

Tribunal of Inquiry into Issues Relating to the Complaints Processes in the Defence Forces and the Culture Surrounding the Making of Complaints

Interpretation of the Terms of Reference for the Tribunal

1. By resolution of the Houses of the Oireachtas, this Tribunal of Inquiry (the “Tribunal”) has been established pursuant to the provisions of the Tribunals of Inquiry (Evidence) Acts 1921 to 2011 to inquire into matters of urgent public importance. Its purpose is to investigate issues relating to the complaints processes in the Defence Forces and the culture surrounding the making of complaints. The complaints involved are principally Complaints of Abuse which are defined in the Terms of Reference.

2. By instrument dated the 20th day of June 2024, the Tánaiste and Minister for Defence established the Tribunal.

3. The terms of reference for the Tribunal are to:

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

- (iii) 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;
- (iv) investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of Complaints of Abuse;
- (v) investigate whether there were:
 - a) reprisals against those who made Complaints of Abuse;
 - b) intimidation consequent on the making of a Complaint of Abuse; or
 - c) the imposition of any penalty or burden upon a person who made a Complaint of Abuse;
- (vi) 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) investigate the response to Complaints of Hazardous Chemicals and to consider the adequacy of the Complaints Processes in light of the responses to same.

4. Guidance to tribunals of inquiry regarding the interpretation of its terms of reference is to be found in *Haughey v Moriarty* [1993] 3 I.R. 1. In that case at p.56 the Court adopted the following recommendation from paragraph 79 of the Report of the Royal Commission on Tribunals of Inquiry (November 1966), (the Salmon report), as a correct statement of the law and practice applicable to Tribunals in this jurisdiction:

“The Tribunal should take an early opportunity of explaining in public its interpretation of its terms of reference and the extent to which the inquiry is likely to be pursued. As the inquiry proceeds, it may be necessary for the Tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged.”

5. The purpose of this document is to outline, in broad terms, how the Tribunal will interpret the Terms of Reference set out above.
6. The Tribunal’s interpretation of the Terms of Reference may be expanded or revised in the light of other facts or circumstances which may emerge during the course of its inquiry.
7. This document is confined to an interpretation of the Terms of Reference of the Tribunal. The Tribunal has separately published on its website the Procedures of the Tribunal.
8. In the view of the Tribunal, the wording of the Terms of Reference, including the definitions is, in the main, unambiguous and conveys the meaning intended. It is clear that it is not the function of the Tribunal to establish whether any individual complaint is or was well founded.
9. The Tribunal, in approaching the task of interpretation of the Terms of Reference has, in general, sought to apply the ordinary and natural meaning of the words used. The Terms of Reference, in the Tribunal’s view, are expressed in clear

language and it does not appear that any particular words require a technical interpretation.

10. In the Terms of Reference, the following definitions are provided:

“Abuse” means 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” means complaints made by:

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

“Complaints of Hazardous Chemicals” means complaints made by:

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

- current or former Civil Servants to the Defence Forces/Minister for Defence, in respect of the use of hazardous chemicals within the Air Corps' headquarters at Casement Aerodrome, Baldonnell; and

“Complaints Processes” includes but is not limited to processes covered by:

- A. the Defence Forces Administrative Instruction A7 Chapter 1;
- B. section 114 of the Defence Act 1954 (Redress of Wrongs procedure);
- C. section 169 of the Defence Act 1954 (civil offences punishable by military law);
- D. the Ombudsman (Defence Forces) Act 2004;
- E. the Protected Disclosures Act 2014; where applicable;
- F. the Protected Disclosures (Amendment) Act 2022; and
- G. in so far as Term of Reference (vii) is concerned, the Safety, Health and Welfare at Work Act 2005 (as amended) or where applicable, the Safety, Health and Welfare at Work Act 1989.

Interpretation

- (i) To establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were appropriate and fit for purpose.
 - No particular interpretation required.
- (ii) To establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were followed.

- No particular interpretation required.
- (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.
- No particular interpretation required.
- (iv) To investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of Complaints of Abuse.
- If a complaint of abuse was not made, whether due to a perceived culture or a fear of retaliation or otherwise, such failure to complain at the relevant time, will not act as a bar to any person who wishes to give evidence to this Tribunal.
- (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.
- No particular interpretation required.

(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.

- No particular interpretation required

(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.

- No particular interpretation required.

11. Should a party wish to address the Tribunal in relation to any aspect of the Tribunal's interpretation of its Terms of Reference, a short submission, in writing should be forwarded to the Registrar for consideration by the Tribunal. Notwithstanding the foregoing, the interpretation of the Tribunal's Terms of Reference is ultimately a matter for the Tribunal.

Dated the 20th day of June 2024.