

CervicalCheck Tribunal

An Binse um CervicalCheck

ANNUAL REPORT

2021

Foreword

On behalf of the Cervical Check Tribunal it is a pleasure to present its second Annual Report. The Report discusses the Tribunal's activities in carrying out its functions for the year ending 31 December 2021.

The appointment of Tribunal Members took effect on 1 December 2020, and from that date the Tribunal was in a position to receive applications, which it did, throughout 2021. Most applications were lodged by way of electronic filing and by ordinary pre-paid post. I want to acknowledge, with thanks, the commitment and dedication of the Tribunal Registrar and the administrative staff who ensured the smooth processing of proceedings notwithstanding the ongoing challenges posed by the worldwide pandemic and the necessary public health restrictions imposed in response thereto. I also want to express my gratitude to the officials within the Department of Health who provided the Tribunal with all necessary supports.

During 2021, procedural hearings were held, remotely. However, the Tribunal's premises remained open for business and, where necessary, physical hearings on a number of legal issues were accommodated in the Tribunal's premises in a manner that complied with the relevant public health guidelines.

At hearings held throughout the year, the Tribunal emphasized to those who appeared before it, its commitment to processing all claims, promptly and fairly. I wish to acknowledge the cooperation and goodwill that was shown by all the parties and their legal representatives, whose collaboration with each other and with the Tribunal was evident from the outset.

The Tribunal extends a welcome to any party who may be considering using the dispute resolution mechanism which the Tribunal provides to visit the Tribunal's premises by making appropriate arrangements with the Tribunal Registrar. A 'Virtual Tour' showing the facilities that are available to those who choose to have claims determined by the Tribunal, is available on the Tribunal's website.

The Tribunal Members continue to exercise vigilance in respect of ongoing public expenditure. To that end, the Tribunal reduced its staff cohort in 2021. It also facilitated the resolution of claims by affording parties the opportunity to avail of the Tribunal's premises for the purpose of conducting mediation and pursuing dispute resolution.

It remains only for me to thank the Tribunal Members, the Tribunal Registrar and the dedicated staff who worked with the Tribunal during 2021 in delivering a fair and expeditious determination of claims.

A handwritten signature in black ink, appearing to read 'Ann Power'.

The Hon. Ms. Justice Ann Power

Chairperson

28 June 2022

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Introduction

This Annual Report of the CervicalCheck Tribunal 2021 has been prepared for submission to the Minister for Health ('the Minister') in accordance with the provisions of Section 35 of the CervicalCheck Tribunal Act, 2019 ('the Act').

Section 35 provides that –

(1) The Tribunal shall not later than 6 months after the end of each financial year of the Tribunal prepare and submit a report to the Minister on its activities during that year.

(2) A report under *subsection (1)* shall include –

- (a) information on the performance of the Tribunal's functions, including its functions under *Chapter 5*, during the period to which the report relates,
- (b) particulars of its accounts, and
- (c) such other information as the Tribunal thinks fit or the Minister may request.

The Report provides information on the Tribunal's activities during 2021. It sets out information on the performance of its functions under the Act as it pursued its key strategic goals.

The Chairperson and the Ordinary Members of the Tribunal acknowledge, with thanks, the contribution of the Registrar to the Tribunal in assisting with the preparation of this Report.

The Composition of the Tribunal



Ms Justice Ann Power

Chairperson of the Tribunal

Ms Justice Power was educated at Mater Dei Institute of Education, the University of Dublin, The King's Inns and the University of Oxford. She was called to the Bar of Ireland in 1993 and to the Inner Bar in 2006. She practised in Public, Constitutional and Medical Law. Ms Justice Power is currently a Judge of the Court of Appeal. She also serves as a Judge of the World Bank Administrative Tribunal. In 2008, she was elected as a Judge of the European Court of Human Rights and, in 2017, as the Presiding Constitutional Judge of the Kosovo Specialist Chambers (The Hague). She has taught in universities throughout Europe and the United States and has published on a wide range of legal issues.



Mr Justice Brian McGovern

Tribunal Member

Mr Justice McGovern was educated at Castleknock College, UCD and the King's Inns. Called to the Bar in 1972, he became a Senior Counsel in 1991. As a barrister he worked in areas of personal injury litigation, commercial law, maritime law and clinical negligence, and he sat as legal assessor for fitness to practice hearings in the Medical Council and the Nurses Board. In 2006 he was appointed as a Judge of the High Court where he sat for a time as Bankruptcy Judge, Admiralty Judge and as a Judge of the Commercial Court. From 2014 to 2018 he was the judge in charge of the Commercial Court. In 2018 he was appointed to the Court of Appeal and retired from that position in March 2020.



Mr Justice Tony O'Connor

Tribunal Member

Mr. Justice O'Connor was appointed to the High Court in October 2015. He has delivered judgments on the Constitution, the application of EU and ECHR law, and on the law of companies, taxation, equity, tort, contract, property and on family law. He has heard Circuit Court appeals and sits, occasionally, on the Court of Appeal. As Senior Counsel he practised in EU, property and competition law. A specialist in personal injury litigation, with a particular focus on the conduct of professionals, he acted as legal assessor, defence Counsel and prosecuting Counsel. Before joining the Bar, he was a Solicitor with expertise in aviation and commercial law. He was an accredited and practising CEDR mediator from 2009 to 2015.



The Tribunal Registrar

Mr Pádraig Mac Criostail

Prior to his appointment as Registrar of the CervicalCheck Tribunal, Mr. Mac Criostail was a Senior Registrar in the Court of Appeal from 2019 to 2021. Before that he served for several years as a High Court Registrar. As a former Director of Comhdháil Náisiúnta na Gaeilge, he has significant experience in organisational leadership. He was appointed as Registrar to the Tribunal in March 2021.

Tribunal Address

Infinity Building
George's Court
George's Lane
Smithfield
Dublin 7
D07 E98Y

Contacts

Tel: (01) 674 3300

For information: info@cervicalchecktribunal.ie

For lodging a claim: claims@cervicalchecktribunal.ie

PART 1

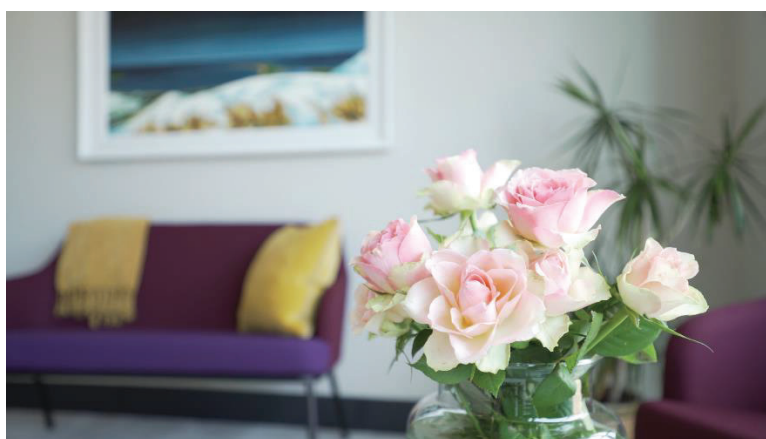
Background to Establishment of the Tribunal

The background to the establishment of the Tribunal was set out in its Annual Report 2020 and a brief synopsis thereof is apposite.

An Alternative System for Dispute Resolution

On 2 August 2018, the Government asked Mr. Justice Charles Meenan to prepare a report setting out recommendations on how claims arising from the State's Cervical Screening Programme could be resolved outside of a court process and in a manner, which would be timely, sensitive and appropriate to cases involving complex issues of liability. In so doing, regard was to be had to Dr Gabriel Scally's Scoping Inquiry into CervicalCheck and to the Expert Panel Review of Cervical Screening led by the Royal College of Obstetricians and Gynaecologists (RCOG).

On 16 October 2018, Mr. Justice Meenan published his report and proposed to the government that a tribunal be established under statute for the purpose of hearing and determining claims arising from the CervicalCheck Screening Programme.



The CervicalCheck Tribunal Act 2019

The Government accepted the recommendation to set up a statutory Tribunal and the legislation necessary to achieve this end – the CervicalCheck Tribunal Act 2019 ('the Act') - was signed into law on 23 July 2019.

Chapter 1 of the Act sets out the functions of the Tribunal. The scope of claims which may be brought before the Tribunal and the reckoning of time for the purpose of the Statute of Limitations are described in Chapter 2. Chapter 3 provides for the procedures where claims are made before the Tribunal. It makes provision, *inter alia*, for the form and manner in which evidence may be given and sets out the Tribunal's powers relating to witnesses and documents. Chapter 4 makes provision for appeals from determinations made by the Tribunal and provides for confirmation and publication of its determinations and for the enforcement of awards made by the Tribunal. Chapter 5 of the Act concerns the issue of 'Restoration of Trust'. Provision in relation to the making of recommendations by the Tribunal and the submission of Annual Reports are addressed in Chapter 6 of the Act. Chapter 7 provides for the dissolution of the Tribunal. Thereafter, miscellaneous provisions in relation, *inter alia*, to appeals to the High Court and to offences under the Act are set out.



PART 2

The CervicalCheck Tribunal

Establishment

On 27 October 2020 the CervicalCheck Tribunal was established pursuant to the provisions of the CervicalCheck Tribunal Act (Establishment Day) Order 2020 (S.I. 454 of 2020).

Following the Tribunal's establishment, a five-week period ensued before the Tribunal Chairperson and its ordinary Members were appointed. During this period, the Tribunal was not empowered to carry out any of its statutory functions under the Act. Its then nominated Chairperson and Members, together with the Tribunal Registrar and staff, did, however, proceed with the necessary preparatory work in anticipation of the appointment of the Tribunal Members.

Appointment of Tribunal Members

On 1 December 2020, Ms. Justice Ann Power was appointed by the Minister as Chairperson of the CervicalCheck Tribunal, in accordance with the provisions of Section 6(1) of the Act. On the same day, Mr. Justice Tony O'Connor and Mr. Justice Brian McGovern were appointed as ordinary Members of the Tribunal.

Upon the date of the appointment of the Tribunal Members, the Tribunal's Rules of Procedure were signed by the Chairperson and ordinary Members and entered into force.

The Tribunal was in a position to receive eligible claims as 1 December 2020.

Tribunal Premises

The Tribunal's premises are located on the 3rd floor of the Infinity Building, George's Court, George's Lane, Smithfield, Dublin 7.

The Tribunal Office

The Registrar of the Tribunal, Mr Pádraig MacCriostail, presides over the Tribunal Office.

Full contact details are available on the Tribunal's website.

The premises include

- A large reception area
- Three large Hearing Rooms with high quality IT facilities
- Three comfortable Family Rooms for private use by claimants
- Six Consultation Rooms
- A large Conference Room
- Offices for the Tribunal's administrative support staff
- Chambers of the Chairperson and Members of the Tribunal

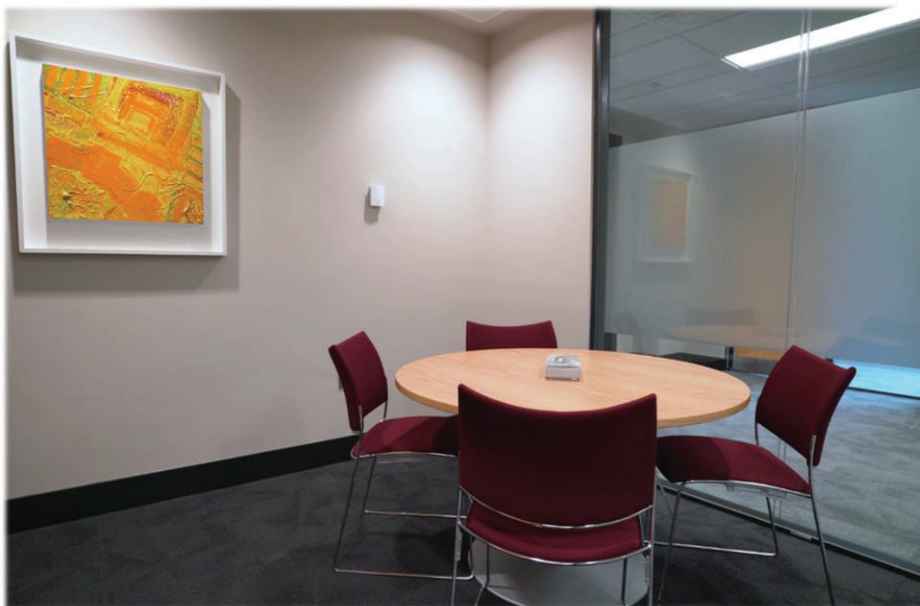
Tribunal Facilities

The premises were designed to ensure that cases that come before the Tribunal are heard in a context that is considerate of the personal situation of claimants and in an environment where proceedings may be conducted, sensitively, and in private. Comfortable family rooms with refreshment facilities are available for use by claimants.



Virtual Tour

The Tribunal has published on its website a virtual tour of its premises. The video recording offers an insight into the facilities available for parties who consent to having claims determined by the Tribunal.



PART 3

The Year in Review

Appointment of Registrar

In January 2021, the Tribunal, with the assistance of the Department of Health, launched a recruitment process for the position of Registrar. Interviews were held, and a successful candidate was identified. Mr Padraig Mac Criostail was appointed as Tribunal Registrar on 29 March 2021. He took up this appointment having served as Senior Registrar of the Court of Appeal.

Management of Tribunal Office

Throughout 2021, the Tribunal Registrar was responsible for the management of the Tribunal Office and he oversaw the smooth processing of all claims received by the Tribunal. He maintained regular contact with the parties before the Tribunal to ensure that claims were advanced, promptly, and he arranged for all online hearings. He kept the Chairperson updated, regularly, on the status and progress of claims. The Registrar managed all necessary supports for the upkeep and maintenance of the Tribunal's premises. These included maintaining service contracts for security, hygiene, stenography and IT services and overseeing other operational facilities. He also ensured that the Tribunal's hearing rooms were prepared in advance of hearings in a manner that was compliant with the relevant public health guidelines that were in force throughout 2021.

Financial accounts

During 2021, the Tribunal Office maintained up to date financial accounts ensuring that services were provided in accordance with contractual terms and that invoices were

processed, promptly, following approval from the Department of Health. Particulars of the Tribunal's account during the financial year ending 31 December 2021 are set out in Part 5 of this Report.

Interim Report

On 29 January 2021, the Chairperson received a request from the Minister for a short Report on the work undertaken by the Tribunal since its establishment. The Report, submitted on 5 February 2021, contained, *inter alia*, an account of pre-establishment preparatory work, a note on indicators of interest (by way of queries made and website data analytics), an update on recruitment, a summary of Members' meetings, a discussion on the potential use of the Tribunal's premises and an outline of the Tribunal's planned outreach programme.

Claims Received

In the year ending 31 December 2021, nine claims were received by the Cervical Check Tribunal, of which two were joined. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

Five claims were brought by women who alleged negligence in respect of their personal experience of the State's Cervical Screening programme.



Processing Times

The shortest period for the processing and resolution of a claim that was lodged with the Tribunal in 2021 was 16 weeks. The longest period for the processing and resolution of a claim that was lodged in 2021 was 37 weeks.



General Procedures

The Tribunal's Rules of Procedure were established pursuant to section 5 of the Act by virtue of the powers conferred upon the Tribunal by section 26 of the Act. These rules regulate the Tribunal's practice and procedure and the conduct of claims before the Tribunal. Consistent with the Tribunal's commitment to processing and determining claims expeditiously, an initial Directions' Hearing was scheduled in every claim lodged in 2021 as soon as the requisite consent form (Form 2) was received by the Tribunal Office.

During the initial Directions Hearings held in each case, the Tribunal informed the parties that the speedy processing, efficient hearing and swift determination of eligible claims—fairly, impartially and in a 'case sensitive' manner—was central to the Tribunal's objectives. Parties were required to agree and adhere to a timetable according to which

various steps in the proceedings were to be completed. Deadline dates were thus set for the delivery of the pleadings, the exchange of Affidavits of Discovery, the exchange of expert reports and the scheduling of meetings of experts for the purpose of identifying outstanding issues between the parties in advance of the Case Management conference.

During 2021, claims were not permitted to be held in abeyance. The Registrar corresponded, periodically, with the parties to ensure compliance with the agreed timetable. Where necessary, additional Directions Hearings were scheduled to address any issues raised by the parties. Occasionally, short extensions of time were permitted where it was evident to the Tribunal that, for reasons beyond the control of the parties, compliance with the agreed timetable was not possible.

The Tribunal appreciates the commitment demonstrated by the parties who participated in proceedings during 2021, as they worked in collaboration with each other and with the Tribunal to ensure that the Tribunal's objective of processing claims, fairly and expeditiously, was achieved.

Issues Arising

During the course of hearings held in 2021, a number of issues came before the Tribunal for directions. These ranged, for example, from delays encountered by a party in making discovery to the joinder of third parties to the protocol for the removal of markings from slides.

In some instances, legal issues were raised that required a hearing before the Tribunal and Rulings, in all cases, were delivered, promptly. Such issues included, for example,

questions pertaining to the jurisdiction of the Tribunal or the scope its powers in respect of minor dependents.

Staffing

In May 2021, a review of the Tribunal's staffing requirements was conducted, in conjunction with the Department of Health ('the Department'). Conscious of its accountability in respect of public funding and pending the receipt of a greater volume of claims, the Chairperson requested the Registrar to consult with the Department concerning the redeployment of most of the administrative staff that had been allocated to the Tribunal.

By the beginning of June 2021, all but one member of the Tribunal's administrative staff had been redeployed to other areas. The Chairperson and Registrar acknowledged, with thanks, the contribution which those staff members had made to the work of the Tribunal. The remaining staff member was granted a one-year contract by the Department of Health to support the Tribunal in the processing of claims and to provide periods of cover whilst the Registrar was on annual leave.

Whilst claims continued to be lodged with the Tribunal throughout 2021, the vacancy for the position of Legal Secretary was not filled. The Tribunal did not consider it justifiable, from a costs' perspective, to proceed with the recruitment process for the position. In the circumstances, the Chairperson carried out her own administrative work (such as, the recording of Minutes of Tribunal Meetings, the drafting of procedures, the preparation of the Reports etc.), where necessary, with the support of the Registrar and her Judicial Assistant.

In December 2021, the Judicial Assistant to the Chairperson confirmed his intention to resign from his position, with effect from 1 January 2022, to pursue further studies. The Chairperson acknowledged, with thanks, the contribution he had made to the work of the Tribunal, having served as Judicial Assistant since September 2020. That position has not, as yet, been filled.



Outreach

The Tribunal's Outreach Programme commenced with the publication of a Notification of Establishment in national newspapers on 13 and 14 February 2021. The Notification was also published on the Tribunal's website.

In July 2021, a Notification confirming that the deadline for submission of eligible claims had been extended to 26 January 2022 was published in the online version of the *Gazette*. This Notification, directed primarily at legal practitioners, was published again in October 2021 in both the online version of the *Gazette* and in the print edition.

A virtual 'Open Day' introducing members of the public to the Tribunal's premises was created. The final editing of the video production was approved and the 'Virtual Tour' of the Tribunal's premises was uploaded on to the Tribunal's website in July 2021.

Annual Report 2020

In June 2021, the Tribunal, in compliance with its obligation under s. 35 of the Act, submitted its first Annual Report to the Minister. The report provided detailed information regarding the background to the Tribunal's establishment, the performance of the Tribunal's functions, including, its functions related to the Restoration of Trust, particulars of its accounts, and a look forward to the Tribunal's functions in 2021. A final section offered recommendations for consideration by the Minister.

Meetings of Members

Throughout 2021, the Chairperson and Members held regular consultations, on a weekly or fortnightly or monthly or on an *ad hoc* basis, as required. Tribunal meetings were held both in person and via the Tribunal's Virtual Meeting Room on the *Pexip* platform. The Chairperson and Members were also in regular contact by telephone.

Among the matters that arose for consideration by the Tribunal Members at their regular meetings were:

- the periodic review of claims pending before the Tribunal;
- the assignment of cases between Tribunal Members;
- the legal and/or practical issues arising in Directions Hearings;
- deliberations on applications made to the Tribunal;
- discussions on draft Rulings of the Tribunal;

- the Chairperson's report on meetings held with representatives of the Department or other bodies;
- procedural issues, such as, the minimum requirements necessary for the completion of a claim form;
- the appropriate procedure for the discontinuance of a claim absent the requisite consent;
- discussions on the respective functions of the Tribunal and the Facilitator of the Restoration of Trust and the statutory provisions in respect of the independence of both entities;
- the drafting of the Tribunal's Interim Report and the Annual Report 2020;
- the extent of the power of the Tribunal under s. 22(1)(i) of the Act of 2019;
- the drafting and publication of the Tribunal's Data Protection procedures;
- the review of audio-visual facilities and broadband capacity and the use of the Tribunal's server;
- the Chairperson's correspondence with the Minister and the Department on a range of issues, including, the Minister's statutory consultation process in respect of the extension of the time limit for the lodgement of claims;
- the procedure to be adopted should legal services be required by the Tribunal, including, the format of any tender proposals; and
- maximising of the use of the Tribunal's premises for other appropriate purposes, including, mediation and dispute resolution meetings.

Extension of Deadline for Making a Claim

On 16 July 2021, the CervicalCheck Tribunal (Amendment) Act 2021 was signed into law by the President. As the long title thereto indicates, this is 'An Act to amend the CervicalCheck Tribunal Act 2019 to extend the period for the making of claims for compensation to the CervicalCheck Tribunal; to provide that the Minister may by order extend that period; and to provide for related matters.'

The Act extended the closing date for eligible claims to be made to the CervicalCheck Tribunal to 26 January 2022. The Act also provided for the possibility of a further extension up to a date not later than 26 July 2022 if the Minister were satisfied that there existed good and sufficient reason for so doing.

Data Protection Procedures

Section 39(2) of the Act of 2019 obliges the Tribunal to establish and publish (in such manner as it considers appropriate) procedures providing for the restriction of the General Data Protection Regulation to the extent necessary and proportionate to enable the Tribunal to carry out its functions under *Part 2* of the Act.

Draft Data Protection Procedures were considered by the Tribunal and, when settled, were published on the CervicalCheck Tribunal website on 15 October 2021 in accordance with s. 39(2) of the Act of 2019.

Tribunal Premises

Hearings

For the most part, hearings before the Tribunal during 2021 were conducted, remotely, as necessitated by restrictions imposed by the then applicable public health guidelines. In respect of a jurisdictional question that arose in one case, an in-person hearing, that complied with public health guidelines, was required. That hearing took place within the Tribunal's premises on 17 August 2021 and the Tribunal delivered its ruling on 3 September 2021.



Other uses

During the latter part of 2021, the Tribunal's premises were used to facilitate mediation consultations between the parties in a number of claims. Where so used, the result of the mediation process was ultimately successful, and matters were resolved between the parties.

Audio Visual (AV) Facilities and Broadband

Prior to the Tribunal's establishment and the appointment of its Members, the Tribunal's hearing rooms had been fitted out with audio visual equipment, including, video link facilities for telephone conference or live video conferencing. This was to allow for the

presentation of evidence to be given, remotely, by way of video link, during Tribunal hearings. Subsequently, it was established that a separate broadband line, distinct from the Government's VPN was necessary, in order to be compatible with the Tribunal's *Pexip* platform which had been secured for the purpose of conducting remote hearings.

A broadband line was installed in 2021. However, there were ongoing difficulties with its proper functioning and efforts were made to resolve the problem. In May 2021, a review of the broadband line was conducted but investigations had to be postponed during June and July 2021 because of the impact of the cyber-attack on the Department of Health and the Health Service Executive. The Chairperson and the Registrar remained in regular contact with the Department throughout the latter part of 2021 in an effort to resolve the difficulties with the broadband line.

Meetings with the Department of Health

The Chairperson, accompanied by the Tribunal Registrar, met with representatives of the Department on a number of occasions in 2021 to discuss issues pertaining to the functioning of the Tribunal.

These meetings addressed matters of practical support required by the Tribunal in areas, such as, the improvement of broadband facilities, the obtaining of legal services (should such become necessary) and the purchase of dictation software.

The meetings also provided an opportunity for the Tribunal to discuss its position in relation to some of the practical difficulties posed by the statutory provisions governing

members of the staff of the Tribunal and s. 32 (11) of the Act insofar as it concerns staff members. This matter is addressed in further detail in Part 4 of the Annual Report 2021.



PART 4

Restoration of Trust

Restoration of Trust

Section 35(2)(a) of the Act provides that the Annual Report shall include information on the performance of the Tribunal's functions *"including its functions under Chapter 5"* during the period to which the Report relates. Chapter 5 of the Act sets out the statutory provisions in respect of the Restoration of Trust.

In 2021, the Chairperson met (remotely) with the then nominated Facilitator of the Restoration of Trust, Ms Monica Brennan. Central to their discussion was an issue raised by the Tribunal in its first Annual Report (2020) pertaining to a conflict between certain statutory provisions which the Tribunal considered evident. The relevant statutory provisions are set out below.

Section 31(4) of the Act provides that:

"The Facilitator shall, subject to this Act, be independent in the performance of his or her functions under this Chapter and shall in particular, be independent of the Tribunal and its functions under section 7(1)(a)."

Notwithstanding the statutory independence of the Facilitator as provided for in s. 31(4), s. 32(11) of the Act provides:

“The Facilitator may, for the purpose of holding and maintaining the records of restoration of trust meetings, nominate one or more members of staff of the Tribunal to be the holder of the records, which records shall be confidential.”

In meetings of the Tribunal in 2021, the Members discussed the practical difficulties which s. 32(11) of the Act presents having regard to the functions and independence of both the Restoration of Trust and the Tribunal, and considered how, if at all, the provisions were to be reconciled. The Tribunal understood the Facilitator’s position insofar as she would seek to use s. 32(11) for the purpose of ensuring that meeting records of the Facilitation of Trust were protected by the exemption from Freedom of Information which s. 40 of the Act of 2019 confers. Nevertheless, the Tribunal considered that, in circumstances where the Facilitator is recognised as being entirely independent in the performance of her functions, and, in particular, is independent of the Tribunal, a question arises as to how such independence is to be reconciled with the deployment by the Facilitator of a staff member of the Tribunal for the purpose of holding confidential records. The Tribunal was mindful of the provisions of s. 8 (3) of the Act, which provides that all members of staff are obliged to perform their functions under the direction and control of the Chairperson, and it considered that issues pertaining to the duty of confidentiality and the potential for conflict, and the appearance of a conflict, may arise.

In June 2021, the Tribunal submitted its first Annual Report and it raised the matter with the Minister. By letter dated 2 September 2021, the Minister indicated that he would ask his officials to engage with the Tribunal and the nominated Facilitator to give consideration as to how the aforesaid provisions are to be reconciled in practice.

PART 5

Particulars of Accounts

Framework

Pursuant to s. 35(2)(b), the Tribunal's Annual Report shall include particulars of its accounts in respect of the financial year in question.

The Tribunal is not allocated a specific budget over which its Chairperson and Members exercise independent control. The framework of the Act under which the Tribunal carries out its functions is such that any expenditure on the part of the Tribunal is made only with the consent of the Minister and the approval of the Minister for Public Expenditure.

For example, s. 8(1) of the Act provides that *'the Tribunal may, with the consent of the Minister, given with the approval of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of the staff of the Tribunal as it may determine'*.

In a similar vein, pursuant to s. 9(1) of the Act, the Tribunal may, if it considers that it requires the advice or assistance of experts in respect of any matter, appoint such and so many persons having expertise in relation to that matter as it thinks fit. However, such a power is subject to ss. (2) which provides as follows:

"Before making an appointment or a determination under subsection (1), the Tribunal shall obtain the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform."

As the Tribunal is not allocated its own budget and all expenditure incurred by reason of its operation is subject to approval by the Department, the particulars set out in this part of the Annual Report are based on information received from the Agency, Governance and Clinical Indemnity Unit of the Department of Health, the accounts of which are subject to audit by the Comptroller and Auditor General.

The Tribunal Office keeps a detailed record of particulars of all invoices and expenses which are forwarded to the Department and in respect of which approval for payment is sought. There are specific procedures and safeguards in place within Office that govern the recording and processing of all invoices received by the Tribunal for onward forwarding to the Department.

Fit Out Costs

In its first Annual Report (2020) the Tribunal set out its understanding of the costs incurred by the Department in the fit out of the Tribunal's premises. It confirms that no additional fit out costs were incurred in 2021.

Leasehold and Service Costs

The Tribunal understands from the Department that the Infinity Building—the third floor of which the Tribunal occupies—is leased by a private entity to the OPW on a long-term basis and that a pro-rata allocation of the leasehold cost amounts to the sum of €303,144 per annum. It further understands that a sum of €112,315, per annum, is currently incurred by way of service charges for the Infinity Building.

Members

Provisions governing the Membership of the Tribunal are set out in Section 6 of the Act. Currently, the Tribunal consists of the Chairperson and two Ordinary Members. Section 6(5) of the Act provides as follows that:

“Each member of the Tribunal, other than a member who is the holder of a judicial office in the Superior Courts, shall be paid such remuneration (if any) as may be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.”

The Chairperson and one Ordinary Member of the Tribunal are currently serving Judges of the Court of Appeal and of the High Court, respectively. No additional expenses are incurred by reason of their service to the Tribunal.

The other Ordinary Member of the Tribunal is a retired Judge of the Court of Appeal and is paid at the rate of remuneration currently applicable to a Judge of that Court. In the financial year ending 31 December 2021, the expenditure thus incurred in respect of the remuneration of this Member of the Tribunal was at the rate currently applicable to a judge of the Court of Appeal.

Section 6(6) of the Act provides that

“Each member of the Tribunal shall be subject to such terms and conditions and be paid such allowance for expenses as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.”

No expenses were claimed by any Member of the Tribunal in the financial year ending 31 December 2021.



Operational Costs

As noted, the Tribunal forwards to the Department all invoices in respect of costs incurred in the operation of the Tribunal and the maintenance of its premises. In the financial year ending 31 December 2021, the total sum paid by the Department in respect of these costs was €85,502.08.

Particulars of the Tribunal's operational costs are set out in Appendix 1.

Staffing Costs

The cost of staffing the Tribunal from 1 January 2021 to 31 December 2021 was €212,008.49. This figure is inclusive of employer's PRSI and it reflects the salaries paid to three staff members up to June 2021, after which they were redeployed to other areas by the Department (see page 19 above).

PART 6

A Look to 2022

Extension of Deadline for Receipt of Claims


The CervicalCheck Tribunal (Amendment) Act, 2021, provided for the possibility of a further extension of the deadline for submitting claims to the Tribunal up to a date not later than 26 July 2022 if the Minister were satisfied that there existed good and sufficient reason for so doing.

On 24 January 2022, the Minister wrote to the Chairperson to inform her that, having completed the consultation required by the Act of 2019, and being satisfied that he had good and sufficient reason for doing so, he had made an order extending the closing date for receipt of claims by the Tribunal to 26 July 2022.

Claims Received

Claims continued to be lodged in 2022 and are being processed in accordance with the Tribunal's Rules of Procedure. As of the date of this Annual Report 2021, twenty claims have been received by the Tribunal since its establishment.

Eleven claims were received in 2022. 

The remaining  claims which were filed in 2022 are in progress and are monitored to ensure compliance with the Tribunal's Rules of Procedure.

Conclusion and Recommendations

Included in this, the Tribunal's Second Annual Report, is a brief background to the establishment of the Tribunal together with an account of its activities in the discharge of its functions in the year ending 31 December 2021. The Tribunal's focus remains on the prompt and fair processing of eligible claims.

Pursuant to the provisions of s.35(2)(a) of the Act, this Annual Report has included information relevant to the Tribunal's functions under Chapter 5 and it has provided particulars of its accounts as required by s. 35(2)(b).

In its 2020 Annual Report, the Tribunal recommended that the Minister consider how the provisions of s. 31(4) and s. 32(11) of the Act are to be reconciled, in practice. The Minister has since corresponded with the Chairperson of the Tribunal in relation to this matter. The Tribunal recommends that discussions between the Chairperson, the Department and the Facilitator should continue in an effort to address and resolve the issue which the Tribunal has raised.

The Tribunal also recommends that, in a manner compatible with the Tribunal's functions, maximum use should be made of the Tribunal's premises. It considers that, where possible, parties involved in litigation arising from the State's Cervical Screening programme should be offered the use of the Tribunal's premises, including, its Conference and Consultation Rooms, should those parties indicate a wish to pursue an alternative dispute resolution process, such as, mediation.

Finally, the Tribunal is mindful of the fact that the final deadline for the receipt of claims is approaching. Subject to the volume of claims received between now and 26 July 2022 and on the assumption that parties who consent to the Tribunal's jurisdiction comply with its procedural time limits, the Tribunal anticipates that it will have completed the processing of all outstanding claims within nine to twelve months of the date of issue of such claims.

The Tribunal thus considers that by in or about July 2023 it should be in a position whereby it will have completed the substantive part of its statutory functions.

Subject to further amendments to the legislative framework within which the Tribunal operates and assuming that it will be in a position to process all outstanding claims within the anticipated time frame, the Tribunal recommends that the Minister may wish to give consideration to the potential dissolution of the Tribunal in the second half of 2023.



Ms. Justice Ann Power
Chairperson
28 June 2022