

OPENING STATEMENT FOR THE SECOND MODULE

1. Introduction

Good morning, Judge. I appear as Counsel to the Tribunal along with my colleagues Mr. Aedan McGovern, Mr. Michael Cush, Ms Lalita Morgan Pillay and Mr Tim O'Hanlon instructed by Mr. John Nolan and Ms. Marian Shanley, Solicitors.

Today is the first day of the Second Module of the Tribunal, which is intended to hear evidence concerning issues relating to the processes within the Defence Forces for dealing with Complaints of Abuse and the Culture surrounding the making of such Complaints. I believe that it is appropriate that I deliver a brief Opening Statement before the Tribunal embarks upon the hearing of the evidence in this Second Module. On 3rd June last, my colleague Mr. Cush made an Opening Statement which included an overview of the Tribunal's work. I now intend to give an update of how the Tribunal's work has progressed since the commencement of the First Module and to outline the matters on which evidence will be heard in this Module.

2. The work of the Tribunal

The Tribunal sat in June and July last and completed the First Module of Public Hearings when it heard evidence on the Culture Surrounding the Making of Complaints within the Defence Forces. Evidence was heard from a total of 53 witnesses, all of whom were examined by Tribunal Counsel and were made available for cross examination by interested parties with legal representation. During the course of the First Module, the Tribunal made a total of eight Orders restricting the reporting of information likely to lead to the identification of a person against whom an allegation of abuse has been made. It also made Orders restricting the reporting of material likely to identify two particular witnesses referred to by a pseudonym.

Since the conclusion of the First Module and in preparation for this Second Module, the Tribunal has made four further discrete Orders of Discovery directing the Chief of Staff of the Defence Forces to make discovery of certain documentation concerning four named members or former members of the Defence Forces. All such Orders were complied with, resulting in a total of 2,257 further pages of documentation being furnished to the Tribunal. It is expected that further such Orders will be made in the coming months.

Since the commencement of the First Module, the Tribunal has made grants of limited legal representation for the public hearings phase of the Tribunal to a number of further parties, who will participate in this Second Module. The Tribunal's legal team has continued to hold interviews and consultations with various members and former members of the Defence Forces and with those who will be witnesses in this Module. To date over 300 such interviews and consultations have been conducted by the Tribunal legal team, and interviews will continue to take place during these public hearings and thereafter. The cooperation of those who have attended interviews, which are a vital part of the Tribunal's work, is greatly appreciated. All such interviews are conducted by two members of the legal team and are recorded so that transcripts of the interviews can be prepared. Such transcripts then are redacted in order to ensure compliance with the requirements of GDPR and to protect the publication of the identities of those against whom complaints of abuse have been made, and of those whose identities are protected for reasons of confidentiality.

It should be noted that the Tribunal's investigative work will continue during the currency of these public hearings

3. The Second Module

The primary focus of the First Module in June and July this year was Term of Reference (iv) "*whether Complaints of Abuse were **actively deterred** or whether there*

*was a **culture that discouraged** the making of Complaints of Abuse.”* As events transpired, evidence was heard in that Module concerning issues relevant to some other Terms of Reference.

In the Module to commence today, the Tribunal will turn its focus to the matters referred to in Terms of Reference (i), (ii), (iii) and (v) although further evidence in relation to the alleged deterrence of Complaints of Abuse or whether there was a culture that discouraged the making of such Complaints will also be heard.

Term of Reference (i) requires the Tribunal to establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were appropriate and fit for purpose;

Under Term of Reference (ii) the Tribunal should establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were followed;

Term of Reference (iii) requires the Tribunal to consider and report on the response to and outcome of Complaints of Abuse, and to identify any systemic failures in the Complaints Processes in the Defence Forces; and

And, finally, under Term of Reference (v) the Tribunal is to investigate whether there were reprisals against those who made Complaints of Abuse by way of retaliation, by intimidation consequent on the making of a Complaint of Abuse or by the imposition of any penalty or burden upon a person who made a Complaint of Abuse.

The Tribunal will hear evidence in relation to each of the above matters and it will also hear further evidence in relation to the matters provided for in Term of Reference (iv).

The Terms of Reference identify six distinct complaints processes, five of which are

potential mechanisms for processing complaints of abuse, the sixth being relevant to complaints in relation to Hazardous Chemicals. It would, Judge, at this stage be appropriate if I were to give a brief outline of each of the Complaints Processes that will feature in the evidence that will come before the Tribunal in this Module.

Complaints Seeking a Redress of Wrongs (S. 114)

The first process concerns Complaints seeking a Redress of Wrongs. Section 114 of the Defence Act 1954 provides the statutory basis upon which an officer can complain about another officer (subsection 1) and ‘any man’ can complain about another man or an officer (subsection 2). These are formal procedures and entail following the chain of command hierarchy. Prior to the introduction of Administrative Instruction A7, Chapters 1 and 2, in 1996 all complaints seeking redress fell under s.114.

S.114(1) provides that an officer who thinks himself wronged by any superior or other officer, including his commanding officer, may complain to his commanding officer. Up to December 2005, if, his commanding officer did not deal with the complaint to his satisfaction, he could complain *“in the prescribed manner to the Minister who shall inquire into the complaint and give his directions thereon.”* After the enactment and coming into force of the Ombudsman (Defence Forces) Act 2004, the Chief of Staff replaced the Minister as the person to whom such final complaint must be addressed.

Subsection 2 provides that a man who thinks himself wronged by any officer, other than his company commander, or by any man, may complain to his company commander. If he does not feel the complaint had been redressed, he may complain to his commanding officer and if he feels wronged by the commanding officer in respect of his complaint not being redressed or if his complaint is about the commanding officer, he may complain *“in the prescribed manner to the Chief of Staff [formerly up to 1998 the Adjutant General], who shall inquire into the complaint and give his directions thereon.”*

Subsection 3 requires the officer, to whom a complaint is made, to ensure that it is inquired into, and to inform the complainant ‘in the prescribed manner’ of the action

taken in respect of the complaint. Amending provisions required notification of the complaints by the Chief of Staff to the Ombudsman and Minister. Complaints arising between 1996 and 1 December 2005 could be referred to the Minister, who could decide to appoint a Complaints Inquiry Officer (CIO). The CIO was an independent person nominated in consultation with the representative associations. The CIO could make recommendations and consult with the Department of Defence.

Administrative Instruction A7 Chapter 2

The process of dealing with a complaint under s.114 was augmented by the process provided for in Administrative Instruction A7 Chapter 2. It commenced in May 1996 and was revised in 2005. Chapter 2 altered and elaborated on the process to be followed under s.114. It enables an officer to complain orally or in writing to his or her commanding officer but the complaint must then be acknowledged in writing. If it is not dealt with satisfactorily, it goes up to the General Officer Commanding, who shall promptly either redress the complaint or appoint an officer not below the rank of the complainant to investigate and report on it. The investigator shall not be of the same unit as the complainant. Where the complainant is not satisfied with the outcome of that step, he has a right to have the complaint forwarded to the Chief of Staff. Under Chapter 2, a man makes a complaint to his company commander either orally or in writing, unless the company commander is the subject of the complaint, in which case it can be made to the commanding officer. All such complaints are required to be acknowledged in writing. Thereafter, the procedure is the same as that which applies to officers. Chapter 2 sets timelines for each step, mostly 7 days. Since 1st December 2005 upon the coming into effect of the Ombudsman (Defence Forces) Act 2004, these complaints must all be notified to the Ombudsman for the Defence Forces. However, he can only receive a complaint made under Chapter 2 where the matter is not likely to be resolved within 28 days of it having been made.

Defence Forces Administrative Instruction A7 Chapter 1

The second process to be considered is Defence Forces Administrative Instruction A7 Chapter 1. A7 Chapter 1, which came into force of 1st February 1996, is entitled

“Interpersonal Relationships in the Defence Forces” and contains the policy and guidance for dealing with sexual harassment, harassment and bullying. It has been expanded since its first iteration, to take into account various Acts of the Oireachtas and Codes of Practice relating to such matters as equality and safety in the workplace, and to set out the procedures to be followed. Under Chapter 1 complaints can be dealt with through an informal approach or formal approach. An informal approach involves the person complained of being approached either directly or through a Designated Contact Person, a member of the Defence Forces of any rank who has been specifically trained for the role. If the matter is resolved in this informal way there will be no formal record kept of the complaint.

The formal approach involves a written complaint to the commander and is dealt with by the chain of command. Where the person complained of is the complainant’s commander, the formal complaint “will be forwarded to the next superior in the chain of command.” The commander makes a preliminary determination. Where he decides there is credible evidence of an offence under military law or a criminal offence he shall report the matter to An Garda Síochána or the Military Police. The commander may also decide to deal with complaint through administrative action and may carry out an investigation of the complaint. When investigating a complaint, the Commander is obliged to ensure that the principles of natural justice and fairness are applied.

When the formal complaint is finally dealt with, the commander of the complainant completes an Annex C report, the original of which is placed on the complaint file. The complaint file should contain all written submissions by the complainant and the person complained of, statements of witnesses, decisions of the chain of command, any review and the Annex C report, and it is placed in the unit personal file of the complainant. A copy of the complaint file is also placed on the unit personal file of the person complained of only where certain sanctions are applied, but it is removed from that person’s file and is destroyed after five years.

Complaints under Chapter 1 must be made within 6 months, and this limit can only be extended to one year where 'reasonable cause' can be shown.

A commander may use the Chapter 1 process to investigate a report of an incident even where a complaint has not been made. Further, Regulation 111 of Chapter 1 imposes an express obligation upon commanders in the following terms: *"It is the responsibility of Commanders at all levels to ensure that the military environment is free from any form of unacceptable behaviour including sexual harassment, harassment or bullying. Failure by a commander to ensure that such is the case or to deal adequately with complaints will be considered a dereliction of duty"*

Complaints to the Ombudsman for the Defence Forces

The next process concerns Complaints to the Ombudsman for the Defence Forces. You will recall, Judge, that the Ombudsman, Mr. Justice Mahon, gave evidence in the First Module on 14th July last and he stated that there are three routes under which a complaint may be dealt with by his office. The first is by what he described as the "internal route", where a Chapter 2 Complaint has been initiated but is not likely to be resolved within 28 days. It may then be investigated by the Ombudsman under section 4 of the Ombudsman (Defence Forces) Act 2004. A revised interpretation of that section by the current Ombudsman has led to a marked increase of the number of complaints under this category. The second route is by way of Section 6 of the Act, which provides a stand-alone mechanism by which serving or former members can complain to the Ombudsman of the Defence Forces about an action taken by another serving member, a former member or a civil servant. Former members of the Defence Forces may also complain to the Ombudsman about an action taken while they were still serving members. Such a complaint must be brought within 12 months of the action complained of. There is now a third process that came into effect after the period under review by this Tribunal and therefore fall outside the Terms of Reference.

Complaints About Offences under Military Law (S. 169 of Defence Act 1954)

The fourth process to be considered by the Tribunal concerns Complaints About Offences

under Military Law , specifically under S. 169 of Defence Act 1954. This section provides that, subject to the provisions of the Act, every person who is subject to military law who commits an offence punishable by ordinary law shall be deemed to have committed an offence under military law and if charged with a civil offence shall be liable to be tried by court martial. This provision was amended after the 20 June 2024 and therefore the amendment and its consequences fall outside the Terms of Reference of this Tribunal.

Complaints in the Form of Protected Disclosures

The final process is that which covered by the Protected Disclosures Act 2014 and the Protected Disclosures (Amendment) Act 2022. These Acts provide statutory protections for a disclosure by a worker of information that comes to his attention in connection with his employment that tends to show wrongdoings whether in the nature of a criminal offence, or breach of legal obligations under health and safety, environmental or employment legislation. S.3(2)(b) of the Protected Disclosures Act 2014 deems a member of the Defence Forces to be a “worker” for the purposes of the Acts. The Acts concern disclosure of systemic rather than individual wrongdoing.

At this stage, I should point out that the Tribunal made Orders of Discovery, in respect of the Chief of Staff to produce to the Tribunal redacted copies of every complaint file in which abuse was alleged for the period of over 41 years under review. Such complaint files encompass complaints made under all of the above processes. The review of such discovered files is a complex exercise, which is ongoing.

General Observations

The complaints processes comprised formal and informal mechanisms through which members of the Defence Forces, civil servants and civilian employees could raise concerns, including workplace grievances. It should be emphasised that not every issue raised is relevant to the Tribunal’s investigation, only those relating to abuse, that is, discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment and any form of sexual misconduct (including sexual assault, aggravated sexual assault and rape)—fall within the scope of the Tribunal’s investigation.

As was said by my colleague Mr. Cush, at the commencement of the First Module, the availability of an effective complaints process is critical for any organisation, but it is particularly so when it comes to matters as serious as complaints of abuse. An effective complaints process will act as a deterrent to potential abusers and will contribute to the maintenance of discipline and morale within the workforce. The Tribunal does not prejudge what constitutes an effective complaints process or whether the complaints processes available to members of the Defence Forces were in fact effective.

Among the matters which the Tribunal will explore in this Module include:

- (i) whether members were informed, adequately or at all, of the existence and/or scope of the various complaint processes available;
- (ii) whether members were informed adequately, or at all, of how to initiate the various complaint processes available; whether the investigation of complaints was performed competently and in accordance with the Defence Forces Regulations governing such investigations and with the Defence Forces' own stated procedures;
- (iii) whether the confidentiality of the process was maintained, where required, so far as practicable;
- (iv) whether complainants and those complained against were notified of the outcome of the investigation and the extent of that notification.

The Module to commence today is expected to run into next year and, it is anticipated that it will complete the evidence presented to the Tribunal in relation to Terms of Reference (i) to (v)

4. Procedures concerning alleged perpetrators of abuse

Paragraph I(d) of the Terms of Reference provides:

“in the context of its investigation into Terms of Reference (i) to (v), [the Tribunal] may permit evidence of Abuse and the consequences of Abuse to be led, but the Tribunal is precluded from investigating into, or making findings of fact upon any matters that would, if established in a court of law, be criminal in nature;”

Before the Tribunal embarks upon this Second Module of Public Hearings, it is important to reiterate the procedures adopted by the Tribunal in the First Module so as to ensure that fair procedures are observed. These procedures are as follows:

- (i) the names of alleged perpetrators of abuse are redacted from the booklets of documents circulated to relevant parties for hearings before the Tribunal;
- (ii) witnesses before the Tribunal will not be permitted to, and will undertake not to, name any alleged perpetrators of abuse during oral testimony;
- (iii) the Tribunal will not name alleged perpetrators of abuse either in the course of its hearings or in its Report to the Taoiseach;
- (iv) the legal representatives of alleged perpetrators of abuse will not be permitted to cross-examine a complainant with a view to suggesting or establishing that his or her complaint of abuse is itself unfounded. They will, however, be entitled to put a denial of abuse and, if appropriate, a short summary of the basis for such denial;
- (v) in limited circumstances, alleged perpetrators of abuse will be called to give evidence before the Tribunal in respect of matters relevant to the Tribunal's Terms of Reference, and such persons will be given a pseudonym by which they will be referred and/or addressed at all times and by all parties

throughout the course of the Tribunal's public hearings and, if it should arise, in the Tribunal's Report; and

- (vi) in respect of alleged perpetrators of abuse, if the identity of any such person is either deliberately or inadvertently revealed in the course of the Tribunal's hearings, the Tribunal, to preserve the confidentiality of such information, will make Orders imposing reporting restrictions on all members of the media, all media organisations and any other person or persons, directing that no report of the proceedings of that particular day which contains material likely to lead members of the public to identify a person as an alleged perpetrator of abuse, or likely to lead members of the public to identify a person as a person against whom a complaint of abuse is made, shall be published in a written publication available to the public or be broadcast.

The procedures outlined above were adopted in the First Module will be applied throughout this Module.

5. Evidence to be heard in the Second Module

- In this module the Tribunal will hear evidence from a diverse range of witnesses with varying experiences of the Defence Forces and of its Complaints Processes. As before, the transcripts of the proceedings before the Tribunal will continue to be published on the Tribunal's website.
- At the start of this module, evidence will be given in relation to the operation and evolution of the Complaints Processes, during the period under review. Members of the two representative groups, The Permanent Defence Forces Other Ranks Representative Association, more commonly known as PDFORRA, and the Representative Association of Commissioned Officers, referred to by its acronym, RACO will also give evidence in this regard. To the extent that the Tribunal may make such recommendations as it considers appropriate, it is proposed to present evidence on the evolution and improvements in the Complaints Processes operated by the Defence Forces in more recent times.

- Thereafter, the Tribunal will hear evidence from several members or former members of the Defence Forces who have utilised the various Complaints Processes to make Complaints of Abuse. Some of these witnesses will testify that they were deterred whether directly, or indirectly due to the pervading culture, from making Complaints of Abuse. Others who allege that they suffered retaliation, reprisals, intimidation or penalisation following the making of a Complaint of Abuse will be heard.
- It is a crucial aspect of this Tribunal that both sides involved in the Complaints Processes are heard. Accordingly, the Tribunal will also hear evidence in relation to the response of those who investigated or made decisions in relation to Complaints of Abuse and from some of those alleged to have handled or processed such Complaints of Abuse in some improper, irregular or unlawful manner. Evidence will also be heard from those against whom allegations of retaliation, reprisal, intimidation or penalisation were made.
- Witnesses testifying in this Module will encompass almost every rank of the Defence Forces and they will have served in the Army and/or the Naval Service and/or the Air Corps. Evidence in relation to the operation of each of the Complaints Processes referred to earlier will be heard. The evidence will concern events alleged to have occurred across the four decades in the relevant period provided for in the Terms of Reference from 1st January 1983 to 20th June 2024.
- Some of the evidence that you will hear in this module will concern complaints detailing sexual abuse and in such instances, Judge, you may consider it necessary or appropriate to hear applications for orders restricting the publication of the identities of such complainants. A confidential and independent counselling service will be available for all witnesses giving evidence should they so require it.
- The witnesses testifying in this Module, as in every other, are the Tribunal's witnesses. As is standard, the evidence from all witnesses will be led by Counsel

to the Tribunal, who will elicit the relevant testimony and will test such evidence, whether by reference to the documentation furnished to the Tribunal upon Discovery or to the evidence expected to be given by other witnesses. There is no automatic right for the legal representative of any party to cross-examine a witness. Applications to cross-examine may be made on behalf of a person to whom legal representation has been granted, where that person's right to his or her good name is or is likely to be impugned by the evidence given, or where the credibility of a witness is genuinely in issue or where a person or group has an important interest in the evidence. Any such application will be considered carefully, and in accordance with these principles. Whilst it is of the utmost importance that the evidence before you, Judge, is subject to rigorous scrutiny in order to assist you in evaluating its weight and import, it is important to stress that the right to cross examine a witness is governed by these principles.

- It is expected that when all of the evidence in this Second Module of Public Hearings has been heard, you, Judge, as Sole Member of this Tribunal, should be in a position to consider such evidence together with the evidence that you heard in the First Module in June and July of 2026 in order to make findings and report upon the various matters set forth in Terms of Reference (i) to (v) in accordance with the mandate given to you by the Houses of the Oireachtas.