



RULING OF THE TRIBUNAL ON APPLICATIONS FOR REPRESENTATION MADE ON BEHALF OF REPRESENTATIVE BODIES

1. The Tribunal sat on the 22nd day of July 2024 to hear applications for representation made on behalf of representative bodies. As stated by Hamilton C.J. in *Haughey v. Moriarty* ([1999] 3 IR 1, p.74), there are several stages to the work of a Tribunal of Inquiry. This Tribunal is at the beginning of its first stage. Notwithstanding this, applications for legal representation were heard in response to a concern that had been raised by some representative bodies that legal advice was needed in order to assist their members in responding to the Tribunal's Call for Statements.

2. 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. The proper exercise of its discretion to make such orders is, undoubtedly, founded on 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 (*Boyhan v Beef Tribunal* [1993] IR 210).

3. Until the Tribunal knows the extent of the relevant evidence that will be adduced and which, if any, aspects thereof will be contested or called into question, it is not, now, in a position to determine, save in the case of two applications, which parties may and which parties may not require representation when the Tribunal moves to the public hearings stage.

4. Bearing that in mind and conscious of its obligation to the public to conduct its inquiry in as cost effective a manner as is possible, the Tribunal considers that, in the case of all but two of the applications it has heard, it is appropriate, at this time, to confine its decisions on legal representation to the 'investigative stage' of its work. Its decisions in relation to legal representation at the public hearings stage is, therefore, deferred.

5. The 'investigative stage' of its work, as that term is used hereafter, encompasses the Tribunal's preliminary investigation of the evidence, its determination regarding what it considers to be evidence relevant to the matters into which it is obliged to inquire, and its service of such relevant evidence on persons likely to be affected thereby.

6. At the end of the investigative stage, the Tribunal will revisit applications for representation. Any representative group whose application for representation during the public hearings stage of the Tribunal's work is, by this Ruling, deferred, will be given notice, in advance of the public hearings stage, of the Tribunal's intention to make its decision and will, at that stage, be afforded an opportunity to provide a supplemental written submission, not exceeding 1,000 words, in respect of representation at the public hearings stage.

The Ruling of the Tribunal, delivered on the 25th day of July 2024, is as follows:

7. Application was made by Mr Patrick McCann SC, instructed by Mr Ronan Cotter, Solicitor at the Chief State Solicitor's Office, for full representation on behalf of the Defence Forces. The Tribunal is satisfied that an order for full representation in relation to all of the matters in the Terms of Reference (i) to (vii) inclusive, should be granted to the Defence Forces and it is so ordered. Should the Tribunal deem it necessary, in

accordance with section 2(a) of the Tribunals of Inquiry (Evidence) Acts 1921 to 2011, to hold a hearing otherwise than in public, then solicitor and counsel for the Defence Forces may make an application to attend such a hearing and the Tribunal will grant such an application if, in the interests of justice, it deems it necessary and appropriate so to do.

8. Application was made by Mr Diarmaid McGuinness SC, instructed by Ms Sarah Maguire, Solicitor at the Chief State Solicitor's Office, for full representation on behalf of the Minister for Defence. The Tribunal is satisfied that an order for full representation in relation to all of the matters in the Terms of Reference (i) to (vii) inclusive should be granted to the Minister for Defence. Should the Tribunal deem it necessary, in accordance with section 2(a) of the Tribunals of Inquiry (Evidence) Acts 1921 to 2011, to hold a hearing otherwise than in public, then solicitor and counsel for the Minister for Defence may make an application to attend such a hearing and the Tribunal will grant such an application if, in the interests of justice, it deems it necessary and appropriate so to do.

9. This grant of full representation to the Minister for Defence includes representation for former holders of the office and current and former officials, if necessary, and if sought by them.

10. Application was made by Mr Kevin D'Arcy BL, instructed by O'Regan Little Solicitors, on behalf of the Permanent Defence Forces Other Ranks Representative Association ('PDFORRA'), for full representation. The Tribunal is satisfied that PDFORRA has a sufficiently direct interest for a grant of limited representation at the investigative stage of the Tribunal's work and it is so ordered. This representation is granted to PDFORRA for the following purposes:

- (a) assisting those individual members who may come to it with information relevant to the Terms of Reference who wish to submit statements to the Tribunal;
- (b) attending upon any such members if they are called for interview during the investigative stage of the Tribunal; and
- (c) making written submissions as an organisation and on behalf of its membership in respect of all of the matters in the Terms of Reference (i) to (vii), inclusive.

11. The Tribunal is satisfied that a grant of representation to PDFORRA in these terms is sufficient to cover the interests of PDFORRA during the investigative stage of the Tribunal's work and defers its decision in respect of the extent of legal representation, if any, during the public hearings stage of its work.

12. Application was made by Mr Raymond Bradley SC, Solicitor, of Malcomson Law LLP, for full representation on behalf of Woman of Honour (a group, it was submitted, composed of four individuals seeking representation in a representative capacity, together with the corporate entity, Women of Honour CLG). The Tribunal is satisfied that Women of Honour has a sufficiently direct interest for a grant of limited representation during the investigative stage and it is so ordered. This representation is granted to Women of Honour for the following purposes:

- (a) assisting the individuals whom it currently represents, and any others who seek to be represented by it, who have information relevant to the Terms of Reference and who wish to submit statements to the Tribunal;

- (b) attending upon any such individuals if they are called for interview during the investigative stage of the Tribunal; and
- (c) making written submissions as an organisation and on behalf of the individuals it represents in respect of all of the matters in the Terms of Reference (i) to (vii), inclusive.

13. The Tribunal is satisfied that a grant of representation to Women of Honour in these terms is sufficient to cover the interests of Women of Honour during the investigative stage of the Tribunal's work and defers its decision in respect of the extent of legal representation, if any, during the public hearings stage of its work.

14. Application was made by Mr Niall Donohoe, on behalf of the Defence Forces Justice Alliance, for full representation in relation to all of the matters covered by the Terms of Reference. The Tribunal is satisfied that the Defence Forces Justice Alliance has a sufficiently direct interest for an order for limited representation during the investigative stage and it is so ordered. Representation is granted to the Defence Forces Justice Alliance for the following purposes:

- (a) assisting its individual non-aligned members who have information relevant to the Terms of Reference and who wish to submit statements to the Tribunal;
- (b) attending upon any such non-aligned members if they are called for interview during the investigative stage of the Tribunal; and
- (c) making submissions as an organisation and on behalf of all of its members in respect of the matters set out in Terms of Reference (i) to (vii), inclusive.

15. The Tribunal is satisfied that a grant of representation to the Defence Forces Justice Alliance in these terms is sufficient to cover the Alliance's interests during the investigative stage of the Tribunal's work and defers its decision in respect of the extent of legal representation, if any, during the public hearings stage of its work.

16. Application was made by Mr Ian Hutchinson on behalf of the 34th Platoon Army Apprentice School Justice Group. At the hearing, the application made was for full representation notwithstanding that this representative body's written application sought limited representation. The Tribunal is satisfied that the 34th Platoon Army Apprentice School Justice Group has a sufficiently direct interest in the Terms of Reference to be granted limited representation during the investigative stage of the Tribunal's work and it is so ordered. Representation is granted to the 34th Platoon Army Apprentice School Justice Group for the following purposes:

- (a) assisting its members who have information relevant to (i) to (v) of the Terms of Reference and who wish to submit statements to the Tribunal;
- (b) attending upon any such members if they are called for interview during the investigative stage of the Tribunal; and
- (c) making submissions as an organisation and on behalf of its membership in respect of the matters set out in Terms of Reference (i) to (v) inclusive.

17. Having considered the written and oral application made herein, the Tribunal is satisfied that a grant of representation to the 34th Platoon Army Apprentice School Justice Group in these terms is sufficient to cover its interests during the investigative stage of the Tribunal's work. The Tribunal defers its decision in respect of the extent of legal representation, if any, during the public hearings stage of its work.

18. Application was made by Mr Gavin Tobin, on behalf of the Air Corps Chemical Abuse Survivors, for partial representation. In addition to complaints concerning '*toxic chemicals*', this representative body, in its written application, also referred to matters that may fall within the definition of abuse as set out in the Terms of Reference. The Tribunal is satisfied that the Air Corps Chemical Abuse Survivors group has a sufficiently direct interest in the Terms of Reference to be granted limited representation during the investigative stage of the Tribunal's work and it is so ordered. Limited representation is granted to the Air Corps Chemical Abuse Survivors for the following purposes:

- (a) assisting individual members who have information relevant to Terms of Reference (vii) and assisting such individual members to the extent that they have information concerning complaints of abuse as defined in the Terms of Reference and which is relevant to paragraphs (i) to (v) thereof and who wish to submit statements to the Tribunal in relation thereto;
- (b) attending upon any such members if they are called for interview during the investigative stage of the Tribunal; and
- (c) making submissions as an organisation and on behalf of its membership in respect of the Terms of Reference.

19. Having considered the written and oral application made herein, the Tribunal is satisfied that a grant of representation to the Air Corps Chemical Abuse Survivors in these terms is sufficient to cover that representative body's interests during the investigative stage of the Tribunal's work. The Tribunal defers its decision in respect of the extent of legal representation, if any, during the public hearings stage of its work.

20. Application was made on behalf of the DF Whistleblowers Protected Disclosure Justice Group, for representation, whether full or partial, in accordance with how the Tribunal saw fit. The Tribunal is satisfied that the DF Whistleblowers Protected Disclosure Justice Group, has a sufficiently direct interest in the Terms of Reference to be granted limited representation during the investigative stage of the Tribunal's work as specified below and it is so ordered. Limited representation is granted to the DF Whistleblowers Protected Disclosure Justice Group for the following purposes:

- (a) assisting its individual members who have information relevant to the Terms of Reference insofar as they relate to protected disclosures and who wish to submit statements to the Tribunal;
- (b) attending upon any such members if they are called for interview during the investigative stage of the Tribunal; and
- (c) making written submissions as an organisation and on behalf of its membership in respect of all of the matters in the Terms of Reference (i) to (vii), inclusive, insofar as they relate to protected disclosures.

21. Having considered the written and oral application made herein, the Tribunal is satisfied that a grant of representation to the DF Whistleblowers Protected Disclosure Justice Group in these terms is sufficient to cover that representative body's interests during the investigative stage of the Tribunal's work. The Tribunal defers its decision in respect of the extent of legal representation, if any, during the public hearings stage of its work.

22. Application was made by Commandant Leo Quinlan (retired) for limited representation in the preparation of submissions on behalf of the Jadotville Justice

Community. The Tribunal observes that, in both its written and oral application, reference is made, *inter alia*, to psychological harm and abuse and moral injury suffered by members of the Jadotville Justice Community in the aftermath of Jadotville. The written application on behalf of this representative body refers to several matters which, at this point, do not appear to be directly referable to the Tribunal's Terms of Reference. The Tribunal's jurisdiction extends only to matters falling within its Terms of Reference, such matters commencing from 1 January 1983, and, in that regard, the matters referred to in Terms of Reference (i) to (vi) are centred upon complaints of abuse, as defined in those Terms of Reference. It appears from the written and oral application that the Jadotville Justice Community is concerned with matters that pre-date 1 January 1983, extending back to 1961. The Tribunal is not in a position, at this point, to ascertain from the application made on behalf of the Jadotville Justice Community, how many, if any, of its members have information that is relevant to the Tribunal's work as set out in the Terms of Reference and, in particular, information pertaining to the period of time under inquiry by the Tribunal, namely, 1 January 1983 until 20 June 2024.

23. In these circumstances, the Tribunal does not consider that this representative body has set out, with sufficient specificity, the grounds upon which it believes its interests are engaged having regard to the Terms of Reference of the Tribunal. Accordingly, the application must be refused at this time.

24. If, having regard to the definitions of abuse and complaints of abuse, the Jadotville Justice Community has information that is relevant to the Tribunal's Terms of Reference (i) to (vi) where such information pertains to the period under inquiry, namely, 1 January 1983 until 20 June 2024, then the Jadotville Justice Community may renew its application for limited representation during the investigative stage of the Tribunal's work. The

application may be renewed, in writing, at any time before the extended date by which statements are to be submitted, *viz.*, 30 September 2024.

25. If a renewed application for legal representation is submitted by the Jadotville Justice Community in accordance with what has been set out above, such application should indicate the number of its members who have information that is relevant to the Tribunal's Terms of Reference and to the period of its inquiry and the basis upon which such relevance is asserted.

26. Application for limited representation was made by Mr Niall Donohoe on behalf of the administrators of the Defence Forces Lariam Justice Group. In its written submission, this representative body acknowledges that the use of Lariam is not the subject matter of the Tribunal's inquiry. However, its members contend that they suffered abuse, as defined in the Terms of Reference, when complaints were made by them following the taking of Lariam. To the extent that its members articulate complaints of abuse as defined in the Terms of Reference, limited representation is granted to the Defence Forces Lariam Justice Group during the investigative stage for the following purposes:

- (a) assisting its members who have information relevant to (i) to (v) of the Terms of Reference and who wish to submit statements to the Tribunal;
- (b) attending upon any such members if they are called for interview during the investigative stage of the Tribunal; and
- (c) making written submissions as an organisation and on behalf of its membership in respect of matters set out in the Terms of Reference (i) to (v) insofar as those matters concern its members.

27. Having considered the written and oral application made herein, the Tribunal is satisfied that a grant of representation to the Defence Forces Lariam Justice Group in these terms is sufficient to cover that representative body's interests during the investigative stage of the Tribunal's work. The Tribunal defers its decision in respect of the extent of legal representation, if any, during the public hearings stage of its work.

28. Application for representation was made by Mr Gerard Cullen, Solicitor, who informed the Tribunal that he currently represents three members of the Victims of the Complaints Processes Group, an entity which he described as being '*slightly fluid*', and of which there may be one or two additional members. The Sole Member observed that it had been understood that Mr Cullen represented three individuals and that it was not quite clear that this, *per se*, constituted a representative body. Without determining that issue, the Sole Member indicated that the application was heard as Mr Cullen was present at the public sitting and that a ruling would be delivered in due course.

29. The Tribunal has considered Mr Cullen's written application and oral submission. The contention appears to be that an application made on behalf of three individuals should be considered as an application made by a representative body because the three individual complaints concern the same alleged perpetrator of alleged abuse and have a commonality with regard to the '*defective characteristics in the Complaints Process*'. Whilst the three individuals may each be a relevant stakeholder in the inquiry, the Tribunal is not persuaded, at this point, that the individuals on behalf of whom an application for representation was made, constitute a representative body *per se* such as would warrant a grant of representation to them as a representative group. Accordingly, the application for representation to the three individuals as a representative body is declined.

30. However, in respect of the three persons named in the written application, the Tribunal will treat the application for legal representation as an application for limited representation on the part of the individuals concerned and will write to Mr Cullen, in due course, with its decision on those applications.

Opportunity to Renew Applications

31. For those parties who have not been granted representation during the investigative stage, whether at all or to the extent they requested, their applications may be renewed if, and only if, they can put forward information and/or material establishing good and sufficient reasons as to why their applications should be reconsidered and the decision of the Tribunal revisited. Such information and/or material should be furnished to the Tribunal's solicitor together with the stated grounds upon which the renewed application is made.

Extension of Date for Submission of Statements

32. Having heard applications made by some representative bodies for an extension of the period within which statements may be submitted to the Tribunal, the Tribunal decided to extend this period to the **30th day of September 2024**.

33. Moreover, any submissions that a representative body may wish to make to the Tribunal should be submitted to its solicitor by that date.

34. As to the representative bodies in respect of whom the Tribunal's decisions on legal representation during the public hearings stage of its work have been deferred,

those parties will be given notice, in advance of the public hearings stage, of the Tribunal's intention to proceed with its deferred decisions. At that stage, they will be afforded an opportunity to file written supplemental submissions, not to exceed 1,000 words, in respect of their applications for representation during the public hearings stage of the Tribunal's work.

Representation and the Question of Costs

35. The fact that the Tribunal has granted representation to a representative body or organisation does not mean that such an entity is entitled, automatically, to an order for costs in its favour, at the conclusion of the Tribunal's inquiry. In this regard, applicants for representation are referred to Part 13 of the Tribunal's Procedures in relation to the question of costs.

36. As to the numbers of lawyers instructed to make such legal representation as has been granted to any representative body or organisation, that is entirely a matter for the body or organisation concerned. It is not a matter for determination by the Tribunal as any costs arising therefrom would be a matter for adjudication.

Dated this the 25th day of July 2024.