

## **RULING OF THE TRIBUNAL ON APPLICATIONS FOR REPRESENTATION**

The Tribunal sat on the 30<sup>th</sup> of March, 2017 to hear applications for representation. The Ruling of the Tribunal is as follows and the Tribunal has not ruled on any other matter raised or mentioned at the hearing:

1. Application was made by Mr. Conor Dignam S.C., instructed by the Chief State Solicitors Office, for full representation on behalf of An Garda Síochána and particularly on behalf of Former Commissioner of An Garda Síochána, Mr. Martin Callinan, and the current Commissioner, Nóirín O'Sullivan. The Tribunal is satisfied that an order for full representation in relation to all of the matters in the Terms of Reference (a) to (o) inclusive should be granted to An Garda Síochána, the former and the current Commissioner and it is so ordered. The Tribunal notes that further applications will be made for representation in relation to other identified members of An Garda Síochána at a later stage and the Tribunal will rule on those as appropriate.

The Tribunal notes that Mr. McDowell S.C. instructed by Sean Costello & Company, solicitors on behalf of Sergeant Maurice McCabe, raised issues in relation to the application made by Mr. Dignam S.C. on behalf of an Garda Síochána. It may prove necessary to consider whether there could or might be circumstances in which it is necessary to determine whether the Tribunal could ever, or should ever, decide whether it had power to, or ought to, interfere in an applicant's choice of solicitor and counsel at the instance of another party. The Tribunal has reached no conclusion on this and may if it thinks necessary take appropriate steps to seek the views of relevant parties.

2. Mr. Brian Gallagher, solicitor, appeared on behalf of Mr. Alan Shatter, former Minister for Justice and Equality, for limited representation in relation to the matters arising at Terms of Reference (h). The Tribunal is satisfied that Mr. Shatter has sufficient direct interest in the matter for a grant of limited representation in respect of (h) and it is so ordered.
3. Mr. Michael McDowell SC, instructed by Sean Costello & Company, solicitors, applied on behalf of Sergeant Maurice McCabe for an order granting him representation in relation to all matters comprised within the Terms of Reference, except those relating to Terms of Reference (n) concerning Garda Keith Harrison. The Tribunal notes other matters raised

by Mr. McDowell S.C. but is making no ruling at this time, in relation to any of those matters. The Tribunal is satisfied that it should grant Sergeant Maurice McCabe an order for representation as sought and it so orders.

4. Mr. Sean Gillane S.C., instructed by RTE's solicitors, applied for an order for representation on behalf of RTE and such employees as may be directly concerned in Terms of Reference (a), (b), (h) and (k), and the Tribunal is satisfied that RTE has such a direct interest in those matters that it will grant an order for representation limited to those matters, (a), (b), (h) and (k), and it so orders.
5. Mr. Mark Harty S.C., instructed by Kilfeather & Company, solicitors, applied on behalf of Garda Keith Harrison for full representation in relation to the matter, including, in particular, those Terms of Reference relating to Sergeant Maurice McCabe, in particular Terms of Reference (g), (d) and (h), in addition to (n) and (o). However, the Tribunal is satisfied that Garda Harrison has only a direct interest in being granted the right of representation limited only to (n) and it does not extend to any other matters within the Terms of Reference at present and it will so order.
6. Mr. Paul Anthony McDermott S.C., instructed by Arthur Cox & Company, solicitors, applied on behalf of the Child and Family Agency, otherwise known as TUSLA, as so designated in the Terms of Reference of the Tribunal, and sought an order for representation on behalf of TUSLA limited to Terms of Reference (d), (h), (n) and (o). The Tribunal is satisfied that TUSLA has a direct interest in being represented in relation to those matters and so orders. The Tribunal raised the issue as to whether that grant of representation would extend to or incorporate those matters formerly the responsibility of the Health Service Executive (the HSE) and the Tribunal was informed that TUSLA would further communicate with the Tribunal in that regard. It is noted by the Tribunal that it has since received a letter dated the 31<sup>st</sup> of March, 2017 from Byrne Wallace, solicitors, acting on behalf of the Health Service Executive, inter alia, stating that it had intended to seek representation on behalf of the Health Service Executive and two named employees but had thought that a letter previously written on its behalf on the 1<sup>st</sup> of March would suffice. The Tribunal is satisfied that the HSE has a direct interest in being represented in relation to terms of reference (d), (h), and (n) and so orders. The Tribunal asks that their efforts be co-ordinated with TUSLA so as to assist in the efficient and economic running of the Tribunal.

7. Mr. John Ferry B.L., instructed by Mr. Carthage Conlon of M.E. Hanahoe & Company, solicitors, made application on behalf of Superintendent David Taylor for an order of representation in relation to the Terms of Reference of the Tribunal except (n) as it relates to Garda Keith Harrison. The Tribunal notes that Mr. Ferry made similar observations to that raised by Mr. McDowell S.C. on behalf of Sergeant Maurice McCabe and the Tribunal makes no ruling thereon. The Tribunal is satisfied that Superintendent David Taylor has an interest in those Terms of Reference except (n) and will grant him such representation and the Tribunal so orders.
8. Mr. Darren Lehane B.L., instructed by Mr. Fintan Lawlor, solicitor, applied on behalf of Mr. John McGuinness T.D. for an order for representation limited to (l) and also extending to (a), (b), (c), (f) and (g) insofar as it relates to or reflects on Mr. McGuinness. The Tribunal is satisfied that Mr. McGuinness has an interest in being represented in relation to (l) and will make an order for representation limited to that. It is not satisfied that it is necessary to make an order in relation to (a), (b), (c), (f) and (g) as it relates to Mr. McGuinness.
9. Mr. Michael Kealey, solicitor, acting on behalf of Associated Newspapers Limited trading as DMG Media Ireland, applied on behalf also of Debbie McCann, Ali Bracken, Jennifer Bray and Alison O'Reilly and sought limited representation in relation to Terms of Reference (a), (b), (c), (f), (h) and (i) insofar as it related to issues of journalistic privilege concerning those parties. The Tribunal has decided at present neither to grant nor refuse an order for representation in this respect but will defer its consideration of same until such time as the Tribunal has further clarified matters in relation to the factual background concerning the same.
10. Mr. Michael Hegarty, solicitor, of Smyth O'Brien Hegarty, solicitors, applied on behalf of Det. Sergeant Yvonne Martin in relation to an application for a grant of representation limited to (e) and (f). The Tribunal is satisfied that it should make an order for representation in relation to those matters in relation to Sergeant Martin and it so orders.
11. Mr. Michael Hegarty, solicitor, of Smyth O'Brien Hegarty, solicitors, also applied in relation to Sergeant Brigid McGowan, Inspector Goretta Sheridan and Det. Sergeant David Durkin for an order for representation limited to Terms of Reference (n) and (p) and the Tribunal is satisfied that those members have sufficient interest in order to make an order for their limited representation on those terms in relation to (n) and it so orders.

12. Mr. Mark Dunne B.L., instructed by Hayes, solicitors, on behalf of the Irish Times and its relevant journalists, indicated that he was seeking limited representation in relation to (h) and (i) and (a), (b) and (c) insofar as it was relevant, but in the light of the Tribunal's exchanges with Mr. Kealey, solicitors, decided that he would reserve his position and did not press the application for representation.
13. Mr. Kieran Kelly, solicitor, of Kelly Fanning, solicitors, appeared on behalf of INM plc and a number of named journalists, Mr. Tom Brady, Mr. Paul Williams, Mr. Ken Foy, Mr. Niall O'Connor, Mr. Cathal McMahon and Mr. Mick McCaffrey, but indicated that he would not press the formal application and would await a further ruling in the matter from the Tribunal and, accordingly, no order has been made by the Tribunal in that regard.
14. Mr. Cullen, solicitor, on behalf of Garda Nicholas Keogh, indicated his intention to make an application for representation under Terms of Reference (p), as did Ms. Cliona Kimber SC, instructed by Moran & Ryan, solicitors, on behalf of Garda Maire O'Reilly, in relation to limited representation under Terms of Reference (p). The Tribunal is prioritising, in accordance with its Terms of Reference, matters related to Terms of Reference (a) to (o) and is accordingly deferring any consideration of matters within Terms of Reference (p) and it will notify these and other interested parties at the appropriate time.