

TRIBUNAL OF INQUIRY INTO ISSUES RELATING TO THE COMPLAINTS  
PROCESSES IN THE DEFENCE FORCES AND CULTURE SURROUNDING  
THE MAKING OF COMPLAINTS ('DEFENCE FORCES TRIBUNAL')

OPENING STATEMENT OF MS. JUSTICE ANN POWER, SOLE MEMBER,  
DELIVERED AT THE INFINITY BUILDING, THIRD FLOOR,  
GEORGE'S COURT, GEORGE'S LANE, SMITHFIELD, DUBLIN 7

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APPEARANCES

FOR THE DEFENCE FORCES TRIBUNAL: MR. EOIN MCGONIGAL SC  
MR. MICHAEL CUSH SC  
MS. LEESHA O'DRISCOLL SC  
MS. KILDA MOONEY BL  
MR. TIM O'HANLON BL  
MS. ÁINE SMYTH BL

INSTRUCTED BY: MR. ROBERT McNAMARA  
SOLICITOR

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1 THE HEARING COMMENCED ON MONDAY, 24TH JUNE 2024 AS  
2 FOLLOWS:

3  
4 REGISTRAR: You are very welcome to the opening sitting  
5 of the Defence Forces Tribunal. Just to remind all 14:02  
6 people present that the unauthorised recording of these  
7 proceedings is absolutely prohibited. A stenographer  
8 and a videographer are present today for the purposes  
9 of making a formal record of these proceedings which  
10 will be uploaded to the Tribunal's website. 14:02

11 SOLE MEMBER: Good afternoon, everybody.

12  
13 Following a resolution of Dáil Éireann on the 18th day  
14 of January 2024, and of Seanad Éireann on the 30th day  
15 of January 2024, Tánaiste and Minister for Defence, by 14:02  
16 instrument dated the 20th day of June 2024, established  
17 this Tribunal of Inquiry pursuant to the Tribunals of  
18 Inquiry Acts 1921-2011, to inquire into certain matters  
19 of urgent public importance.

20 14:03  
21 Those matters were specified in paragraphs (i) to (vii)  
22 of the aforesaid resolutions of the Houses of the  
23 Oireachtas and they constitute the Terms of Reference  
24 for this Tribunal.

25 14:03  
26 The Tribunal is tasked by those resolutions with  
27 inquiring urgently into a range of matters pertaining  
28 to the effectiveness of the processes and the culture  
29 within the Defence Forces for dealing with complaints

1 of abuse.

2

3 Investigating the nature and performance of the  
4 statutory role of the Minister for Defence, Department  
5 of Defence, in the systems and procedures for dealing 14:03  
6 with complaints of abuse forms part of the Tribunal's  
7 remit. Additionally, the Tribunal is to investigate  
8 the response to complaints in respect of the use of  
9 hazardous chemicals within Air Corps Headquarters at  
10 Casement Aerodrome, Baldonnel, and consider the 14:03  
11 adequacy of the complaints processes in the light of  
12 such response.

13

14 The purpose of this opening statement is to provide a  
15 broad outline of how the Tribunal intends to approach 14:04  
16 its task. I also want to highlight certain fundamental  
17 principles that must be underscored as the Tribunal  
18 commences its work.

19

20 A judge of the Court of Appeal, I have been appointed 14:04  
21 as the Sole Member of the Tribunal. The Tribunal is  
22 supported in its task by a team of accomplished legal  
23 practitioners who will assist, advise and represent the  
24 Tribunal throughout all stages of its work.

25

26 The six members of the Tribunal's legal team are:  
27 Eoin McGonigal, Senior Counsel; Michael Cush, Senior  
28 Counsel; Leesha O'Driscoll, Senior Counsel;  
29 Kilda Mooney, barrister-at-law; Tim O'Hanlon,

14:04

1 barrister-at-law; and Áine Smyth, barrister-at-law.

2  
3 THE BACKGROUND

4 The background to the establishment of this Tribunal of  
5 Inquiry is a matter of public knowledge. Bearing in 14:05  
6 mind that serious allegations had been made in respect  
7 of discrimination, bullying, harassment, physical  
8 torture, physical assault, psychological harm, sexual  
9 harassment and sexual misconduct within the Defence  
10 Forces, the Government established a non-statutory 14:05  
11 independent review group to examine those issues and to  
12 report recommendations and guidance to the Minister for  
13 Defence on measures and strategies required to underpin  
14 a workplace based on dignity, quality, mutual respect  
15 and a duty of care for every member of the Defence 14:05  
16 Forces.

17  
18 The group's first recommendation was the establishment  
19 of a statutory fact-finding process to identify  
20 systemic failures, if any, in the complaints system in 14:05  
21 order to ensure accountability and transparency.

22  
23 Acting on that recommendation, this Tribunal of Inquiry  
24 was established by Government because it was recognised  
25 as representing the only comprehensive method of 14:06  
26 inquiry to resolve outstanding issues that are of  
27 fundamental public importance.

28  
29 In moving the motion before Dáil Éireann to establish

1 this Tribunal, tribute was paid to former and current  
2 members of the Defence Forces who served, and who  
3 continue to serve, with honour. It was said that their  
4 personal courage, dignity, and resilience set in motion  
5 a journey of accountability that led to the 14:06  
6 establishment of this Tribunal.

7  
8 Honour is a cardinal value in the Defence Forces. It  
9 is a priceless and a hard-won virtue. It means doing  
10 what is right. It means standing up for the truth, the 14:06  
11 whole truth, even if standing alone.

12  
13 Being a person of honour may, at times, call upon one's  
14 deepest resources of courage and personal integrity.  
15 Telling the truth and contributing to ascertaining the 14:07  
16 full truth, particularly when it may be difficult to do  
17 so, is a fundamental aspect of honour.

18  
19 Establishing the truth, however worrying or reassuring  
20 that truth may be, is what this Tribunal has been 14:07  
21 tasked to do.

22  
23 I want to turn now to the Terms of Reference that have  
24 been fixed for the Tribunal and which delineate or mark  
25 the boundaries of the Tribunal's jurisdiction. 14:07  
26

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

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(i) to establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were appropriate and fit for purposes;

14:08

(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 system of the Defence Forces;

14:08

(iv) to investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of Complaints of Abuse;

14:08

(v) to investigate whether there were reprisals against those who made Complaints of Abuse by way of retaliation, by intimidation consequent upon 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.

14:08

(vi) to investigate the nature and performance of the statutory role of the Minister for Defence/Department of Defence and the systems and procedures for dealing with Complaints of Abuse; and

14:09

(vii) to investigate the response to Complaints of

1 Hazardous Chemicals and to consider the adequacy of the  
2 Complaints Processes in light of the responses to same.

3  
4 There are within the Terms of Reference additional  
5 provisions that guide the work of the Tribunal and 14:09  
6 these matters are set out in paragraphs (a) to (l)  
7 thereof.

8  
9 It is evident from the Terms of Reference that  
10 Complaints of Abuse concern complaints about serious 14:09  
11 matters. Abuse is defined as "discrimination,  
12 bullying, harassment, physical torture, physical  
13 assault, psychological harm, sexual harassment, and any  
14 form of sexual misconduct, including sexual assault,  
15 aggravated sexual assault and rape." 14:10

16  
17 Complaints of Abuse refer to complaints made by  
18 specified persons. The term "Complaints of Abuse" is  
19 defined as complaints made to the Defence Forces or the  
20 Minister for Defence, by serving or former members of 14:10  
21 the Defence Forces, by current or former civilian  
22 employees to the Defence Forces/Minister for Defence,  
23 by current or former civil servants to the Defence  
24 Forces/Minister for Defence in respect of abuse  
25 suffered by the complainant in the course of his or her 14:10  
26 training, work and/or career with the Defence Forces  
27 (or in the case of civil servants and civil employees,  
28 in respect of their interactions with the Defence  
29 Forces).



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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. 14:11

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. 14:11

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 14:12

1 Reference to contact the Tribunal at the earliest  
2 opportunity.

3  
4 Some have already indicated a willingness to speak  
5 about their experiences and to share their knowledge. 14:12  
6 Others may have chosen not to do so but may still want  
7 the whole truth to emerge. This is the opportunity to  
8 be heard: To participate in a fact-finding process  
9 that aims to establish the truth about the Complaints  
10 Processes, and the culture surrounding the making of 14:13  
11 specific types of complaint within the Defence Forces.  
12

13 Whatever your relevant experience of, or within the  
14 Defence Forces may be, whether negative or positive,  
15 damaging or constructive, concerning the culture and 14:13  
16 the processes for dealing with the type of complaints  
17 that fall within the jurisdiction of the Tribunal, you  
18 are invited and encouraged to come forward and to  
19 assist the Tribunal in establishing the truth.  
20

21 In particular, the Tribunal is calling for anyone who 14:13  
22 has knowledge or information that is relevant to any of  
23 the matters into which it must inquire to provide the  
24 Tribunal with a written statement setting out the  
25 detail of such knowledge and information. This is the  
26 preferred and most efficient way of furnishing evidence  
27 to the Tribunal. A written statement should be as  
28 comprehensive as possible. Providing a statement that  
29 specifies information or knowledge relevant to the

1 Tribunal's remit will speed up its work and will assist  
2 it greatly in planning for the various stages of its  
3 inquiry.

4  
5 It is imperative to bear in mind that certain 14:14  
6 statements and documentation that parties may wish to  
7 furnish, or indeed may be ordered to discover to the  
8 Tribunal, may contain information of a highly personal  
9 and sensitive nature.

10 14:14  
11 Important constitutional rights such as the right to  
12 fair procedures and the right to privacy are not set at  
13 nought by reason of the fact that a Tribunal of Inquiry  
14 has been established to investigate the matters  
15 specified in the Terms of Reference. 14:14

16  
17 Any interference with, or encroachment upon,  
18 constitutional and other rights must be both necessary  
19 and proportionate to the work that the Tribunal has  
20 been tasked to complete. 14:15

21  
22 The Tribunal's legal team will follow up on every  
23 statement received.

24  
25 whilst the Tribunal may adopt procedures for dealing 14:15  
26 with issues of a particularly sensitive nature, it is  
27 important that all stakeholders are aware that all  
28 records made or received or held in the course of the  
29 Tribunal's inquiry shall be subject to the terms of the

1 National Archives Act 1986 and Part 15 of the Civil Law  
2 (Miscellaneous Provisions) Act 2011. This is a  
3 requirement of law and it is not unique or specific to  
4 the work of this Tribunal.

5  
6 Bearing the above in mind, a statement furnished to the  
7 Tribunal should not only be comprehensive but should be  
8 relevant to its Terms of Reference. The Tribunal has  
9 no power to inquire into any matter that is beyond the  
10 boundaries of its specific jurisdiction which has been 14:15  
11 set down in the Terms of Reference. 14:16

12  
13 If any person is unsure or hesitant about how to submit  
14 a statement to the Tribunal, or is unable to do so for  
15 reasons of ill-health or infirmity, or otherwise, the 14:16  
16 Tribunal's legal team will be available to offer  
17 guidance in this regard.

18  
19 Any person in possession of evidence relevant to the  
20 subject matter of this inquiry is urged to contact the 14:16  
21 Tribunal's solicitor with a view to sharing that  
22 evidence at the earliest opportunity. Signed  
23 statements may be submitted to the Tribunal by e-mail  
24 or by post, and the contact details of the Tribunal's  
25 office are set out at the end of this statement and are 14:16  
26 available on the Tribunal's website.

27  
28 Statements should be sent to the Tribunal's office by  
29 close of business on the 16th day of August 2024. That

1 is within approximately eight weeks of today's date.

2  
3 Once again, the Tribunal seeks to have as clear and as  
4 true a picture as possible of the reality of the  
5 situation within the Defence Forces pertaining to the 14:17  
6 matters into which it must investigate. Any person who  
7 has any relevant information that would assist the  
8 Tribunal in completing its work is asked to make  
9 contact, to come forward and to speak up. This call  
10 for information will also be published in the national 14:17  
11 newspapers and will be uploaded to the Tribunal's  
12 website.

13  
14 The Tribunal fully appreciates that there may be  
15 persons who want to assist it in its work but who have 14:17  
16 concerns in relation to issues of personal  
17 confidentiality.

18  
19 In order to address these concerns, the Tribunal will  
20 approach documentation that contains sensitive or 14:18  
21 confidential information in the following manner:

22  
23 1. All copies of documents that contain confidential  
24 or sensitive or personal information will be retained  
25 safely by the Tribunal and will be stored in a secure 14:18  
26 location with access thereto restricted;

27  
28 2. Confidential information that is not relevant to  
29 the work of the inquiry will not be disclosed to any

1 party save as may be required by law;

2  
3 3. Where relevant documents contain some confidential  
4 or personal or sensitive information that is not  
5 relevant to the Tribunal's inquiry, that information 14:18  
6 will be redacted; and

7  
8 4. Counsel for the Tribunal will be available to  
9 discuss any concerns that a person may have concerning  
10 confidential, personal or sensitive information. 14:19

11  
12 At the same time, it must be noted that the Tribunal is  
13 a public inquiry and the Tribunal cannot provide any  
14 person with a guarantee of absolute confidentiality  
15 relating to information or documentation which is 14:19  
16 receives and which may be relevant to the terms of its  
17 inquiry. Such information or documentation may be put  
18 in evidence in the course of a public hearing and/or  
19 may be disclosed to a third party as required by law.

20  
21 I want to explain briefly what will happen once the  
22 information and the documentation requested has been  
23 lodged with the Tribunal Office. There are five phases  
24 to the Tribunal's work.

25  
26 PHASE 1: THE INVESTIGATIVE STAGE

27 In order for the Tribunal to complete its work, a  
28 thorough examination of all of the information it  
29 receives, including evidence obtained by investigators

1 it may appoint, must first take place. It is  
2 anticipated that during the preliminary investigative  
3 stage, a large volume of material will fall to be  
4 considered in private by the Tribunal and its legal  
5 team. Follow-up queries may have to be made and 14:20  
6 further lines of inquiry pursued in the light of the  
7 information received. This preliminary phase will  
8 constitute a significant part of the Tribunal's work  
9 and will take some time to complete.

10  
11 The experience of past tribunals has demonstrated that  
12 the time devoted to getting this initial phase right  
13 can bring great value and efficiency to later stages.  
14 A thorough investigation of the materials received will  
15 enable the Tribunal to categorise the evidence and to 14:20  
16 organise its work. This will help to reduce the  
17 overall number of hearing days required and the  
18 associated burden attaching thereto, a burden that all  
19 parties appearing before the Tribunal must bear. It  
20 will also reduce costs and resources expended on such 14:21  
21 hearings.

## 22 23 PHASE 2: DETERMINING THE EVIDENCE

24 At the end of the initial stage, the Tribunal should be  
25 well placed to know the extent of all of the 14:21  
26 documentation and information it has received. At this  
27 point, it will then determine what it considers to be  
28 evidence that is relevant to the matters into which it  
29 is obliged to inquire.

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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.

14:21

14:22

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.

14:22

14:22

PHASE 5: PREPARATION OF THE 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.

14:22

THE TRIBUNAL'S PROCEDURES



1 It's a well-established principle of law that tribunals  
2 of inquiry have an inherent right to govern their own  
3 procedures, subject always to observing the  
4 requirements of natural justice. The procedures which  
5 this Tribunal intends to apply are published on the  
6 Tribunal's website. 14:23

7  
8 The procedures document is an important one and  
9 addresses several matters, including, for example, the  
10 powers of the Tribunal, the appointment of 14:23  
11 investigators, orders for discovery, and how oral  
12 hearings and other hearings shall be conducted. All  
13 parties are encouraged to familiarise themselves with  
14 the Tribunal's procedures in early course.

15 14:23  
16 ORAL HEARINGS

17 Oral hearings will be in public, unless otherwise  
18 decided by the Tribunal in accordance with law.  
19 Counsel for the Tribunal will make an opening statement  
20 on behalf of the Tribunal at the commencement of 14:23  
21 publication hearings.

22  
23 As the inquiry is inquisitorial rather than adversarial  
24 in nature, all evidence tendered in oral hearings will  
25 be led by counsel for the Tribunal. Witnesses who 14:24  
26 testify may be cross-examined on the evidence they give  
27 and re-examined by counsel for the Tribunal, should the  
28 need arise.

29 The objective is not about winning or losing, but

1 rather establishing the truth, reporting on the  
2 inquiry's findings and making recommendations for the  
3 future.

4  
5 RESTRICTED HEARINGS

14:24

6 whilst this Tribunal is fundamentally a public inquiry,  
7 provision is made in law for restricted hearings to be  
8 held pursuant to Section 2A of the Tribunals of Inquiry  
9 (Evidence) Acts 1921-2011.

10  
11 Some of the evidence that this Tribunal will receive  
12 may be particularly sensitive in nature and where an  
13 application is made for restrictions to be imposed the  
14 Tribunal will hear submissions from the relevant  
15 parties and will consider each application carefully as  
16 it arises.

14:24

14:25

17  
18 The Tribunal may hold a hearing otherwise than in  
19 public if, in the opinion of the Tribunal, it is in the  
20 public interest and expedient to do so, for reasons  
21 connected with the subject matter of the inquiry or the  
22 nature of the evidence given.

14:25

23  
24 LEGAL REPRESENTATION

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

14:25

1 therefore be premature to hear applications for legal  
2 representation, whether on a full or a limited basis,  
3 at this stage; or to make any assessment now as to when  
4 the Tribunal will be ready to move to the commencement  
5 of public hearings.

14:25

6  
7 when the Tribunal is ready to receive applications for  
8 legal representation, it will publish a notice to that  
9 effect on its website.

10  
11 The Tribunal's procedures contain further information  
12 in this regard, including how applications for  
13 representation should be made in the first instance.

14:26

14  
15 The Tribunal's Terms of Reference stipulate that the  
16 Tribunal is required to endeavour to complete its work  
17 no later than three years from the date of its  
18 establishment. It has been deemed of the utmost public  
19 importance that an urgent inquiry be made into the  
20 matters stipulated in the Terms of Reference.

14:26

21  
22 Urgency is lost where unnecessary delays are permitted.  
23 Everyone involved is entitled to have the urgent nature  
24 of this inquiry respected and observed. It is  
25 therefore in the public interest that the specific  
26 matters are investigated and reported upon promptly and  
27 in a timely fashion. What that may require in  
28 practical terms is important.

14:26

29 Parties are asked to bear in mind that the Tribunal is



1 understands this. Whilst evidence of abuse may be led,  
2 the Tribunal is not concerned with whether claims of  
3 abuse are well founded. As a nation built upon the  
4 rule of law, criminal findings may only be made by  
5 criminal courts that are lawfully constituted, and on 14:29  
6 which an accused person has all the essential  
7 safeguards and guarantees that are necessary to ensure  
8 the fundamental requirements of a fair trial.

9  
10 Before calling for persons with information to come 14:29  
11 forward certain assurances were requested from the  
12 Minister for Defence and the Chief of Staff of the  
13 Department of Defence. Paragraph (e) of the Tribunal's  
14 Terms of Reference provides that:

15 14:29  
16 "The Tribunal will require appropriate assurances from  
17 the Minister for Defence and the Chief of Staff of the  
18 Department of Defence that any serving member of the  
19 Defence Forces will not be penalised by reason of their  
20 disclosure of any Complaint, Complaints of Abuse, or 14:29  
21 Complaint of Hazardous Chemicals at the Tribunal."

22  
23 The Tribunal has received assurances consistent with  
24 the terms of paragraph (e) from the Minister for  
25 Defence and the Chief of Staff of the Defence Forces 14:30  
26 Defence. These assurances should provide some comfort  
27 to serving members of the Defence Forces who have been  
28 reluctant to speak before now, but who may wish to have  
29 their voices heard at this stage.

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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. 14:30

THE NEXT STEPS

The Tribunal will now begin its preliminary investigation and cannot, at this juncture, estimate how long that will take. Once some of the preliminary work is under way 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. 14:31

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

1 Forces Tribunal is The Infinity Building, Third Floor,  
2 George's Court, George's Lane, Smithfield, Dublin 7,  
3 D07 EN8Y. The Tribunal's e-mail address is  
4 info@toidf.ie; its telephone number is 01-5391550; and  
5 its website is www.toidf.ie. A copy of this opening  
6 statement will be available on the Tribunal's website,  
7 as will an authorised recording of today's proceedings.

14:32

8  
9 Thank you for your attention and good afternoon.

14:32

10  
11 THE HEARING THEN CONCLUDED

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