led IRG to examine all these dignity
10 and equality issues within the Defence Forces. And 14:55
11 you've read the report of the IRG Group, obviously. Do
12 you know what the steps that were taken then by the
13 Government and the Minister after the IRG reported?
14 Can I ask you to look at the bottom of page 8108? And
15 the Secretary General says: 14:56

16
17 "The IRG was fully supported in its endeavours by the
18 Minister and the Department of Defence. It produced an
19 interim report in August 2022 and ultimately it
20 produced its final report in March 2023. The 14:56
21 Government agreed to progress all of the
22 recommendations contained in the report."
23

24 And she then lists actions which have been taken and in
25 relation up to the date of the establishment of the 14:56
26 Tribunal and just to look at them, and beyond even.
27

28 "The amendment of Section 169 and 192 of the Defence
29 Act by way of Part 4 of the Criminal Law (Sexual

1 Offences and Human Trafficking) Act, 2024 to provide
2 that An Garda Síochána have sole jurisdiction within
3 the State to investigate alleged sexual offences
4 committed by persons subject to military law."

14:56

5
6 And you've become aware of that, obviously.

7
8 The establishment of a tribunal - I don't need to say
9 more about that - it was one of the headline
10 recommendations by the IRG to establish a statutory
11 fact-finding inquiry into the matter. And, obviously,
12 your conclusions about the historic position that I've
13 referred to in paragraph 5 of your assessment earlier,
14 was based not on a fact-finding mission that had
15 completed its task but on the basis of all of the
16 allegations and the evaluation of the allegations and
17 the responses of the different parties to the problem,
18 which clearly emerged, albeit...

14:56

14:57

19 A. Definitely a big part of but that is not correct. It's
20 a combination of everything, I would say.

14:57

21 298 Q. Yes.

22 A. Not only the allegation but, of course, they are an
23 important part.

24 299 Q. Yes.

25 A. What you are describing are, of course, these are good
26 steps, important steps that have so far ended with the
27 Tribunal.

14:58

28 300 Q. Yes.

29 A. Definitely on the right path and full credit for that.

1 301 Q. Yes. The next one she refers to is "a new independent
2 grievance manager." And the Tribunal has heard
3 reference to that. There's the appointment of a senior
4 rank of colonel of a gender diverse and inclusion
5 adviser which means a new inclusion office. 14:58
6
7 "The Defence Forces have developed mandatory sexual
8 ethics and responsible relationship workshops in
9 cooperation with University College Cork. These
10 workshops are mandatory for all personnel to attend." 14:58
11
12 And you regard that, presumably, as a step of some
13 significance, mandatory training in that area.
14
15 The Tribunal heard evidence from Mr. Lyons, I think, 14:58
16 that close to 4,000, 3,000 and something is the number,
17 have been trained to date in that. That was at the
18 time of giving of his evidence.
19
20 "The establishment in 2023 of an External Oversight 14:59
21 Body of the Defence Forces."
22
23 And I think you're aware of that, that it was
24 established immediately following the publication of
25 the report and is now on a statutory basis and can have 14:59
26 public hearings, as it were, with the Chief of Staff of
27 the Defence Forces and other people that it wishes to
28 take evidence from or hear submission from; you regard
29 that as a good form of oversight, I take it? That's a

1 yes, I think

2 A. Yes.

3 302 Q. There's also a recommendation in relation to the
4 establishment of the complaints process for civilian
5 employees and civil servants. That would bring all 15:00
6 three streams of people who are connected with the
7 Defence Forces into a single possible complaints
8 process and that's what's been done in Norway, as I
9 understand it?

10 A. Yeah. 15:00

11 303 Q. Is there any downside to that or any disadvantage to
12 that, in your view?

13 A. I wouldn't say so, no.

14 304 Q. Just going back to your second document, the detailed
15 comments on the seven complaints process. It starts at 15:01
16 page 4488. You seem to endorse it as a process which
17 is clear, simple but not appropriate for some
18 particular types of complaints; would that be a fair
19 summary?

20 A. I'm not sure that I understand exactly what you mean. 15:01

21 305 Q. Well, I know you've criticised the chain of command
22 issue, but if a complaint is made about the person
23 who's in command, in immediate command, would you think
24 it appropriate to provide an alternative course in such
25 circumstances so that the complaint can be conveyed 15:02
26 otherwise up the chain; is that a way of avoiding the
27 problem or dealing with it satisfactorily?

28 A. I believe that having another option would be okay.
29 Just to say about when I worked with this, the seven

1 processes, what I looked at all the time was if the
2 processes had been fully adequate or fully appropriate
3 during that 41 years, that was what I looked at, and
4 that is the context which this is written.

5 306 Q. Yes. 15:02

6 A. Yes.

7 307 Q. And I mean it may be unfair to ask you to design a new
8 scheme or elements of a possible scheme on the hoof and
9 I'm not trying to do that, I'm trying to get your
10 valuable opinion on whether elements could work or if 15:03
11 there's a reason why they ought not to be considered or
12 of lessor value in your view.

13 A. I could certainly write at least considerations,
14 absolutely.

15 308 Q. If I -- 15:03

16 A. Please, I try to understand.

17 309 Q. Perhaps we'd look at page 4489. In the third paragraph
18 there you identify institutional design:
19

20 "The core problem with one of institutional design: 15:03
21 The same chain of command that is the subject of the
22 complaint is also the mechanism through which the
23 complaint must be processed. Where an allegation is
24 directed against a superior, a colleague, or where the
25 conduct complaints of reflects cultural norms within 15:04
26 the unit, the chain of command mechanism lacks the
27 distance, independence, and incentive necessary to
28 investigate and adjudicate fairly. In a close-knit
29 military environment, the personal and professional

1 relationships that bind officers together are an asset
2 to operational effectiveness but a liability to impartial
3 complaint resolution. It is not a reflection on the
4 individual integrity and instructive feature of the
5 design."

15:04

6
7 May I suggest that that observation seems to be
8 directed only to the situation where the chain of
9 command is the subject of the complaint?

10 A. Yes.

15:04

11 310 Q. And it would seem to follow, perhaps, that you would
12 agree with me that an alternative mechanism on the side
13 would get over that difficulty?

14 A. Yes.

15 311 Q. Okay. The next paragraph then deals with the issue of
16 confidentiality and it repeats, I think, a point we
17 discussed very briefly some time ago. The difficulty
18 in ensuring confidentiality - and I'm not talking about
19 a right to broadcast complaints but I'm talking about
20 Corporal X who had complaints about Corporal Y and Z,
21 they will be interviewed and they're likely to say in
22 the barracks, 'Do you know what that fella has just
23 done? He's just complained about me because of this or
24 that or the other.' Is there any way, in any
25 investigation system, internal or external, that you
26 can try and minimise that?

15:05

15:05

15:05

27 A. You have some kind of a secured pipeline to whom you're
28 complaining, yes.

29 312 Q. And can you think of any way in which that could be

1 achieved fairly easily or readily?

2 A. As far as I can see that is what your defence system is
3 now working with.

4 313 Q. All right.

5 A. Putting up the secure line pipelines. 15:06

6 314 Q. Yes. There is, as you probably know, the Independent
7 Grievance Manager appointed on an interim basis was
8 established following the recommendation of the IRG
9 while the review of the internal Redress of Wrongs
10 system is being completed. You're probably aware of 15:06
11 that from the recommendation of the IRG?

12 A. Mmm.

13 315 Q. And that's something that they should be looking at, do
14 you think?

15 A. Yes, I think so. 15:06

16 316 Q. Your observations about Process No. 2, it appears,
17 correct me if I'm wrong, to be a similar analysis that
18 it's infected by the chain of command issue, is that
19 way you view that also? If you look at the bottom of
20 page 4490, that final paragraph? 15:07

21 A. More or less, I would say, yes. More or less.

22 317 Q. As I understand it, the intent of A7, Chapter 1, in
23 terms of setting out a policy to try and prevent
24 bullying and sexual harassment and discrimination,
25 you've no difficulty with the way in which the policy 15:07
26 is framed as an aim, as a goal, as a value in itself.
27 You'd agree that it's an appropriate enunciation of
28 what is to be achieved?

29 A. Yeah. Yeah. And I'm not sure but I don't find the

1 right word for saying that.

2 318 Q. You sort of agree with me?

3 A. I sort of, yes.

4 319 Q. Process No. 3, the complaints to the Ombudsman,
5 Mr. McCann has dealt with that briefly, I've dealt with 15:08
6 it briefly.
7

8 Process No. 4, complaints about criminal offences.
9 Mr. McCann asked you that you're not here to
10 disestablish or you're not suggesting that the Military 15:08
11 Justice System, insofar as it can deal with criminal
12 offences, should be altered?

13 A. I'm sorry, again.

14 320 Q. I beg your pardon.

15 A. I'm not suggesting anything but, please. 15:08

16 321 Q. Is that what -- is that a conclusion you would wish the
17 Tribunal to take into account that there's no point in
18 maintaining a criminal Military Justice System dealing
19 with criminal offences committed?

20 A. I'm not recommending anything. 15:08

21 322 Q. You're not recommending anything?

22 A. That's not for me to say.

23 323 Q. Right. Okay. I'm going to cease trying to put words
24 in your mouth and I'm sure you'll resist successfully.
25 15:09

26 The protected disclosures legislation -- and I suppose
27 I should ask a question at this stage. You've looked
28 at the formal structure for all of these processes,
29 isn't that correct? And your judgement is based upon

1 your understanding of the formal structure and
2 everything else that you've gleaned in the way of
3 reading and knowledge and...

4 A. And, also, what is comparable to the Norwegian system.

5 324 Q. Yes. Yes. But, factually, you haven't seen any 15:09
6 Redress of Wrongs, as it were, documented from start to
7 finish in terms of any one particular process?

8 A. In the Irish Defence Forces?

9 325 Q. Yes.

10 A. No, I haven't asked for that, no. 15:09

11 326 Q. Yes. And you haven't seen any documented A7 Chapter 1
12 or Chapter 2 complaints or how they were dealt with?

13 A. Not directly, no.

14 327 Q. And you haven't seen any -- you've seen the Ombudsman's
15 reports but, again, you haven't seen any complaints 15:10
16 made by a person to the Ombudsman, or the inner
17 workings of any of the investigations of the Ombudsman?

18 A. Much more what I'm being told and what I have read,
19 yes.

20 328 Q. The Ombudsman, and to be fair and you've seen this, 15:10
21 you've obviously referenced all of his annual reports
22 from 2006 to 2024, you've seen his annual reports which
23 are laid before Parliament as required and he is giving
24 case studies and they're obviously useful but that's
25 the extent to which you've seen the workings of the 15:10
26 office of the Ombudsman?

27 A. Mostly, yes.

28 329 Q. The same is probably true about protected disclosures;
29 you haven't seen any protected disclosures or how they

1 were dealt with or how long some of the processes take
2 or who was involved, or any of the investigative stages
3 relating to any protected disclosures?

4 A. Not directly, no.

5 330 Q. Process No. 6 you describe at 4497, complaints about 15:11
6 injuries due to accidents at work. And you give your
7 assessment of the appropriateness there and you
8 reference the Baldonnel claims. But, I mean, I take it
9 you're aware that complaints about injuries due to
10 accidents at work traditionally there's, obviously, an 15:11
11 element of enquiry within the Defence Forces when
12 accidents take place, whether at training or due to
13 physical issues, car crashes, we've heard this morning
14 about a live firearm being discharged into a young
15 recruit, I think. And there can be courts of 15:12
16 inquiries, obviously, in relation to those. But a lot
17 of them end up in litigation like all of the Army
18 deafness cases and you've referenced that also, the
19 Army deafness. So, would you agree with me that the
20 safety, health and welfare at work apply to the Army 15:12
21 and the Health and Safety Authority have conducted,
22 apparently, inspections at Baldonnel in relation to
23 issues that were raised by Air Corps men there. You're
24 aware of that, I take it?

25 A. Mmm. 15:12

26 331 Q. Litigation is a route that is taken by many members of
27 the Defence Forces where their rights have been
28 infringed or that they've suffered damage or injury
29 improperly. I'm not quite sure what your view is about

1 complaints about injuries due to accidents at work.
2 what is your assessment of the problem, is there a
3 problem?

4 A. I think that when we look at the different Defence
5 Forces in Europe, when it comes to accidents at work, 15:13
6 injuries, are quite similar. Most of the cases, I
7 believe, would be dealt with in a final and rational
8 way. If there's a problem, I would say, yes, there
9 will always be cases that is not solved in a good
10 fashion or in a final way. 15:14

11 332 Q. Yes. I mean, it seems difficult, on paper, to say that
12 A7 or Redress of Wrongs could be an appropriate redress
13 for an injury or an accident or a condition that
14 someone has suffered. I mean one of the primary
15 factors should be is there medical attention necessary 15:14
16 or medical care necessary?

17 A. Of course.

18 333 Q. And then if responsibility has to be allocated, if
19 there's a disciplinary breach or a criminal breach they
20 can be dealt with by the Army. Or if there's an 15:15
21 infringement of an enlisted man or an officer's civil
22 rights they can go to courts for any compensation and
23 there's no -- do you see any problem with that?

24 A. No.

25 MR. McGUINNESS: Cpt. Bratli, thank you very much, 15:15
26 indeed.

27 SOLE MEMBER: Mr. McGovern.

28

29 SUBMISSION BY MR. MCGOVERN:

1
2 MR. McGOVERN: Judge, just very briefly there are two
3 matters which I bring to the attention of you, Sole
4 Member, arising out of the cross-examination of
5 Mr. Bratli.

15:15

6 SOLE MEMBER: Yes.

7 MR. McGOVERN: In fairness, neither Mr. Bratli nor,
8 indeed, Mr. Anderson before him are experts in Irish
9 law, but certain matters have been put to him and I
10 think it's necessary to make sure that the record is
11 clear in relation to those matters. The first is that
12 Mr. Bratli was referred to Section 114 of the 1954 Act
13 by Mr. McCann and it was suggested, at least it was
14 pointed out, that in 2005 the wording of Section 114 of
15 the '54 Act was amended. Up to that time it had
16 referred to the Minister, as to use the words of
17 Mr. McCann, was at the top of the mountain, as it were,
18 but from 2005 onwards, that changed to the Chief of
19 Staff. But significantly, 2005 was the same time as we
20 had the introduction of the Ombudsman of the Defence
21 Forces. So, in other words, it was suggested that at
22 no time was the Chief of Staff solely responsible for
23 Section 114 matters.

15:15

15:16

15:16

24
25 Can I refer you, Judge, to Statutory Instrument 31/1998
26 which can be found in the source book at page 1627.
27 Sorry, I just had my own copy here earlier. Maybe it
28 can be brought up. It's Reference Book 1627. That's a
29 Statutory Instrument, Judge. On the last page it was

15:16

1 signed on 1st October 1998 and it says:

2
3 "I Michael Smith, Minister for Defence, in exercise of
4 the powers conferred on my be Section 13 of the Defence
5 Act, 1954 (as amended) hereby assign to the Chief of 15:17
6 Staff the duties in connection with the business of the
7 Department of Defence described in this instrument..."

8
9 If one goes to the fourth page, which is page 1630, at
10 the bottom of that page under the heading: 15:17

11
12 "(d) Administration - Courts of Inquiry

13
14 Investigation of complaints under Section 114 of the
15 Defence Act, 1954." 15:18

16
17 On the next page, (e), is discipline.

18
19 It is, therefore, the case that between 1998, for a
20 seven-year period between 1998, which is the date of 15:18
21 the Statutory Instrument, and 2005, which was the
22 establishment of the Ombudsman's Office, to use
23 Mr. McCann's phrase, the sole occupant at the top of
24 the mountain was the Chief of Staff and, indeed, those
25 delegated powers are still delegated to the Chief of 15:18
26 Staff because if one -- again, Mr. McCann or sorry,
27 Mr. McGuinness has referred to the statement of
28 Ms. Jacqui McCrum, which is at page 8088, I don't think
29 it is necessary to open that formally but if I just

1 read two sentences of the second page of Ms. McCrum's
2 report. She says in the third paragraph on the second
3 page:

4
5 "As provided for in the Act, the Minister has assigned 15:18
6 duties to the Chief of Staff."

7
8 And in the next paragraph she says:

9
10 "In effect, this means that the day-to-day operational 15:19
11 control of the Defence Forces rests with the Chief of
12 Staff, for which they are directly responsible to the
13 Minister."

14
15 The second matter, Judge, reference was made to the 15:19
16 sexual offences and the provision that was introduced
17 into 2024 which required that sexual offences should be
18 referred directly to An Garda Síochána. And
19 Mr. McGuinness stated that this came about as a result
20 of an IRG recommendation and it resulted in legislative 15:19
21 change. Again, Judge, can I refer to the core booklet,
22 page 616. Perhaps, that could be called up. 616.
23 This is a Consolidated General Routine Orders produced
24 by the Defence Forces. The core booklet, page 616.
25 Sorry, reference booklet 616. I beg your pardon. 15:20
26 Consolidated General Routine Orders GRO 43/1955 which
27 was implemented on 5th December 1955. And if one goes
28 to page 633, paragraph 22:
29

1 "In this paragraph 'superintendent' means the
2 superintendent of An Garda Síochána..."

3
4 And then skip town (2):

5
6 "Where it appears, or there are reasonable grounds for
7 the something a civil offence..."
8

15:20

9 And "civil offence" means an offence under the civil
10 law rather than military law:

15:21

11
12 "...has been committed by a person subject to military
13 law and that such offence is either (a) of a serious
14 nature or (b) involves the person or property of a
15 person not subject to military law..."
16

15:21

17 skip down:

18
19 "...shall..."
20

15:21

21 Mandatory.

22
23 "...the Commanding Officer shall, with all due
24 despatch, report the facts to An Garda Síochána and to
25 the Assistant Provost Marshal."
26

15:21

27 There's more specific Regulations over the page and in
28 particular if I can refer to page of 634, in particular
29 paragraph 4(ii):

1
2 "Where a question arises as to the suitable tribunal to
3 try a civil offence which is either (a) of a serious
4 nature or, (b) involves the person or property of a
5 person not subject to military law, the decision will 15:21
6 rest with the superintendent. The decision should be
7 made after consultation with the Commanding Officer."
8

9 I just draw these matters to the attention of the
10 Tribunal because I don't want to create an incorrect 15:22
11 impression to be given. It appears, therefore, that
12 this Routine Order, although it has been there since
13 1955, it appears to be honoured by its breach rather
14 than its adherence. And it would appear also, in
15 fairness, that when the IRG recommended a change and, 15:22
16 indeed when the Minister implemented that change in
17 2024, it would appear they were unaware of the
18 existence of this provision which had been there for
19 69 years.

20 SOLE MEMBER: I think I raised that question with 15:22
21 Col. Coakley early on because that was a Routine Order
22 the Tribunal had come across quite early in the stages
23 of its investigation.

24 MR. McGOVERN: It's been referred to, Judge, but I
25 don't think it has been formally opened. 15:22

26 SOLE MEMBER: Thank you very much.

27 MR. McGOVERN: Thank you, very much, Mr. Bratli.
28
29

1 CPT. KJELL ARNE BRATLI WAS QUESTIONED BY THE SOLE
2 MEMBER, AS FOLLOWS:

3
4 334 Q. SOLE MEMBER: Cpt. Bratli, thank you for the evidence
5 that you have given to the Tribunal. Could I ask one 15:23
6 question, please, in relation to your view on the
7 correlation between incidents of complaints of abuse in
8 a military context, and complaints of abuse in society
9 generally. Mr. Anderson spoke of this yesterday. Are
10 you aware of any comparative data which might, from 15:23
11 your jurisdiction, give an indication of whether there
12 is a higher or a lower incidence of complaints of an
13 abuse within a military context, as opposed to within
14 society generally?

15 A. I'm not there on comparative data, I can look into that 15:23
16 if there is. So, I wouldn't make any guessing here.
17 SOLE MEMBER: That's fine. Thank you very much for the
18 evidence you have given, Cpt. Bratli.

19
20 We have come to the end of the first module. I want to 15:24
21 thank everybody who has attended here every day during
22 the course of these public hearings and we will resume
23 the second module in October. Until then, that's it
24 from the Tribunal. Thank you.

25
26 THE TRIBUNAL WAS THEN ADJOURNED TO OCTOBER 2026 (DATE
27 TO BE CONFIRMED)
28
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