



Defence Forces Tribunal

Opening Statement

Ms Justice Ann Power

Sole Member of the Tribunal

Establishment

Following a resolution of Dáil Éireann on the 18th day of January 2024 and of Seanad Éireann on the 30th day of January 2024, the Tánaiste and Minister for Defence, by instrument dated the 20th day of June 2024 [S.I. 304 of 2024], established this Tribunal of Inquiry under the Tribunals of Inquiry (Evidence) Acts 1921 to 2011 to inquire into certain matters of urgent public importance. Those matters were specified in paragraphs (i) to (vii) of the aforesaid resolutions of the Houses of the Oireachtas and they constitute the ‘Terms of Reference’ of this Tribunal.

Subject Matter of the Inquiry

The Tribunal is tasked by those resolutions with inquiring, urgently, into a range of matters pertaining to the effectiveness of the processes and the culture within the Defence Forces for dealing with complaints of abuse. Investigating the nature and performance of the statutory role of the Minister for Defence/Department of Defence in the systems and procedures for dealing with complaints of abuse, forms part of the Tribunal’s remit. Additionally, the Tribunal is to investigate the response to complaints in respect of the use of hazardous chemicals—within Air Corps’ headquarters at Casement Aerodrome, Baldonnel—and to consider the adequacy of the complaints processes in the light of such response.

Purpose

The purpose of this Opening Statement is to provide a broad outline of how the Tribunal intends to approach its task. I also want to highlight certain fundamental principles that must be underscored as the Tribunal commences its work.

Tribunal Legal Team

A Judge of the Court of Appeal, I have been appointed as Sole Member of the Tribunal. The Tribunal is supported in its task by a team of accomplished legal practitioners who will assist, advise and represent it throughout all stages of its work. The six members of the Tribunal's legal team are:

- Eoin McGonigal, Senior Counsel
- Michael Cush, Senior Counsel
- Leesha O'Driscoll, Senior Counsel
- Kilda Mooney, Barrister at Law
- Tim O'Hanlon, Barrister at Law
- Áine Smyth, Barrister at Law

Background

The background to the establishment of this Tribunal of Inquiry is a matter of public knowledge. Bearing in mind that serious allegations had been raised in respect of discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment and sexual misconduct within the Defence Forces, the Government established a non-statutory Independent Review Group to examine those issues and to provide recommendations and guidance to the Minister for Defence on measures and strategies required to underpin a workplace based on dignity, equality, mutual respect, and duty of care for every member of the Defence Forces.

The Group's first recommendation was the establishment of a statutory fact-finding process to identify systemic failures, if any, in the complaints system, in order to ensure accountability and transparency. Acting on that recommendation, this Tribunal of Inquiry was established by Government because it was recognised as representing the only

comprehensive method of inquiry to resolve outstanding issues that are of fundamental public importance.¹

Honour

In moving the motion before Dáil Éireann to establish this Tribunal, tribute was paid to former and current members of the Defence Forces who have served and who continue to serve with honour. It was said that their personal courage, dignity and resilience set in motion a journey of accountability that led to the establishment of this Tribunal. Honour is a cardinal value within the Defence Forces. It is a priceless and hard-won virtue. It means doing what is right. It means standing up for the truth—the whole truth, even if standing alone. Being a person of honour, may, at times, call upon one's deepest resources of courage and personal integrity. Telling the truth and contributing to ascertaining the full truth, particularly, when it may be difficult so to do, is a fundamental aspect of honour.

Establishing the truth, however worrying or reassuring that the truth may be, is what this Tribunal has been tasked to do.

Terms of Reference

I want to turn now to the Terms of Reference that have been fixed for the Tribunal and which delineate or mark the boundaries of the Tribunal's jurisdiction.

The Tribunal's Terms of Reference are clear. In the public interest and as a matter of urgent public importance, the Tribunal is required:

- (i) to establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were appropriate and fit for purpose;
- (ii) to establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were followed;
- (iii) 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;

¹ Transcript of motion before Dáil Éireann 18 January 2024.

- (iv) to investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of Complaints of Abuse;
- (v) 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;
- (vi) to investigate the nature and performance of the statutory role of the Minister for Defence/Department of Defence in the systems and procedures for dealing with Complaints of Abuse; and
- (vii) to investigate the response to Complaints of Hazardous Chemicals and to consider the adequacy of the Complaints Processes in light of the responses to same.

There are, within the Terms of Reference, additional provisions that guide the work of the Tribunal and these matters are set out in paragraphs (a) to (l) thereof.

Abuse

It is evident from the Terms of Reference, that complaints of abuse concern complaints about serious matters. 'Abuse' is defined as 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).

Complaints of Abuse

'Complaints of Abuse' refer to complaints made by specified persons. The term 'Complaints of Abuse' is defined as complaints made to the Defence Forces or Minister for Defence:

- by serving or former members of the Defence Forces;
- by current or former civilian employees to the Defence Forces / Minister for Defence; and

by current or former civil servants to the Defence Forces/Minister for Defence in respect of abuse suffered by the complainant in the course of his or her training, work and/or career

with the Defence Forces, or in the case of civil servants and civilian employees, in respect of their interactions with the Defence Forces.

Interpreting the Terms of Reference

How the Terms of Reference are to be interpreted is a matter for the Tribunal. In accordance with accepted practice, the Tribunal has published its interpretation of the Terms of Reference and this document is available on the Tribunal's website.

In approaching the task of interpreting the Terms of Reference, the Tribunal has sought to apply to the words their ordinary and natural meaning. In the Tribunal's view, the words are expressed in clear language, and it does not appear that any particular word requires a technical interpretation.

The Tribunal's publication of its interpretation of the Terms of Reference is, of course, without prejudice to the fact that it may be necessary and appropriate to elaborate on its interpretation in the light of emerging information.

Call for Information

Today, at its first public sitting, the Tribunal is calling for anyone with knowledge or information relevant to its work to come forward.

The Tribunal urges all those serving and former members of the Defence Forces, and all civilian employees and civil servants who are working or who have worked with the Department of Defence or the Defence Forces and who have knowledge or material relevant to the Terms of Reference, to contact the Tribunal at the earliest opportunity.

Some have already indicated, publicly, a willingness to speak about their experiences and to share their knowledge. Others may have chosen not to do so but may still want the whole truth to emerge. This is the opportunity to be heard, to participate in a fact-finding process that aims to establish the truth about the complaints processes and the culture surrounding the making of specific types of complaints within the Defence Forces. Whatever your relevant experience of or within the Defence Forces may be—whether

negative or positive, damaging or constructive—concerning the culture and the processes for dealing with the type of complaints that fall within the Tribunal’s jurisdiction, you are invited and encouraged to come forward and to assist the Tribunal in establishing the truth.

Statements

In particular, the Tribunal is calling for anyone who has knowledge or information that is relevant to any of the matters into which it must inquire, to provide the Tribunal with a written statement setting out the details of such knowledge or information.

That is the preferred and most efficient way of furnishing evidence to the Tribunal. A written statement should be as comprehensive as possible. Providing a statement that specifies information or knowledge relevant to the Tribunal’s remit will speed up its work and will assist it, greatly, in planning for the various stages of its inquiry.

It is imperative to bear in mind that certain statements and documentation that parties may wish to furnish or, indeed, may be ordered to discover to the Tribunal, may contain information of a highly personal and sensitive nature. Important constitutional rights, such as, the right to fair procedures and the right to privacy are not set at nought by reason of the fact that a Tribunal of Inquiry has been established to investigate the matters specified in the Terms of Reference. Any interference with or encroachment upon constitutional and other rights must be both necessary and proportionate to the work that the Tribunal has been tasked to complete.

The Tribunal’s legal team will follow up on every statement received. Whilst the Tribunal may adopt procedures for dealing with issues of a particularly sensitive nature, it is important that all stakeholders are aware that all records made or received or held in the course of the Tribunal’s inquiry shall be subject to the terms of the National Archives Act 1986 and Part 15 of the Civil Law (Miscellaneous Provisions) Act 2011 (as amended). This is a requirement of the law and it is not unique or specific to the work of this Tribunal.

Bearing the above in mind, a statement furnished to the Tribunal should be, not only comprehensive, but relevant to its Terms of Reference. The Tribunal has no power to

inquire into any matter that is beyond the boundaries of its specific jurisdiction which has been set down in the Terms of Reference. If any person is unsure or hesitant about how to submit a statement to the Tribunal or is unable to do so for reasons of ill health or infirmity or otherwise, the Tribunal's legal team will be available to offer guidance in this regard.

Any person in possession of evidence relevant to the subject matter of this inquiry is urged to contact the Tribunal's solicitor with a view to sharing that evidence at the earliest opportunity. Signed statements may be submitted to the Tribunal by email or by post and the contact details of the Tribunal's Office are set out at the end of this statement and are available on its website. Statements should be sent to the Tribunal's Office by close of business on the 16th day of August 2024, that is, within approximately eight weeks of today's date.

Once again, the Tribunal seeks to have as clear and as true a picture as possible of the reality of the situation within the Defence Forces pertaining to the matters into which it must investigate. Any person who has any relevant information that would assist the Tribunal in completing its work is asked to make contact, to come forward and to speak up. This 'Call for Information' will also be published in the national newspapers and will be uploaded to the Tribunal's website.

Confidentiality

The Tribunal fully appreciates that there may be persons who want to assist it in its work but who have concerns in relation to issues of personal confidentiality. In order to address these concerns, the Tribunal will approach documentation that contains sensitive or confidential information in the following manner:

- (i) all copies of documents that contain confidential or sensitive or personal information will be retained safely by the Tribunal and will be stored in a secure location with access thereto restricted;
- (ii) confidential information that is not relevant to the work of the inquiry will not be disclosed to any party save as may be required by law;

- (iii) where relevant documents contain some confidential or personal or sensitive information that is not relevant to the Tribunal's inquiry, that information will be redacted; and
- (iv) Counsel for the Tribunal will be available to discuss any concerns that a person may have concerning confidential, personal or sensitive information.

At the same time, it must be noted that the Tribunal is a public inquiry and the Tribunal cannot provide any person with a guarantee of absolute confidentiality relating to information or documentation which it receives and which may be relevant to the terms of its inquiry. Such information or documentation may be put in evidence in the course of a public hearing and/or may be disclosed to a third party as required by law.

Phases of the Inquiry

I want to explain, briefly, what will happen once the information and documentation requested, has been lodged with the Tribunal Office. There are five phases to the Tribunal's work.

Phase 1: The Investigative Phase

In order for the Tribunal to complete its work, a thorough examination of all of the information it receives, including, evidence obtained by any investigators it may appoint, must first take place. It is anticipated that, during this preliminary investigative stage, a large volume of material will fall to be considered, in private, by the Tribunal and its legal team. Follow up queries may have to be made and further lines of inquiry pursued in the light of the information received. This preliminary phase will constitute a significant part of the Tribunal's work and will take some time to complete.

The experience of past tribunals has demonstrated that the time devoted to getting this initial phase right, can bring great value and efficiency to later stages. A thorough investigation of the materials received will enable the Tribunal to categorise the evidence and to organise its work. This will help to reduce the overall number of hearing days required and the associated burden attaching thereto—a burden that all parties appearing before the Tribunal must bear. It will also reduce costs and resources expended on such hearings.

Phase 2: Determining the Evidence

At the end of that initial stage, the Tribunal should be well placed to know the extent of all of the information and documentation it has received. At this point, it will then determine what it considers to be evidence that is relevant to the matters into which it is obliged to inquire.

Phase 3: Service of the Evidence

Once the relevant evidence has been identified, the Tribunal will serve that evidence on the people who are likely to be affected by it. It may divide that evidence into separate categories pertinent to the various tasks set out in the Terms of Reference. Anyone served with evidence will be afforded an opportunity to consider it. The Tribunal's legal team will be available to provide assistance to any party who seeks clarification in relation to any aspect of the evidence that has been served.

Phase 4: Oral Hearings

Thereafter, the Tribunal will conduct oral hearings, as it considers necessary, to enable it to carry out its work. It will publish statements, in advance, on the Tribunal's website and will notify relevant parties in relation to which aspects of the inquiry will be pursued by way of oral hearings.

Phase 5: Preparation of Report

Finally, having concluded its hearing of the relevant evidence, the Tribunal will complete its Report on its investigation into the matters set out in the Terms of Reference and will make whatever recommendations it considers appropriate arising therefrom. It will then furnish its Report to the Taoiseach.

The Tribunal's Procedures

It is a well-established principle of law that Tribunals of Inquiry have an inherent right to govern their own procedures, subject always to observing the requirements of natural justice. The Procedures which this Tribunal intends to apply are published on the Tribunal's website. The 'Procedures' document is an important one and addresses several matters, including, for example, the powers of the Tribunal, the appointment of

investigators, orders for discovery, and how hearings shall be conducted. All parties are encouraged to familiarise themselves with the Tribunal's Procedures in early course.

Oral Hearings

Oral hearings will be in public unless otherwise decided by the Tribunal in accordance with law. Counsel for the Tribunal will make an opening statement on behalf of the Tribunal at the commencement of public hearings. As the inquiry is inquisitorial rather than adversarial in nature, all evidence tendered in oral hearings will be led by Counsel for the Tribunal. Witnesses who testify may be cross-examined on the evidence they give and re-examined by Counsel for the Tribunal should the need arise.

The objective is not about winning or losing but rather establishing the truth, reporting on the inquiry's findings and making recommendations for the future.

Restricted Hearings

Whilst this Tribunal is fundamentally a public inquiry, provision is made in law for restricted hearings to be held pursuant to s. 2(a) of the Tribunals of Inquiry (Evidence) Acts 1921 to 2011.

Some of the evidence that this Tribunal will receive may be particularly sensitive in nature and where an application is made for restrictions to be imposed, the Tribunal will hear submissions from the relevant parties and will consider, carefully, each application as it arises.

The Tribunal may hold a hearing otherwise than in public if, in the opinion of the Tribunal, it is in the public interest expedient to do so for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given.

Legal Representation

At this juncture, the Tribunal cannot know the extent of the information that will come to light during the investigative stage of its inquiry nor, indeed, the number of people affected by the matters that have given rise to the need for this inquiry.

It would, therefore, be premature to hear applications for legal representation, whether on a full or limited basis, at this stage, or to make any assessment, now, as to when the Tribunal will be ready to move to the commencement of the public hearings phase. When the Tribunal is ready to receive applications for legal representation, it will publish a notice to that effect on its website. The Tribunal's Procedures contain further information in this regard, including, how applications for representation should be made in the first instance.

The Urgent Nature of the Inquiry

The Tribunal's Terms of Reference stipulate that the Tribunal is required to endeavour to complete its work no later than three years from the date of its establishment.

It has been deemed of the utmost public importance that an *urgent* inquiry be made into the matters stipulated in the Terms of Reference. Urgency is lost where unnecessary delays are permitted. Everyone involved is entitled to have the urgent nature of this inquiry respected and observed. It is, therefore, in the public interest that the specific matters are investigated and reported upon, promptly, and in a timely fashion. What that may require, in practical terms, is important.

Period of Investigation

Parties are asked to bear in mind that the Tribunal is tasked with investigating matters that extend back over four decades, that is, from the 1st day of January 1983 until the 20th day of June 2024. That is a significant period of time.

Moreover, its examination of complaints of abuse extends to matters occurring not only within this jurisdiction but also overseas. The Tribunal's task is a formidable one.

Sampling (if necessary)

When the full extent of the evidence is known, it may become necessary for the Tribunal to adopt procedures that would ensure that it fulfils the aim of respecting the urgent nature of its inquiry. The Terms of Reference permit the Tribunal to exercise a discretion in relation to the extent of the evidence that it hears. The Tribunal is entitled to consider that a sample of evidence on particular issues is sufficient for it to make conclusions and report upon its findings.

No Findings of a Criminal Nature

As has already been noted, a Tribunal of Inquiry is primarily inquisitorial rather than adversarial in nature. It conducts an investigation, not a trial. Pursuant to its Terms of Reference, the Tribunal may permit evidence of abuse and the consequences thereof to be led but it is precluded from making findings of fact upon any matters that would, if established in a court of law, be criminal in nature. It is essential that everyone interested in the work of this Tribunal understands this. Whilst evidence of abuse may be led, this Tribunal is not concerned with whether claims of abuse are well founded. As a nation built upon the rule of law, criminal findings may only be made by criminal courts that are lawfully constituted and in which an accused person has all the essential safeguards and guarantees that are necessary to ensure the fundamental requirements of a fair trial.

Assurances

Before calling for persons with information to come forward, certain assurances were requested from the Minister for Defence and the Chief of Staff of the Defence Forces. Paragraph (e) of the Tribunal's Terms of Reference provides that:

“The Tribunal will require appropriate assurances from the Minister for Defence and the Chief of Staff of the Defence Forces that any serving member of the Defence Forces will not be penalised by reason of their disclosure of any Complaint, Complaints of Abuse, or Complaint of Hazardous Chemicals at the Tribunal.”

The Tribunal has received assurances consistent with the terms of paragraph (e) from the Minister for Defence and the Chief of Staff of the Defence Forces.

These assurances should provide some comfort to serving members of the Defence Forces who have been reluctant to speak before now but who may wish to have their voices heard at this stage.

Cooperation and Collaboration

The Tribunal expects that all those who have an interest in the subject matter of the inquiry will cooperate, fully, in furnishing relevant information and documentation.

That said, it is cognisant of the need to ensure the preservation of all relevant evidence and, in this regard, has issued Protective Orders directing the Minister for Defence and the Chief of Staff of the Defence Forces to retain and preserve all relevant documents (in soft and hard copy format) in their power, possession or procurement pending the making of any orders for discovery.

Next Steps

The Tribunal will now begin its preliminary investigations and cannot, at this juncture, estimate how long this will take. Once some of the preliminary work is underway it will be in a better position to consider any applications for legal representation that will have been received and to decide whether it is necessary to hear oral submissions on any such applications. It will publicise, in advance, its intention to hold any such hearings. The Tribunal will also update the public, in due course, regarding when it envisages the commencement of public hearings.

Contact

All correspondence in relation to the work of this Tribunal should be marked for the attention of the Tribunal's Solicitor. The address of the Defence Forces Tribunal is:

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