

Interpretation of the Terms of Reference of the Tribunal

1. The Supreme Court in its decision in the case of *Haughey and others v Mr Justice Moriarty and Others* [1999] 3 IR 1, has provided careful guidance to tribunals of inquiry in relation to both the time and manner in which a tribunal of inquiry should interpret its terms of reference. In the course of its judgement at page 56 it said that” the court is satisfied that is not the function of the High Court or this Court to interpret the terms of reference of the tribunal at this stage. The interpretation of the terms of reference of the tribunal is at this stage entirely a matter for the tribunal itself.”

2. The Chief Justice speaking for the court adopted as a correct statement of the law and practice of tribunals of inquiry in Ireland the terms of paragraph 79 of the report of the Royal Commission on Tribunals of Inquiry (November 1966), and known as the Salmon report , which states;

“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.”

3. The explanation of the terms of reference today by the Tribunal may be expanded or revised in the light of other facts, which may emerge during the course of this inquiry. It should be clearly understood by any party that they are entitled to make any submission to it relevant to their particular interests in relation to the interpretation of these terms of reference. The Tribunal would request that, in the first instance, any submission made by any party should be in writing and should be received by the Tribunal not later than 14 days from the date hereof.

4. The terms of reference of the Tribunal at paragraphs (a) to (p) are set out in the Instrument appointing it, as made by the Minister for Justice and Equality on 17 February 2017 and are also set out on the Tribunal’s website.

5. This statement is confined to an interpretation of the terms of reference of the Tribunal. The Tribunal also makes a public statement in relation to the procedures, which it intends to adopt in pursuing its inquiries pursuant to the terms of reference.

6. The Tribunal is privately investigating matters in the course of its confidential and preliminary investigation. The central purpose of this preliminary investigation is to identify what evidence is or may be available to the Tribunal and to determine whether that evidence is relevant to some or all of the matters into which it is required to inquire.

7. The Tribunal in approaching the task of interpretation has, in general, sought to apply the ordinary and natural meaning of words to the wording comprised in the Terms of Reference. It does not appear to the Tribunal that any particular words in the terms of reference have a special or technical meaning attributable to them or are, apart from statutorily designated names, words, which are intended to have a specific statutory meaning.

8. The wording of the terms of references is, in the view of the Tribunal, reasonably clear and the Tribunal is satisfied, on a plain reading of the terms of reference that this wording, in the main, conveys a proper interpretation of the meaning intended.

9. If on any occasion where the Tribunal is not interpreting specific words in the terms of reference in a particular way and specifically in a way different to its ordinary and natural meaning the Tribunal will notify any interested party where their interests are, or, may be affected by that interpretation and the context in which it arises.

10. It is now proposed to outline in this notice specific aspects of the terms of reference that, in the Tribunal's view, require explanation. It should be clearly understood that while the Tribunal welcomes any submission by an interested party in relation to any aspect of an interpretation of the terms of reference relevant to their particular position, it is for the Tribunal to interpret its terms of reference.

11. It should be noted that this is only intended to be an interpretation of the wording concerned and is not intended to be an explanation of the work to be undertaken by the Tribunal relevant to each term of reference or a determination of any matter to be inquired into.

Relevant paragraphs of the Terms of Reference.

Paragraph (a) To investigate the allegation made in a Protected Disclosure under the Protected Disclosures Act 2014, on the 30th of September, 2016, by Superintendent David Taylor, wherein he alleges that he was instructed or directed by former Commissioner Martin Callinan and/or Deputy Commissioner Nóirín O'Sullivan, to contact the media to brief them negatively against Sergeant Maurice McCabe and in particular to brief the media that Sergeant McCabe was motivated by malice and revenge, that he was to encourage the media to write negatively about Sergeant McCabe, to the effect that his complaints had no substance, that the Gardaí had fully investigated his complaints and found no substance to his allegations and that he was driven by agendas.

The reference to "a Protected Disclosure" is being given the same meaning as in the Protected Disclosures, Act, 2014.

The word "agendas " or "agenda " is interpreted by the Tribunal as meaning an explanation for and/or motivation behind Sergeant Maurice McCabe's actions in relation to

- (a) his allegations relating to policing in the Bailieboro /Cavan area
- (b) his allegations relating to the improper termination of fixed charge penalty notices
- (c) his allegations of mismanagement and corruption.

The word "media " here is interpreted by the Tribunal to include professional journalists engaged in the print, radio, television or web-based news organisations and includes those bodies entities or organisations which those journalists worked for. It does not include social networking sites, or other communication platforms or other non-professional bodies.

Paragraph (b) to investigate the allegation of Superintendent Taylor in his Protected Disclosure, that he was directed to draw journalists' attention to an allegation of criminal misconduct made against Sergeant McCabe and that this was the root cause of his agenda, namely revenge against the Gardaí.

The use of the word "journalists" here is not interpreted in a narrow sense but is taken to mean the "media" as set out above and accordingly the Tribunal here draws no distinction between the use of the word "media" in (a) and the use of the word "journalists" here in (b)

The phrase "an allegation of criminal misconduct" is not specifically identified here but the Tribunal interprets this as relating to an allegation of sexual assault made against Sgt Maurice McCabe in 2006 and as repeated thereafter.

The phrase "the Gardaí" is interpreted by the Tribunal as meaning An Garda Síochána as a whole rather than any particular rank.

Paragraph (c) To investigate what knowledge former Commissioner Callinan and/or Commissioner O'Sullivan and/or other senior members of the Garda Síochána had concerning this allegation of criminal misconduct made against Sergeant McCabe and whether they acted upon same in a manner intended to discredit Sergeant McCabe.

The phrase "or other senior members of the Garda Síochána", is interpreted by the Tribunal as including any Deputy Commissioners, Assistant Commissioners and also Chief Superintendents and Superintendents and any persons acting in any such capacities.

The word "discredit" is interpreted by the Tribunal as including the fostering of disparagement, mistrust, suspicion, disbelief or otherwise to convey or cause reputational damage in a personal and/or professional sense.

Paragraph (d) to investigate the creation, distribution and use by TUSLA of a file containing false allegations of sexual abuse against Sergeant Maurice McCabe that was allegedly sent to Gardaí in 2013, and whether these false allegations and/or the file were knowingly used by senior members of An Garda Síochána to discredit Sergeant McCabe.

The word "Túsla" here is interpreted by the Tribunal as the Child and Family Agency established under the Child and Family Agency Act 2013. On 1 January 2014, this Act inter alia provided for the transfer of certain functions of the Health Service Executive, certain employees of the HSE, transfer of rights and liabilities of the HSE and of the records of the HSE as of the establishment day. The Tribunal therefore interprets this paragraph as necessarily including within it any relevant actions and files of the HSE from 2013 and as thereafter transferred to Túsla.

The phrase "false allegations of sexual abuse" in this context is interpreted by the Tribunal as those apparently first recorded in relation to Sergeant Maurice McCabe in 2013.

The phrase "senior members of an Garda Síochána", used in this context and when compared with paragraph (c) above leads the tribunal to interpret this phrase as including former Commissioner Callinan and or Commissioner O'Sullivan in addition to the other category of Gardaí referred to in paragraph (c) above.

Paragraph (e) To investigate whether the false allegations of sexual abuse or any other unjustified grounds were inappropriately relied upon by Commissioner O'Sullivan to discredit Sergeant Maurice McCabe at the Commission of Investigation into Certain Matters in the Cavan/Monaghan district under the Chairmanship of Mr. Justice Kevin O'Higgins.

No particular interpretation is required here.

Paragraph (f) To investigate whether senior members of An Garda Síochána attempted to entrap or falsely accuse Sergeant McCabe of criminal misconduct.

“senior members” is interpreted here as in paragraph (d) above

The phrase “attempted to entrap” is interpreted by the Tribunal as being related to “criminal misconduct “where it appears in the paragraph.

Paragraph (g) To investigate such knowledge, which former Commissioner Callinan and Commissioner O’Sullivan had concerning the matters set out in [a], [b], [c], [d], [e] and [f] above.

No particular interpretation is required here.

Paragraph (h) To investigate contacts between members of An Garda Síochána and:

Media and broadcasting personnel,
members of the Government,
TUSLA,
Health Service Executive,
any other State entities,

or any relevant person as the Sole Member may deem necessary to carry out his work relevant to the matters set out in [a], [b], [c], [d], [e] and [f] above.

“members of the government “ is interpreted by the Tribunal as relating to individual members appointed as Ministers pursuant to Bunreacht na Éireann but also includes contacts with such in their capacity as TDs or members of Committees of the Houses of the Oireachtas.

“any other State entities “is interpreted by the Tribunal as including anybody whether established by statute or otherwise or supported or established by the State.

Paragraph (i) To examine all records relating to the telecommunications interactions used by Superintendent Taylor, former Commissioner Callinan and Commissioner O’Sullivan, in the period from the 1st of July, 2012, to the 31st of May, 2014, to ascertain whether there are any records of text messages or other telecommunication interactions relating to the matters set out at [a], [b], [c], [d], [e] and [f] above and to examine and consider the content of any such text messages or other telecommunication interactions.

No particular interpretation is required here.

Paragraph (j) To examine all electronic and paper files, relating to Sergeant Maurice McCabe held by An Garda Síochána and to consider any material therein relevant to [a], [b], [c], [d], [e] and [f]above.

No particular interpretation is required here.

Paragraph (k) To investigate whether Commissioner O’Sullivan, using briefing material prepared in Garda Headquarters, influenced or attempted to influence broadcasts on RTÉ

on the 9th of May, 2016, purporting to be a leaked account of the unpublished O'Higgins Commission Report, in which Sergeant McCabe was branded a liar and irresponsible.

No particular interpretation is required here.

Paragraph (l) To investigate whether a meeting took place between former Commissioner Callinan and Deputy John McGuinness on the 24th of January 2014 in the carpark of Bewley's Hotel, Newlands Cross, Co. Dublin and to examine and consider the circumstances, which led to any such meeting, the purpose of such meeting and matters discussed at such meeting.

No particular interpretation is required here.

Paragraph (m) To investigate such knowledge which Commissioner O'Sullivan had of the meeting referred to in [l] above.

No particular interpretation is required here.

Paragraph (n) To investigate contacts between members of An Garda Síochána and TUSLA in relation to Garda Keith Harrison.

The phrase "contacts between" is interpreted by the Tribunal as including all interaction between any member of the Gardaí and Túsła in relation to Garda Keith Harrison howsoever first initiated and any such contacts thereafter.

Paragraph (o) To investigate any pattern of the creation, distribution and use by TUSLA of files containing allegations of criminal misconduct against members of An Garda Síochána who had made allegations of wrongdoing within An Garda Síochána and of the use knowingly by senior members of the Garda Síochána of these files to discredit members who had made such allegations.

No particular interpretation is required here.

Paragraph (p) To consider any other complaints by a member of the Garda Síochána who has made a protected disclosure prior to 16th February, 2017 alleging wrong-doing within the Garda Síochána where, following the making of the Protected Disclosure, the Garda making the said Protected Disclosure was targeted or discredited with the knowledge or acquiescence of senior members of the Garda Síochána.

This Tribunal is not presently required to inquire into these matters in the first instance and it is not therefore opportune or timely to give any interpretation in relation to this paragraph at present.

12. The Tribunal intends, later, to make a public statement in relation to which aspects of this inquiry are likely to be pursued at future public sittings of the Tribunal.

Dated this 12th day of May 2017.