Ruling of the Tribunal on Applications for Full Representation and Access to Documentation of Witnesses

Introduction

1. These applications are brought by Malcomson Law LLP ('Malcomson Law') on behalf of its client 'Women of Honour Group CLG, its associates and members' (hereinafter 'the applicant').

2. The applications were moved by Mr Harty SC on 5 November 2026. The Tribunal had set aside time, at short notice, for a public sitting to deal with the applications having received several letters on behalf of the applicant group in the days preceding the hearing ('the correspondence'). The correspondence concerned the applicant's request for full access to documentation. On 30 October 2026 the Tribunal directed the applicant's solicitor to set out, in writing, the specific relief sought in relation to access to documentation.

3. On 30 October 2026 the applicant filed its application and sought additional relief in the form of an order granting full legal representation to the group. As the Tribunal had previously determined this matter on 27 May 2026, it indicated that it would proceed only with the application in respect of documentation which had been the subject of the correspondence. On 3 November 2026, the Tribunal was informed that the application for full representation would be based on '*more extensive and different grounds*'. The Tribunal indicated that an adjournment would be permitted, as requested by Malcomson Law, to allow it to bring a fresh application for full legal representation in the proper format by setting out the new grounds upon which the application would be made. Those grounds were to be furnished by 12 noon on 4 November 2026. The Tribunal indicated that the matter would be listed for hearing at a sitting of the Tribunal on 5 November 2026.

4. In the submission filed by the applicant, the reliefs sought were as follows:

> *"1. Women of Honour seeks recognition that its interests are likely to be affected by evidence in the forthcoming Module and accordingly seeks a grant of full legal representation in proceedings relevant to those interests, including access to relevant evidence, submissions and particularised applications to participate in witness questioning.*
>
> *2. Alternatively, Women of Honour seeks timely, rolling access through its legal representatives to the Module witness statements and material intended to be adduced in respect of those witnesses, with liberty to apply and any necessary, individually tailored protective directions."*

5. Whilst a third ancillary relief had been requested on 30 October 2026, that application was not progressed at hearing.

The Applications

6. Mr Harty moved the application for full legal representation on behalf of his client group indicating, at the outset and contrary to what was stated in earlier correspondence, that the application concerned only the second module of public hearings which had commenced on 28 October 2026 ('the second module'). He noted that this module is concerned with paragraphs (i), (ii), (iii) and (v) of the Tribunal's Terms of Reference which relate, generally, to the adequacy or otherwise of the processes for dealing with complaints of abuse. Systemic failures, if any, within the processes were to be examined. He said that his client was established to represent the interests of an alliance of affected people and its interest was in relation to systemic interests across the Defence Forces. There was, it was said, '*an absolute alignment*' between the Terms of Reference and the interests of the applicant.

7. In the first module of public hearings which took place in June and July of 2026, it was submitted that the applicant had been provided with all material which had allowed it to

assess whether there were any matters which the applicant ought to address before the Tribunal. By contrast, he said, in the second module they were asked approach their own evidence and the evidence of other witnesses, to a certain extent, *'through a glass, darkly'*. They were being asked to play *'Only Connect'* without knowing all the pieces in the sequence.

8. Reference was made to (EK), a witness represented by Malcomson Law, who is scheduled to give evidence later this month and to the approach taken by the Defence Forces concerning issues of credibility. If this approach were to be taken with other witnesses it creates *'another picture'* in terms of the Tribunal and in terms of the applicant assisting the Tribunal by drawing matters to its attention. Mr Harty acknowledged that there is no automatic right for any party to cross-examine a witness, and he accepted that it should be permitted where a person's good name is at risk. There was, he said, no clear parameter between what full and limited representation means and full representation for the applicant was both necessary and proportionate. Whilst not saying that his client was best placed to identify all the systemic connections—different people see different patterns in different ways and it is for the Tribunal to determine what patterns it finds—he submitted that his client *'must have an entitlement to submit to the Tribunal as to what patterns it ought to find'*. Mr Harty submitted that there is no party with full representation who sees all the pieces from the complainants' side. The only parties, arguably who are going to be suggesting patterns are those whose interests would be in suggesting patterns of perfection.

9. When asked by the Tribunal to identify the differences between this application for full representation and the applicant's previous application which was rejected, Mr Harty replied that the difference on this occasion was that on the first occasion *'they were not aware that limited representation would rob them of the entitlement'* to sight of all materials in respect of witnesses. Pressed again on the differences between the two applications for full legal representation, he replied that the difference that arises this time is that the 'implementation', the *'effect'* of limited representation has now become clear.

10. In the applicant's written submission, it was stated (at para. 15) that if full representation were refused, then disclosure (of documents) was necessary to determine whether and how evidence adduced during the second module *'affects'* the applicant group's interests. On the alternative relief, Mr Harty submitted that if his clients had the ability *'to assess witnesses'*, they could assist the Tribunal further by disclosure of documents. Startling *'similarities in background'* and *'underlying facts'* in relation to other members of the Defence Forces at a level which was *'statistically improbable'*, were the sort of things with which the applicant could assist the Tribunal further if it had full representation.

Submissions of Other Parties

11. On the application for full legal representation, Mr Compton SC on behalf of his 115 clients and Mr Darcy BL on behalf of PDFORRA indicated that representation was a matter for the Tribunal, with the former reserving his position pending the outcome of the application.

12. Mr Lehane SC indicated that in making his submission on behalf of the Defence Forces and some individual respondents, nothing was to be taken as a criticism of any other party, including, the applicant. It was because the Chief of Staff had given assurances of cooperation with the Tribunal, that he was responding to the invitation to be heard but he was also responding because of the documentation of various individuals concerned.

13. On the right to legal representation, the relevant principles were clear. The statutory basis is to be found in section 2(b) of the Tribunals of Inquiry (Evidence) Act 1921 of which gives the Tribunal the power to authorise representation by counsel or solicitor or to refuse to allow such representation. The Supreme Court's identification of the rights set out in the case of *In Re Haughey* [1971] IR 217 *('Re Haughey')* *'put colour on what the preservation and protection of rights involved.* He noted that the courts have been asked to consider the pathway that a party has to satisfy to persuade a tribunal that it gets representation. In *Boyhan v the Beef Tribunal* [1993] IR 210 (*'Boyhan'*), Denham J. was very clear. The tribunal must look at representative groups in terms of their role and in that case, she said that the United Farmers' Association ('UFA') was not an accused party,

its conduct was not being investigated, and no allegations were made against it or its members.

14. The courts have set out *'a jurisdictional pathway'* which guides a tribunal in determining which grants of representation should be sufficient for each party. Mr Lehane submitted that there is no adversarial *'us and them'* scenario with the Tribunal as acting as referee. Every witness is a Tribunal witness. It is not about establishing *'an equal playing field'* between all parties. He contended that it is, rather, about persuading the Tribunal that there is a legal pathway that establishes the applicant's right to full legal representation and that *'He who asserts must prove'*.

15. More concerning for Mr Lehane's clients was the alternative relief sought by the applicant, namely, the disclosure of documentation relevant to other witnesses. This raised issues of confidentiality. In *O'Callaghan v Mahon* [2006] 2 IR 32 (*'O'Callaghan'*) the Supreme Court was very clear about the limits on confidentiality. If an allegation is made against a person, then the right to cross-examine a witness and to have material necessary for a proper cross-examination arises. This principle, it was said, was most recently referenced by the Court of Appeal in *Ní Laimhín v McGregor & Anor* [2025] IECA 162.

16. The Supreme Court in *O'Callaghan* confirmed that a tribunal of inquiry enjoys the presumption that it will engage, lawfully. The relief sought by the applicant effectively asks the Tribunal to displace the mutual respect between the individuals who provide documentation containing sensitive information and the Tribunal's obligation to disclose such documentation when necessary.

17. Mr Whelan SC on behalf of a witness (Ms D) who had given testimony to the Tribunal during the second module adopted a neutral position on the application but confirmed that it was his client's expectation in coming to the Tribunal that her documents would be provided only to parties likely to be affected by her evidence.

18. On behalf of PDFORRA, Mr Darcy submitted that representation was a matter for the Tribunal. However, on the issue of disclosure of documents, he said that one member had indicated, unequivocally, that his instruction was *'not to share'*. PDFORRA did not, however, dispute the Tribunal's function to share information within the appropriate

guidelines having regard to persons who are affected by that information or by the evidence likely to be given.

19. Mr Compton instructed by Coleman Legal LLP on behalf of 115 personnel, indicated that his clients reserved their position pending the outcome of the application for full legal representation. In terms of the alternative relief sought, however, he submitted that his clients had come to the Tribunal with highly sensitive material and on the understanding that the material would be treated as confidential. The Tribunal's approach, he said, was consistent with the relevant law that restricts their confidentiality rights under section 60(3)(iv) of the Data Protection Act 2018 (as amended) where a statutory tribunal is conducting its business. The threshold which the applicant group must meet to succeed in its application for his clients' documentation is one of necessity and proportionality. In asking the Tribunal to restrict his clients' privacy rights, it must state *'with precision'* why his clients' information is impacting that group. He set out the various avenues that are currently open to the applicant including its entitlement to apply for cross-examination, its attendance at hearings each day on behalf of its clients, the fact transcripts are produced daily and can be reviewed and that, if necessary, the applicant can ask the Tribunal to recall a witness.

20. With regards his clients' second concern, namely, delay, Mr Compton emphasised that his clients are very interested in the Tribunal coming to a resolution as soon as possible. Anything which may impact upon its pace, by way of documentation being provided afresh, having to be reviewed or redacted, is not in the interests of his clients.

21. Finally, Mr McGuinness SC on behalf of the Minister, submitted that it is a matter for the Tribunal to decide whether the reliefs sought in the application are permissible under the law, whether they are necessary and proportionate, and whether, if granted, they would respect the rights of parties to confidentiality in relation to their data. The right to representation was a discretionary power of the Tribunal under section 2(b) of the Tribunal of Inquiries Act 1921 which fixes the interests of parties and the subject matter of the granted representation and allows them to participate to that extent. It was noted that the existing right to limited representation already extends to the right to make submissions in relation to all matters within the Terms of Reference, subject to relevance. Individuals give evidence in public which will be available to all interested parties who

can make appropriate submissions having regard thereto. In that context it was difficult to see how it is necessary to extend the applicant's right to representation to allow it and its legal representatives to have possession of other people's documentation which does not relate to the applicant.

22. Mr McGuinness submitted that, by virtue of the Tribunal's Terms of Reference, the documentation booklets relate to allegations of abuse, as defined. Details are provided on files as to the nature of the alleged abuse that occurred. The consequences of the alleged abuse produced materials relating to the investigations, medical reports and even subsequent litigation at times. This results in a very wide variety of sensitive personal information in every hearing booklet. The applicant is, in a sense, requesting the Tribunal to disseminate this data without establishing the necessity for same or showing a significant justification. This request has a consequence for the *Re Haughey* rule on necessity and proportionality as well the procedure which the Tribunal has adopted in deciding how parties are affected by the evidence. Should the request be granted, some serious issues would also arise in relation to the Tribunal's obligations under its Data Policy.
23. The Oireachtas, it was submitted has selected a Judge of the Superior Courts for appointment to this Tribunal under the assumption that she is best placed to consider the constitutional rights of every individual and to design procedures to protect such rights, sensitive to the concerns of all whose affairs are affected by the business by the Tribunal. (Murphy J. in *Lawlor v Flood* [1999] 3 IR 107 (at page 143) and reflected in *Goodman v Hamilton* [1992] 2 IR 542). The Sole Member has taken on a public duty, and it is her function, and no one else's function to examine, inquire and report on the subject matter of the matters in the Terms of Reference.

The Law

24. The Tribunal's jurisdiction to make orders granting legal representation is to be found in section 2(b) of the Tribunals of Inquiry (Evidence) Act of 1921. Section 2 (b) provides that:

"2. A tribunal to which this Act is so applied as aforesaid -

(b) shall have power to authorise the representation before them of any person appearing to them to be interested to be by counsel or solicitor or otherwise, or to refuse to allow such representation."

25. The power to authorise or refuse representation is, essentially, an exercise, on the part of the Tribunal, of a discretion conferred upon it by statute. The proper exercise of the discretion is, undoubtedly, founded upon principles of natural and constitutional justice. Natural justice requires, *inter alia*, that parties who make allegations against another party substantiate those allegations, and that the other party be given the fullest opportunity for dealing with such allegations.

26. In the case of *Re Haughey* the Supreme Court identified (at page 263) the minimum legal protections to be afforded to persons where their rights, including their good name, are in issue. A person whose *'rights'* are likely to be affected or who may be prejudicially affected by the proceedings/findings of the Tribunal is entitled to:

(a) a copy of any proposed evidence which may affect his/her good name;
(b) an opportunity to cross-examine his/her accusers through counsel;
(c) an opportunity to give rebutting evidence; and
(d) an opportunity to address the Tribunal in his/her own defence.

27. A relevant authority that is of some assistance is to be found in the judgment of Denham J. in *Boyhan*. In *Boyhan*, members and representatives of the UFA issued proceedings against the Beef Processing Tribunal when it had declined to grant the group full legal representation. It sought an Order from the High Court directing the tribunal to grant it full representation whenever it was dealing with matters which the group claimed were particularly relevant to them (*'relevant allegations'*). In the alternative, it sought full representation where there was any purported refutation of the evidence given by UFA's witnesses.

28. The group also sought an injunction directing the tribunal to furnish books of documents containing *'relevant allegations'* or, in the alternative, such portions of the

books of documents which comprised evidence tending to support or refute the evidence to be given by its witnesses at the tribunal.

29. In coming to her decision, Denham J. held that the tribunal must look at representative groups in terms of their roles. She rejected the contention that the UFA represented the public and farmers in the circumstances that evolved at the inquiry. They could not, in her view, appropriate to themselves the duty of representing either the public or the farmers. *'They have no mandate to so do.'* Their interest was limited to their association'.

30. Denham J. was satisfied that the status of the UFA was that of a willing witness who has approached the Tribunal and sought to give evidence. There were no allegations made against the UFA or any of its members. She said (at page 219):

> *"It is a witness which has proffered itself. As such, while its constitutional rights must at all times be protected it does not appear that its rights - to good name, for example - are in jeopardy in any way at all. The position of the U.F.A. at this time in relation to the Tribunal is analogous to a witness in a trial and as such it is not entitled to the protection as set out at (a) and (d) by Ó Dálaigh C.J. Its position, as a witness, is fully protected by the limited legal representation awarded by the Tribunal."*

Decision on Application for Full Legal Representation

31. By letter of 27 May 2026 the Tribunal granted the applicant limited legal representation during the public hearings phase of the inquiry. The letter stated that the limited grant was for the following purposes:

> *(a) attendance at Opening Statements of the Tribunal's public hearings;*
> *(b) making an application to the Tribunal to cross-examine any expert witness whose evidence is relevant to the interests of Women of Honour CLG;*
> *(c) making an application to the Tribunal to cross-examine any other witness whose evidence may be relevant to the interests of Women of Honour CLG;*

(d) making a closing written submission in respect of the evidence before the Tribunal insofar as that evidence relates to the members of Women of Honour CLG in general; and

(e) any other matters deemed necessary by the Tribunal. In this regard, the Tribunal does not accept that unrestricted legal representation is either necessary or appropriate or that the interests of Women of Honour CLG ought to be equated with those of the public interest, the latter interest being considerably broader. Nonetheless, in respect of the forthcoming module only, to be heard in June and July 2026, the Tribunal will provide your firm with copies of the full Tribunal Booklet of Documents relating to those sittings. This should not be regarded necessarily as a precedent for the documentation which will be provided to your client in any future module of the Tribunal's public hearings.

32. A grant of limited representation was also made to individuals whose statements were submitted by Malcomson Law and who are called to give evidence during the public hearings phase of the Tribunal's work. No representation has been granted to what is described as the applicant's *'associates and members'.*

33. I pause to observe that, to date, the Tribunal has not been furnished with the names of those comprising the applicant group. In response to a request for this information, the Tribunal was informed by letter of 22 May 2026 that *'the situation in terms of disclosure of individuals over and above the persons who have engaged with the tribunal is a confidential issue and will remain a confidential issue unless such individuals decide otherwise'.*

34. In its written submission it was said that the applicant's interest in the Tribunal was not confined to the evidence of its members or to witnesses publicly associated with it. It was *'an alliance of affected people, including personnel who had not come forward publicly for personal and confidentiality reasons'.* It was said that *'patterns'* of discrediting, isolating or undermining complainants may be *'difficult to identify'* from individual accounts and that *'connections'* may only emerge from *'a collective examination of the evidence'.* Reference was made to a client of Malcomson Law where

her credibility and good name were in issue. Reference was also made to another witness (NB) who, whilst not represented by Malcomson Law, had referred to the applicant in documents before the Tribunal.

Scope of Existing Representation

35. Whilst the Tribunal readily acknowledges that the applicant played an important role in matters that preceded the establishment of the Tribunal, that, in itself, does not entitle it to a status different to every other witness who has come forward to assist the Tribunal with its inquiry. As Denham J. observed (at para. 42) in *Desmond v Moriarty* [2004] IR 334 (*'Desmond'*), the tribunal should apply rules of constitutional justice equally. *'There must be equal treatment of all persons. The people who appear before the tribunal should be dealt with in essentially the same manner'.* Whilst grateful to everyone who comes forward to testify, it is for the Tribunal itself, supported by its team, to identify any *'patterns'* or *'connections'* emerging from *'a collective examination of the evidence'*. That is part of the Tribunal's responsibility which cannot be delegated to any witness or party before it.

36. A review of the grant of limited legal representation to the applicant during the public hearings phase of its inquiry demonstrates that it is extensive. The grant extends legal representation for the purposes of attending opening statements of the Tribunal's public hearings, making an application to the Tribunal to cross-examine expert witnesses whose evidence is relevant to the interest of the applicant. It can also apply to cross-examine any other witness whose evidence may be relevant to the interests of the applicant.

Public Interest

37. The Tribunal has previously confirmed by letter of 27 May 2026 that it did not accept that unrestricted legal representation was either necessary or appropriate or that the interests of the group ought to be equated with those of the public interest, the latter interest being considerably broader. It is for the Tribunal alone and no party before it, to represent the public interest.

38. Moreover, it is clear from the submissions of parties, that the applicant cannot appropriate to itself the duty of representing anyone other than its own members. To adopt the words of Denham J. in *Boyhan,* the applicant has *'no mandate'* to represent anyone apart from itself. Its interest for the purpose of the Tribunal is limited to that of its constitutive membership. It would not be appropriate in my view to confer on any one group, a status that is more favourable to that of any other witnesses. I am satisfied that there is no special interest above and beyond the interest determined by the Tribunal.

Witness Status

39. The Tribunal is satisfied that, in many ways, the applicant is similar to the plaintiffs in *Boyhan*. The applicant's status is that of *'a willing witness'* who has approached the Tribunal. Some of its members, who are willing to come forward, have information that is relevant to the Tribunal's inquiry. Any individual members who have been called to give evidence during the course of the inquiry have received legal representation. No allegations have been made against the applicant. Nobody has impugned its good name. In these circumstances, I find the words of Gannon J. in *K. Security Ltd. and William Kavanagh v Ireland and the Attorney General* (Unreported, High Court, 15 July 1977) to be particularly apt. This tribunal has no function or authority to deal with the applicant in any way other than in its capacity as a witness before it. None of the rights of the applicant is in jeopardy nor has it been *'exposed to unjust attack or injustice of any kind in the proceedings before the tribunal'* nor does it *'require vindication or defence during the course of the proceedings of this Inquiry'* (*Boyhan,* page 222). In such circumstances, the applicant, in my view, does not require the grant of full legal representation that it seeks.

The Constitution

40. There is no indication that the applicant's rights under the Constitution will be endangered or abused. As noted by Mr McGuinness on behalf of the Minister, even

under the *Re Haughey* principles, the entitlement to the protection of one's good name would only give rise to a right to limited representation for the purpose of protecting one's reputation when the need arises. That submission is correct, in my view. The need to protect such a right would not entail an open-ended entitlement to full representation for the entirety of a tribunal. Similarly, should issues of credibility arise, a party may be granted representation for that purpose alone. The five identified matters in (a) to (e) of the Tribunal's decision of 27 May 2026 amply protects the interests of the applicant.

41. Bearing in mind the terms of the grant of limited representation, I am satisfied that the Tribunal has not adopted procedures which would in any way prevent the applicant from vindicating its rights. In its written submission, it was said that its legal team must be able '*to assess the evidence*' continuously and make applications when an issue arises. Mr Harty said that his client '*must have an entitlement to submit to the Tribunal as to what patterns it ought to find*'. The current grant does not prevent the applicant from so doing. It is in a position similar to that of the applicant in *Desmond*. It has been granted legal representation at the Tribunal. Its legal advisors receive a daily transcript of the public proceedings of the Tribunal. It enjoys the right to attend the Tribunal at any time, and its legal team may apply to cross-examine any witness whose evidence may be relevant to its interests. If it is absent during particular testimony and alerted by reading the daily transcript, it is entitled to apply to cross-examine witnesses or to require that witnesses be recalled for the purpose of such cross-examination where it would be appropriate so to do. It has representation for the purpose of making legal submissions insofar as evidence relates to its interest in general. Thus, the applicant, in my view, is well placed to make any '*focused application*' should the need to do so arise. Accordingly, I am satisfied that its interest in the work of the Tribunal is protected. Of course, whilst the applicant and any party is entitled to make a relevant submission on '*patterns*', it is, of course, exclusively, a matter for the Tribunal to determine what, if any, such '*patterns*' or systemic issues might be identifiable having heard the totality of the evidence.

No New Grounds

42. The Tribunal had directed that the application should set out the new grounds upon which it was to be made. In answer to the Tribunal's questions on this issue, Mr Harty made reference to the fact that his client had been given a booklet of documentation for the first module but not for the second. Mr Harty acknowledged that the difference that arises between the first and the second applications for full legal representation is that the *'effect'* of limited representation has now become clear. Whilst I will address that matter of the distribution of documents at the end of this Ruling, it is difficult to see how a decision of this nature made by the Tribunal in the exercise of its discretion, constitutes a new ground upon which to bring a fresh application for full legal representation when the initial application was refused. The fact that, exceptionally and on a once off basis, a party with limited representation was furnished with documents for one module but not for another, does not create a new ground for, or a reason why, a change in that party's level of representation should be made. I consider that no new or different grounds have been identified in the applicant's submission such as would warrant a change in the level of representation granted when the first application for full legal representation was made and refused.

43. The onus rests on the applicant to satisfy the Tribunal that it should exercise its discretion in favour of its application for full legal representation. For the reasons set out above, I am satisfied that the applicant has not discharged that onus and that the decision in relation to legal representation that was made by the Tribunal on 27 May 2026 should remain unchanged. The grant of limited legal representation afforded to the applicant is amply sufficient to protect its interests.

44. Accordingly, the application for full legal representation is refused.

Decision on Application for Access to Documentation of Witnesses

45. By letter dated 24 September 2026, the Tribunal wrote to Malcomson Law in relation to the documentation that it would receive during the second module of public hearings. The letter stated:

> *"Accordingly in respect of the forthcoming hearings the tribunal will, in advance of such hearings, provide your firm with all relevant documentation for expert and/or general witnesses, and with all relevant documentation for the individual witnesses for whom you act (including all documentation relating to witnesses whose evidence is given in response to your client's evidence). However, the Tribunal does not intend to provide your firm with documentation for other witnesses giving evidence of their complaints of abuse (and witnesses responding to that evidence) for whom your firm does not act. The same provision applies in respect of all other legal teams to whom similar grants of legal representation have been made."*

46. Some weeks later and days before the commencement of the second module of hearings, Malcomson Law on behalf of the applicant, wrote to the Tribunal objecting to its decision as set out above. It was said that the Tribunal was in breach of its own Procedures and, if the Tribunal remained of the view that the documentation to be afforded to its client group was as set out in its letter of 24 September, then a hearing on the matter was requested.

47. To facilitate the applicant and as noted above, at short notice, a hearing was scheduled. At the hearing, the alternative relief sought by the applicant was for access to witness statements and materials intended to be adduced in respect of other witnesses who will testify during the second module of public hearings.

48. Counsel to the Tribunal confirmed that Malcomson Law is entitled to all statements and discovery relating to its own clients – but that, it was said, is not the issue. The

applicant is seeking the complete set of booklets in respect of every other witness to be called to give evidence to the Tribunal.

49. In support of his application for the alternative relief, Mr Harty submitted that his clients had the ability *'to assess witnesses'* and could assist the Tribunal further if there were full disclosure of documents (with liberty to apply for individually tailored protective directions). In the applicant's written submissions (para. 16) it was stated that access to documents *'should not depend on another party's assessment that evidence is irrelevant'* to the applicant.

50. As is clear from the submissions made to the Tribunal at hearing, concerns were expressed by a number of parties in relation to this application. The *'service of evidence'* was said by Mr Lehane to be on those parties *'likely to be affected thereby'*. There was a presumption that confidentiality would be protected and that the Tribunal would engage lawfully. The Tribunal has powers of compellability to obtain from persons documentation that would otherwise not be available. This is to enable the Tribunal to conduct an effective examination and inquiry. Such documentation, it was understood, would only be circulated to parties that require sight of same.

51. Mr Compton, on behalf of his clients said that the *'real'* issue concerned confidentiality. His clients had come to the Tribunal and assisted it in the expectation that their highly sensitive information would be treated confidentially. The threshold for the applicant to succeed in the application was one of necessity and proportionality. The applicant must state *'with precision'* how his clients' information is impacting the applicant.

52. Counsel on behalf of the Minister submitted that it was a matter for the Tribunal to decide whether the relief sought in this application was permissible under the law, whether it was necessary, whether it was proportionate and whether, if granted, it would respect the rights of parties to confidentiality in relation to their data.

53. I have carefully considered all of the submissions made both in writing and during the course of the public hearing. In coming to a decision on the second relief sought, I have had regard to the following matters.

54. The Tribunal's Procedures make it clear that it will serve copies of all relevant evidence on parties with representation, including limited representation, and on other persons likely to be affected thereby. Under those Procedures, in preparation for each public sitting, it is for the Tribunal, and no one else, to identify persons likely to be affected by the evidence available to the Tribunal. The applicant's submission that access to documents '*should not depend on another party's assessment that evidence is irrelevant*' is fundamentally flawed. The Tribunal is not '*another party*' conducting an assessment as to the relevance of evidence. It is the statutory body mandated by the Oireachtas to conduct this public inquiry and to do so independently of every party, including the applicant. The Tribunal's procedures are broadly similar in terms to the procedures adopted by other tribunals. When the Tribunal decides what evidence is relevant to other parties, it shares that evidence in advance with those parties so that they have an opportunity to respond to any allegations or issues arising in respect of the testimony of a given witness.

55. A second important factor to which the Tribunal has had regard is the question of confidentiality. In its letter of 24 September 2026 concerning the second module of public hearings, the Tribunal confirmed to Malcomson Law that in advance of the public hearings, that firm would be provided with all relevant documentation for expert and/or general witnesses, and with all relevant documentation for the individual witnesses represented by Malcomson Law. It was expressly confirmed that the Tribunal would not be providing the firm with documentation relating to other witnesses for whom the firm did not act. That was a decision that clearly fell within the discretion of the Tribunal, and it was taken having regard to important principles of confidentiality. The same provision applied in respect of all other legal teams participating in the second module of public hearing who had received similar grants of legal representation.

The Balancing of Rights and Interests

56. In making its decision on access to documentation for the second module, the Tribunal was cognisant of the fact that almost all of the witnesses scheduled to be called had made complaints to the Defence Forces and/or the Minister for Defence. This was a marked and notable difference between the first and second modules of public hearings. That fact, inevitably, generated significant volumes of documentation produced to the Tribunal by way of discovery. As Mr McGuinness has indicated, those personal files of witnesses who have no connection to the applicant contained details as to the nature of abuse that was alleged to have occurred. The consequences of the alleged abuse produced materials relating to investigations into such alleged abuse. Personal medical reports were contained on some files and, in some cases, the details of litigation that ensued. This resulted in a very wide range of sensitive personal information with no bearing or impact upon the interests of the applicant.

57. The Tribunal was satisfied that it was neither necessary nor proportionate for it to share such personal information and documentation with persons other than those it had identified as persons likely to be affected by the evidence. Parties who volunteer to assist the Tribunal with its inquiry often do so at great personal costs and their right to confidentiality, privacy and the protection of their personal data must be accorded appropriate weight in any balancing exercise carried out by the Tribunal.

58. In exercising its discretion, the Tribunal was required to balance the right to fair procedures and the asserted *'interest'* of the applicant in accessing all documentation, with the important rights of other parties, including, their rights to confidentiality. To disclose such a broad range of confidential data as is contained on the files of witnesses unrelated to the applicant, would constitute an unwarranted *'overreach'* on the part of the Tribunal. Bearing in mind the range of sensitive material and information that was contained on files discovered in respect of such witnesses, the Tribunal was entitled to strike the balance where it did and to determine that the rights and interests of the applicant were not *'likely to be affected'* by the documentation in question.

59. Whilst confidentially may, of course, have to yield in circumstances where serious allegations are made against a party who is entitled to defend its good name, such a scenario did not arise in relation to the applicant group. (*O'Callaghan v Mahon*). The Tribunal is always obliged to conduct its inquiry in accordance with fair procedures and the requirements of constitutional justice, and it has said so on several previous occasions. I am satisfied that the concerns of the applicant can be kept under review and dealt with, if necessary, on a case-by-case basis.

60. For the reasons set out above, I am satisfied that the applicant, being in the position of a witness before the Tribunal, is not entitled to the documentation it seeks relating to every other witness. As Denham J. said (at page 222) in *Boyhan - 'I know of no authority which enables a witness to be served with a book of evidence'*. There are no allegations against the applicant or any of its members and the group will not be prejudicially affected in any way by the evidence which may be given during the second module of public hearings.

61. The Tribunal's decision in relation to access to documentation as set out in its letter of 24 September 2026 is affirmed and it remains unchanged.

62. Accordingly, the application for the alternative relief requested is refused.

Difference Between the First and Second Modules

63. The approach that was taken by the Tribunal in respect of documentation in the second module applied not only to the applicant but to all other legal teams to whom similar grants of legal representation had been made. It was, as such, the *'rule'* that applied to the second module. No other person or entity, apart from the applicant, took issue with the Tribunal's approach in this regard.

64. The fact that the Tribunal took a different decision in relation to the first module of hearings is entirely a matter that fell within the remit of the Tribunal. It is for the

Tribunal to determine what level of dissemination of documentation is appropriate as each new module begins.

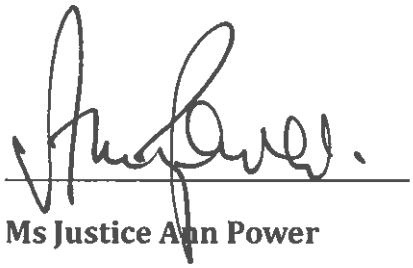
65. As has already been stated, most of the complainants who had testified during the first module of hearings had made no complaints to the Defence Forces or to the Minister in respect of the abuse they alleged. There were, accordingly, no volumes of personal complaint files with sensitive personal information that fell to be discovered to the Tribunal.

66. Moreover, the booklet for the first module was disseminated days before the material contained therein became public. The proposition that confidential material loses that quality when it becomes public is a basic proposition of the law of confidentiality. (*O'Callaghan,* para. 90).

67. In providing the applicant's solicitors with a booklet of documents relating to the first sittings, the Tribunal expressly stated in its letter of 27 May 2026 that such provision was in respect of the first module only and that it should not be regarded as a precedent for any future module of the Tribunal's public hearings. In that context, the presence of an explicit exception implies that the general rule as articulated above would apply in all other cases. As matters transpired, the *'rule'* proved entirely justified as nothing in the documentation opened publicly during the first module affected the interests of the applicant. No application was made to cross-examine any witness because the evidence given did not relate to or affect the interest of its members. The same principle applied to the evidence given by the witness NB. Whilst mention had been made of the applicant in papers before the Tribunal, such references were not relevant to the Tribunal's Terms of Reference, and no evidence was led or cross-examination arose in relation thereto. The grant of representation, as noted above, permits the applicant to make a closing written submission in respect of the evidence before the Tribunal insofar as that evidence relates to the applicant.

68. I make this Ruling in respect of the second module of public hearings, and I do not anticipate taking a different approach to subsequent modules. However, as the Tribunal conducts its inquiry in accordance with fair procedures and the requirements of constitutional justice, any future concerns arising on the part of the applicant may be kept under review and addressed and determined, if required.

Dated this the 10th day of November 2026.



Ms Justice Ann Power

Sole Member of the Tribunal