



Garda
Ombudsman
INQUIRY INDEPENDENCE IMPARTIALITY

GARDA SÍOCHÁNA OMBUDSMAN COMMISSION
RESPONSE TO THE INVITATION FROM
THE JOINT COMMITTEE ON JUSTICE, DEFENCE
AND EQUALITY
FOR SUBMISSIONS ON THE EFFECTIVENESS OF
LEGISLATION RELATING TO OVERSIGHT OF AN
GARDA SÍOCHÁNA.



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Executive Summary

The Garda Síochána Act 2005 (the Act) gave rise to the Garda Síochána Ombudsman Commission (GSOC), which has been operational since 2007. This submission is based on our experience, since then, of implementing the provisions which give effect to independent oversight of policing.

Our suggestions here range from the least serious issues to the highest level of our operations. At the heart of the suggestions is a focus on proportionality, independence and effectiveness. At the least serious level, we believe that too many cases are channelled inappropriately toward adversarial, expensive, time-consuming investigations, which do little to provide satisfaction to the public or gardaí. At a more serious level of complaint, the concept of gardaí conducting investigations on our behalf is questionable in terms of its independence and effectiveness. At a higher level, the fact that the Commissioner of the Garda Síochána is not within the remit of oversight does not appear logical and is an impediment to effective processing of serious matters.

We believe that the oversight body, GSOC, should have responsibility for all complaints. However, we also believe that the management of the Garda Síochána should be a partner in giving effect to resolving issues. We would urge the Committee to distinguish between service issues and discipline breaches on the one hand and criminal matters on the other. We see no question of gardaí investigating allegations of criminal behaviour by other gardaí arising from complaints to GSOC. Further, we believe that all allegations of criminal behaviour by gardaí should be subject to independent investigation. However, a less bureaucratic way for service issues and simple discipline breaches to be dealt with, using the normal line management processes within the Garda Síochána, could make for much more satisfactory and efficient outcomes in a significant proportion of cases.

Resolution should be a key goal

The Act sets out that the objectives of GSOC are:

- (a) to ensure that its functions are performed in an efficient and effective manner and with full fairness to all persons involved in complaints and investigations under Part 4 concerning the conduct of members of the Garda Síochána and
- (b) to promote public confidence in the process for resolving those complaints.

We believe that the above should be amended to shift the focus from processing complaints to the provision and promotion of an oversight system. Such a re-setting of the goals of GSOC would encompass more properly the functions of an Ombudsman: that of seeking resolution of problems rather than an exclusive focus on sanctions for misconduct.

That is not to say that recommending sanctions as part of a properly enforced disciplinary code is not appropriate and central to GSOC's remit. Nor does it diminish the central role of independent investigation by GSOC of alleged offences and serious incidents. Oversight encompasses all these, but key to the promotion of public confidence in the process must be the possibility of resolution of problems between members of the public and members of the Garda Síochána. Focus on whether or not a sanction is appropriate arising from a complaint may cause everyone involved to miss the substance of the problem. In GSOC's experience, many complaints of a less serious nature i.e. where

there is no suggestion of criminal behaviour or serious misconduct, are problems of service on the part of the Garda Síochána, not exclusively by an individual member. This is the basis for the proposal that the concept of service issues be included. GSOC is of the view that issues such as the non-return of phone calls are best dealt with by seeking to resolve the problem in the first instance. A management or corporate response, in many instances, is what the public seek. The Garda Síochána should be encouraged to provide such responses. The current system, whereby resolution requires the consent of the parties involved, militates against resolution.

Independence should be assured

The Act provides for the investigation by the Garda Síochána of allegations of misconduct. GSOC believes that the legislation was so designed to encourage line management within the Garda Síochána to take responsibility for matters of discipline. The danger exists that, if there is no Garda Síochána involvement in such investigations, that the Garda Síochána management abdicate responsibility for discipline. Unfortunately the current system, whereby investigations are conducted by gardaí into the conduct of other gardaí carried under the Garda Síochána (Discipline) Regulations 2007, is flawed. The public perception is that it is simply “guards investigating guards”; the Garda Síochána has been resistant to the concept and has not delivered the desired results in terms of information provision or timeliness. Our preferred alternative is that, as outlined above, resolution be fostered, encouraged and, if necessary, efforts to achieve resolution mandated. GSOC would then investigate all other complaints. This would have the advantage of assuring the public and gardaí alike that all investigations into alleged misconduct were fully independent. However, should the legislature wish to retain the current mechanism, we suggest amendments to the current provision.

Independence is a factor in our administrative structure. GSOC is appointed by and answerable to the Oireachtas. GSOC, rightly, has a reporting relationship with the Department of Justice and Equality. However, the financing of GSOC is currently a matter for the Minister for Justice and Equality: the accounting officer of GSOC is the Secretary-General of that Department. We believe that independence and public confidence in the system would be enhanced by the designation of GSOC as a fully independent body.

The independence of GSOC is a matter that has come to international attention. A recent United Nations report has recommended that GSOC be enabled to undertake examinations into practices, policies and procedures of the Garda Síochána without, as is the current provision, the requirement of Ministerial approval.

Legislation currently provides for independent investigation by GSOC of any matter which appears, to the Garda Commissioner or to GSOC, to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person. We are concerned that the definition of serious harm available to the Garda Síochána and to GSOC does not encompass some serious matters e.g. serious sexual offences. We propose that the provision be amended to allow for serious offences, as perceived by the legislature, to be independently investigated.

Efficiency should be improved

In order to provide a high-quality public service, the GSOC process should be efficient. We believe that the system whereby GSOC must notify all gardaí subject to inadmissible complaints is an irritant to those gardaí and waste of public resources. We propose that such notification be discretionary.

Of even greater impact on efficiency is adherence to the Protocols between GSOC and the Garda Síochána which are mandated under the Act. We have experienced well-documented difficulties in securing the cooperation of the Garda Síochána. We believe that adherence to the Protocols should be underpinned by statute and that this will assist us and the Garda Síochána to make the progress envisaged by the legislature.

In the interests of even-handedness and efficiency, we also propose that GSOC be enabled to make some preliminary enquiries of the Garda Síochána regarding complaints in order to assist in determination of admissibility. Currently, GSOC makes such enquiries regularly of complainants, but has no ability to do so in the case of the Garda Síochána.

Conclusion

We make these proposals based on seven years of experience. We believe they address key issues for the Garda Síochána and the public. The review of oversight arrangements is welcome and presents an opportunity to incorporate the lessons we have all learned. Ireland is fortunate in that the Garda Síochána Act 2005 was a leading initiative in establishing independent oversight of policing. Implementation has been challenging for all concerned but valuable learning has occurred. The incorporation of that learning into future arrangements will be of benefit to all concerned.

Introduction

The Garda Síochána Act 2005 (the Act) gave rise to the Garda Síochána Ombudsman Commission (GSOC). GSOC has been operational since 2007. This submission is based on almost seven years experience of implementing the provisions which give effect to independent oversight of policing. We make this submission in the knowledge that discussions are taking place regarding the creation of a Policing Authority. Since that discussion is at an early stage, we do not know what effect that may have on the structures, including of civic policing and state security. We confine ourselves to Parts 3 and 4 of the Act.

We have examined the operation of policing oversight in other jurisdictions, particularly the Office of the Police Ombudsman of Northern Ireland which, like us, oversees a single police force. We believe there are lessons which can be learned from such comparisons. We have also listened carefully to the Garda Síochána over the past seven years and while we may not always agree with them, we take their views very seriously. We have also appeared before the Public Service Oversight and Petitions Committee and heard the views of elected representatives.

As a result of these experiences, over the following pages, we have compiled 12 suggestions, with attendant indications as to what principal sections of the Act would require amendment to give them effect. We believe that these proposals highlight the factors which will be key to improving the effectiveness of the legislation governing our activity and will result in significant improvements in the oversight of the Garda Síochána.

Lastly, we would highlight that two words are of central significance in this submission: resolution and independence. We believe any review of the role of GSOC should strive to enhance the capacity to resolve problems to the benefit of all and to strengthen the independence of oversight in all its operations. Both these matters are important as they touch on what the public actually wants from our operations and the confidence that the public and gardaí can have in the process.

Proposal 1

To shift the focus of GSOC's activity towards effective resolution of issues

Background

The Act sets out that the objectives of GSOC are:

- (a) to ensure that its functions are performed in an efficient and effective manner and with full fairness to all persons involved in complaints and investigations under Part 4 concerning the conduct of members of the Garda Síochána and
- (b) to promote public confidence in the process for resolving those complaints.

Current situation

The overall thrust of these objectives is toward a system of apportioning blame on gardaí or not, as appropriate. We believe that the exercise of an Ombudsman function is broader, particularly in the area of seeking resolution to issues and to providing feedback to the Garda Síochána, so that lessons can be learned from cases.

Problem

The objectives of an organisation set the tone for its relationships. The current objectives are focussed narrowly on the negative aspects of GSOC's work: that of establishing whether or not gardaí are at fault in some way. This has not assisted in inter-organisation relationships. It has not fostered an atmosphere in which trust between GSOC and the Garda Síochána is engendered. As independent oversight has now become an established part of the policing landscape in Ireland, the objectives of GSOC should reflect a broader and less exclusively adversarial approach. While GSOC and the Garda Síochána have very different mandates and duties, we share a common desire to improve policing in the public interest. Oversight includes being a critical friend. The Act does not provide sufficiently for such a relationship to be built.

Proposed Solution

To re-set the objectives of GSOC to reflect the nature of oversight, as opposed to complaint-handling.

Section likely to require amendment^[1]

Section 67

^[1] There is cross-referencing in the Act between sections; therefore other sections may require amendment also, but we have confined ourselves in this document, to referencing the principal section concerned.

Proposal 2

To establish more efficient processes to deal with minor issues:
informal resolution

Background

Many admissible complaints do not allege serious misconduct or criminal behaviour, but rather alleged breaches of discipline. Examples are complaints of discourtesy or dissatisfaction in relation to basic expectations of garda members, e.g. accounts of curt manners or poor response of garda members at incidents.

The current system allows for the many types of common and less serious complaints to be dealt with under two categories: Informal Resolution (IR), or as a disciplinary matter to be investigated under the Garda Síochána (Discipline) Regulations 2007. This proposal focuses specifically on the former.

The original legislators, taking learning from other jurisdictions, believed a high proportion of less serious complaints could be dealt with via IR. It was seen as a method of dealing with these types of matters quickly, where all stakeholders took something of a non-judgmental stance and lessons could be learnt. The legislation provided, through the development by the Commission of guidelines, for the design of a fair system for the operation of this concept.

Problem

In other jurisdictions (such as Northern Ireland for example), the Ombudsman is empowered to make the decision about whether it is most appropriate to resolve a case informally. The process works because of speedy feedback loops where, at the conclusion, in many cases, the complainant receives a satisfactory response from the police organisation.

Under our legislation, however, express consent is required from all parties in order for a matter to be dealt with via IR. This is the major impediment in resolving minor matters informally. GSOC has found that complainants are often happy with this way of dealing with matters, but garda members, in the vast majority of cases, exercise their right to refuse. This has resulted in less than 1% of complaints being resolved informally.

The options then, are withdrawal of the case, or commencement of a lengthy, bureaucratic disciplinary investigation, a drain on resources for both GSOC and the Garda Síochána. In addition to the cost to the taxpayer, neither of these approaches tends to be what the complainant really wants, nor may it be appropriate for the garda member concerned. GSOC believes that currently we have a lose-lose situation.

Proposed Solution

The existing IR process could be rendered effective by empowering GSOC to decide whether it should be applied, i.e. removing the necessity for consent by both parties. Proper safeguards to ensure that the rights of the parties are preserved would be required.

Section likely to require amendment¹

Section 90

Proposal 3

To establish more efficient processes to deal with minor issues: service issues

Background

As mentioned in Proposal 2, the current system allows for the many types of common and less serious complaints to be dealt with under two categories: Informal Resolution (IR), or as a disciplinary matter to be investigated under the Garda Síochána (Discipline) Regulations 2007.

Even with proposed amendments to IR to make it a more effective option (Proposal 2), there is little room at present for other avenues towards a fair, proportionate, impartial outcome that might better match public expectation and achieve speedy recovery of what may be described as simple service failures. At present nearly all issues coming to notice are treated as complaints of misconduct, whereby a lengthy, expensive and highly bureaucratic process begins.

Problem

Often the type of categorisation described above leads to an adversarial process and does not engender a problem-solving or organisational learning stance. The process often results in a lengthy investigation, without necessarily addressing the fundamental issue complained of.

Solution

The proposed solution would involve introducing a new category of 'service issues' to the Act. These would still be matters that GSOC would receive and record. From an early stage, however, they could be dealt with by another route. The description of the word 'complaint' would need to be elaborated in the Act. Additionally, it is suggested that legislators could add and detail another category of 'service issue'. Protocols could be drawn up that ensure oversight and transparency of recording.

The resolution of a service issue would be a matter principally for Garda management to achieve. An efficient and effective communication loop would need to be agreed between the Garda Síochána and GSOC. Once a service issue had been identified and recorded, remedial action could be taken by the Garda Síochána directly to address it, e.g. in relation to curt manners, a garda member's superior bringing the complaint to the attention of the member and advising the complainant that this has been done could be sufficient. This would mean that the Garda Síochána would become more responsive, offering explanation for any service deficiencies – which would be very positive for public perception of the force.

Garda Síochána management would need to report the outcome of any local management action to GSOC for consideration, lest further action be required. A legislated response, that allows the search for a more customer-focused solution, without risk of bureaucratic process, could be very effective.

Section(s) likely to require amendment¹

Section 87.

Proposal 4

To enhance the independence of all investigations arising from complaints

Background

As mentioned in Proposals 2 and 3, the current system allows for the many types of common and less serious complaints to be dealt with under two categories: Informal Resolution (IR), or as a disciplinary matter to be investigated under the Garda Síochána (Discipline) Regulations 2007. This proposal focuses specifically on the latter.

Currently the Garda Síochána may undertake investigations, either supervised or unsupervised, into complaints following referral of a matter from GSOC. These cases are investigated under the Garda Síochána (Discipline Regulations) 2007 mentioned above.

Problem

GSOC does not believe that continuing this practice is conducive to public confidence. We believe that the concept of gardaí conducting investigations on our behalf is questionable in terms of its independence and effectiveness. We propose the discontinuation of gardaí investigating complaints under the Garda Síochána (Discipline) Regulations 2007 on our behalf.

However, the legislature may decide to retain it. For this reason, we are also laying out below how an amendment to the provision could enhance independence of oversight and public confidence:

Problems arise in relation to how a complaint is dealt with, and notably reported on, when a supervised or unsupervised investigation is conducted by the Garda Síochána under the Garda Síochána (Discipline Regulations) 2007.

What happens in many cases is that the outcome is decided and sanctions are applied, if a breach of discipline is found, and only subsequent to this are GSOC and the complainant informed. The complainant may then – and often does – request a GSOC review of the investigation. However, the decision has already been communicated to the garda member and the sanctions have already been applied, so it is too late for this to have any effect.

When this happens, it can be confusing to the general public. It tends to give rise to suggestions that the system of “guards investigating guards”, without independent oversight, has not really changed.

In relation to legislation, there are two issues:

- The Preamble to the Act talks of “ensuring openness, transparency and accountability”; elsewhere it is provided that complainants are entitled to “sufficient information to keep them informed of the progress and results of the investigation...”. In practice, the information provided by the Garda Síochána to GSOC following disciplinary proceedings as described above, is generally a one-line statement of the outcome, with no explanation.
- GSOC is expected to gather evidence and to make fair and independent recommendations to the DPP or to the Garda Commissioner based on examination of this evidence. Processes

such as the above impinge on GSOC's role in the decision-making chain and undermine its oversight role.

Proposed solution

It is proposed that the practice of gardaí investigating complaints against gardaí be discontinued.

Should the provision be retained, it is proposed that investigations undertaken by garda members, in relation to referrals from GSOC, should be fact-finding in nature and should not be undertaken under the Discipline Regulations. The purpose of such investigations would be to provide GSOC with the case-related facts, in order to enable GSOC to consider the matter fully, with a view to then making a report to the Garda Commissioner.

The outcome of all such investigations should be communicated to the garda member(s) and the complainant. If the complainant is unhappy, then he/she could request GSOC to review the matter. There should be options resulting from such requests for a meaningful review. GSOC should, as appropriate, be in a position to:

- request the (Garda) Investigating Officer to take further investigative steps;
- decide to investigate the matter further itself; or
- direct that the matter be forwarded to the Garda Commissioner for consideration of action under the Disciplinary Regulations.

Principal section likely to require amendment¹

Section 94.

Proposal 5

To include the Garda Commissioner within the remit of GSOC (in certain circumstances)

Background

Currently the Act states that 'member of the Garda Síochána' does not include the Garda Commissioner, and therefore that office holder is outside the remit of the Ombudsman Commission.

Problem

Effective oversight of policing, and public confidence therein, favours the Garda Commissioner being subject to civilian oversight by the force's Ombudsman Commission. There are a number of reasons why it is illogical, and detrimental to public perception, that the Garda Commissioner should be exempt from oversight:

- In a command organisation like the Garda Síochána, ultimate authority rests with the Garda Commissioner;
- It is the international norm that an Ombudsman deals with complaints against anyone in an organisation.

Proposed solution

Legislative change could allow for the Ombudsman Commission, if it deemed appropriate, to investigate allegations of misbehaviour by the Garda Commissioner. The following provisions could ensure that the number of GSOC investigations involving the Garda Commissioner would remain limited and only arise in relation to specific incidences of alleged misbehaviour of a particularly serious nature, which would merit investigation in the public interest:

- where it does not relate to general policy matters regarding the general direction and control of the Garda Síochána; and
- where it is in the public interest to do so (whether on receipt of a complaint or otherwise).

N.B. GSOC is cognisant that the Garda Commissioner leads not only the national police force but also the State's security services. The Act already recognises this distinction and, accordingly, this function could be broadly accommodated within the existing legislative framework.

Principal section likely to require amendment¹

A section could be added, or definitions changed in section 82, to make the Commissioner of the Garda Síochána subject to oversight in certain defined situations.

Proposal 6

To make adherence to Protocols compulsory

Background

Section 94 of the Act provides that GSOC may refer complaints for either supervised or unsupervised investigation to the Garda Síochána. The operational details, including time-lines, are not provided for in the Act; Protocols defining these were agreed between GSOC and the Garda Síochána.

Problem

The Protocols defined that such investigations were to be completed within 12 weeks, but year-on-year, the vast majority of them have run considerably over time. Revised Protocols with extended time frames were agreed in the last year, but adherence to these is still of serious concern to GSOC.

GSOC has also had significant problems with timeliness in relation to the provision of information from the Garda Síochána. This activity is also guided by agreed Protocols, whereby information requested should be provided within 30 days and no caveats were allowed.

Such is GSOC's concern about the impact of the above on our ability to carry out our role, that on three occasions in 2013 we highlighted the issues:

- a special report pursuant of section 80(5) of the Garda Síochána Act was issued on 9 May 2013. Whilst this report centred on a particular investigation, adherence to timeliness standards was also a major theme;
- our 2012 Annual Report, highlighting examples where agreed Protocol standards for the provision of information within 30 days were still outstanding long after this, was made public on 23 May 2013;
- GSOC appeared before the Joint Oireachtas Committee on Public Service Oversight and Petitions on 3 July 2013 and again expressed dissatisfaction with the adherence to agreed Protocols, mostly in relation to timeliness in the provision of information.

GSOC is still, at this time, awaiting full compliance to the original and now the re-negotiated Protocols. Whilst some issues do not present too many problems, timeliness, both in terms of the provision of information and in the timescales of Garda investigations, remains a concern. This is an area which is critical to GSOC's ability to do the job expected of it.

Proposed solution

The adherence to the agreed Protocols should be made compulsory under the statute, with defined sanction for failure. Legislature may wish to consider whether failure to adhere to Protocols around timeliness of investigations and information provision should be considered as obstruction of an investigation and sanctioned accordingly. (If the latter is enacted, it will need to be added to the Protocols.)

Principal section likely to require amendment¹

Section 108.

Proposal 7

To expand the definition of serious harm

Background

Section 102 (1) and (2) provide for investigation by GSOC, following referral by the Garda Commissioner, of any matter that appears “to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person.”

The definition of “serious harm” which is applied in application of section 102 is that set out in section 4 of the Non-Fatal Offences against the Person Act 1997. This definition is the only statutory definition available to GSOC and the Garda Síochána for this purpose and thus is referred to in the Protocols agreed between GSOC and the Garda Síochána.

Problem

The definition of serious harm does not encompass, for example, sexual offences of a serious nature. Consequently, matters relating to child defilement, child grooming, or rape may not be the subject of referral to GSOC under the Act. Under the current provisions, such offences allegedly committed by members of the Garda Síochána do not merit referral to GSOC for independent investigation and can be investigated internally.

The investigation of members of the Garda Síochána by the Garda Síochána in relation to such serious offences raises concerns of impartiality, fairness to the garda members under investigation, fairness to the investigating garda members, fairness to alleged victims and questions of public confidence in the process.

Proposed solution

The investigation of serious offences allegedly committed by members of the Garda Síochána should be conducted by GSOC. Provision should be made to allow the legislature to decide what serious offences it considers appropriate for independent investigation.

Principal section likely to require amendment¹

Section 102.

Proposal 8

To accord GSOC the independence to undertake examinations into practice, policy and procedure of the Garda Síochána

Background

Section 106 provides for examinations by GSOC into any practice, policy and procedure of the Garda Síochána, in defined circumstances. In practice, GSOC has recommended to the Minister for Justice and Equality that an examination in accordance with the section be undertaken on two occasions and, on one of these occasions, the Minister requested that GSOC undertake the examination.

Problems

The section appears to pre-suppose that complaints are anticipated or have been received. It does not provide for situations where complaints would not be anticipated in relation to a possible policy, practice or procedure. The application of the termination of fixed charge penalty notices is a case in point. GSOC has not received a large number of complaints from members of the public who have had their notices terminated nor would it expect to. Such an instance, consequently, does not appear to fall within this section.

Secondly, the undertaking of an examination is at the discretion of the Minister for Justice and Equality. This is a limit on the independence of GSOC.

Thirdly, the publication of “all or part of any report received under this section from the Ombudsman Commission” is at the discretion of the Minister for Justice and Equality. This is a limit on the independence and transparency of GSOC.

Fourthly, there is a matter of public perception of Ministerial control of the ability to conduct examinations. The public may view this as compromising the independence of GSOC.

Finally, there is a matter of international perception. The United Nations Human Rights Council Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, following her mission to Ireland in 19023 November 2012, on page 9, paragraph 40, stated that

“40. While the Special Rapporteur welcomes the existence of the Ombudsman Commission to ensure the accountability and independent oversight of the police, she expresses concern at the serious constraints faced by the body, including financial and resource limitations, and the reported limited public awareness of its activities and responsibilities. While she takes note of the powers of the Commission to conduct public interest investigations into the behaviour of the police in accordance with section 102(4) of the Garda Síochána Act (2005), she remains concerned at the Commission’s excessive dependence on the Ministry of Justice and Equality when it comes to opening investigations relating to the practices, policies and procedures of the police, which requires permission from the Minister, as laid out in section 106 of the mentioned Act. The Special Rapporteur recommends that this provision be removed from the Garda Síochána Act (2005) in order to grant the Commission independent investigative powers.”

(<http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/IEIndex.aspx>)

The legislature may wish to consider the impact of this recommendation on Ireland's international reputation.

Proposed solution

That GSOC be enabled to initiate, conduct and report examinations at its own discretion.

Principal section likely to require amendment¹

Section 106.

Proposal 9

To overhaul the current confidential recipient framework so as to make GSOC more central to the process

Problem

Recent events have suggested that the existing system for issues to be raised by garda members requires significant overhaul.

Proposed solution

GSOC could be nominated as an external confidential recipient with the capacity to receive complaints from serving garda members of serious corruption, malpractice, or systemic issues.

The system could work in such a way that GSOC would assess any such report received and could, depending on the nature and seriousness of the allegation:

- on determination that it was in the public interest to do so, launch an investigation pursuant to the terms of the Garda Síochána Act, 2005 (whether criminal or disciplinary). On completion of such an investigation GSOC could refer a file to the DPP (re alleged criminality) or to the Garda Commissioner (re alleged indiscipline) or discontinue the investigation whether further action is not necessary or reasonably practicable; or
- refer the confidential report to the Garda Commissioner for attention, who would notify GSOC of the proposed action to be taken in relation to them and the outcome of any such action;
- undertake an examination of a practice, policy or procedure.

Note: GSOC would need to have the discretion, if it deemed it to be important in the context of gathering or preserving of evidence, or otherwise in the public interest, to postpone notification of the receipt of a confidential report, or alternatively notification of the identity of the garda making the report, to the Garda Commissioner.

Principal section likely to require amendment¹

This may require a new section.

Proposal 10

To modify notification requirements regarding complaints determined inadmissible

Background

When a complaint is received, the Ombudsman Commission must notify the Garda Commissioner of the complaint. If, following initial screening, the complaint is determined to be inadmissible, GSOC must notify the complainant, the garda member concerned and the Garda Commissioner, and include in the notification the reason for the determination.

Problem

Following the above procedures, a Garda member receives a letter from GSOC saying a complaint has been made and has been deemed inadmissible. The letter will give the reason for inadmissibility:

- (a) The person making it is not authorised;
- (b) The conduct alleged does not constitute misbehaviour;
- (c) The complainant is out of time;
- (d) The complaint is frivolous or vexatious.

However, it does not give detail of the complaint. We believe that this must be very frustrating for garda members and even likely to unnecessarily undermine their confidence in their ability to do their job.

Proposed solution

We believe that it would be better if GSOC had the discretion to decide, firstly, as to whether it is beneficial to notify a garda member if a complaint, deemed inadmissible, is made against them and, secondly, as to whether it may be appropriate to give the garda member the details of the complaint.

Principal sections likely to require amendment¹

Section 88.

Proposal 11

To allow preliminary inquiries to identify the best mechanism for dealing with complaints

Background

When complaints are received by GSOC, they are considered for admissibility on the basis of the information supplied by the complainant and often GSOC is obliged to contact the complainant because not enough information was provided to make the decision. However, there are no current arrangements allowing GSOC to contact garda members who are the subject of a complaint (or any other third parties, such as alleged witnesses). As a result, sometimes admissibility decisions are made in the absence of key information, which would have affected the decision. For example, even ascertaining if a particular garda member was on duty at the time of alleged misconduct prior to admissibility is often desirable but not possible, and clearly this information would be a significant factor in admissibility of the complaint.

The former Garda Síochána Complaints Board (GSCB) was able to make preliminary inquiries, often of garda management, to gain a fuller picture. The Board, however, was challenged and threatened with Judicial Review as it was perceived that going to Garda management could lead to a bias in favour of the member. The matter was never judicially tested but the practice was ceased on legal advice and this may be why current legislation does not allow for GSOC to contact both parties to help them to make an admissibility decision.

Problem

As it is not currently permitted to contact any third party at an early stage to assist admissibility decision making, complaints are admitted on the basis of what was known at the time and it is sometimes found that, either i) if more information had been available, a less cumbersome route could have been followed; or ii) an admissibility decision could have been made far more quickly and fairly if a simple phone call could have been made. Therefore, sometimes response to a complaint is not proportionate as a result of this limitation.

Proposed solution

GSOC proposes the introduction, on a statutory basis, of “preliminary inquiries”, to help ensure that response to a complaint is proportionate and fair. Preliminary inquiries will also bring greater clarity to the allegations made, thereby enhancing the effectiveness and probity of the admissibility determination.

The legal advice to the GSCB in the past requires that any possibility of bias towards the garda member in question be robustly addressed and GSOC believes that this can be done by defining and recording any preliminary inquiries, thereby guaranteeing transparency. We believe it is important that this be a statutory process rather than an ad hoc approach to information-gathering, to ensure trust and confidence in the system.

In the interest of flexibility, the amended Act should empower GSOC to either conduct these enquiries themselves or to seek the assistance of the Garda Síochána in collecting the information

necessary and providing it to GSOC. An important feature of any such system would be that any evidence collected during the course of the preliminary inquiry may be used (subject to the privilege against self-incrimination and the 'ring fencing' of IR) in subsequent criminal and/or disciplinary proceedings.

Principal section likely to require amendment¹

Section 87.

Proposal 12

To increase the administrative independence of GSOC

Background

GSOC is currently a body under the Department of Justice & Equality, so the financing of GSOC is currently a matter for the Minister for Justice and Equality: the accounting officer of GSOC is the Secretary-General of that Department.

Problem

Credibility in the capacity of GSOC as an independent oversight organisation is impacted as a result of being under the Department of Justice & Equality. In particular the areas of finance and human resources management are overly controlled through Departmental structures, thereby restricting GSOC's autonomy. In practice, the impact of such a restrictive approach is manifested through apparent third party decisions in relation to, for example, expenditure in such areas as information technology and legal costs, and with respect to recruitment and maintenance of staffing levels within the organisation.

Proposed solution

Consideration should be given to legally designating GSOC as a fully independent body with voted financial resources and an autonomous Accounting Officer answerable to the Public Accounts Committee in its own right.

The Commission believes that such an approach would increase its independence and enhance the efficiency and effectiveness of the organisation.

Principal sections likely to require amendment¹

Sections 76 and 77.

Final Note

There are numerous other sections that would also benefit from minor adjustment to make them more efficient and if a process were to be commenced, GSOC would be happy to be involved in making further recommendations.