

Investigation arising from receipt of a complaint following the death of a minor in 2006 - a summary pursuant to section 103 of the Garda Síochána Act 2005.

In 2007, the Garda Síochána Ombudsman Commission (GSOC) received a complaint relating to the circumstances surrounding the death of a minor in late 2006. Five days before his death, the Health Service Executive (H.S.E), with the support of the boy's mother, had made an application in the High Court for the enforcement of a residential order on the boy.

The complaint alleged that the Garda Síochána did not establish if the order handed down by the High Court had been enforced and that the Garda Síochána did not execute the order itself. It also alleged that the gardaí did not act on the telephone calls made to them by the boy's mother on the night/morning of her son's death.

The case concerned the death a 14 year old boy. At an inquest, the Coroner concluded that he had died from asphyxia due to hanging and that the death was self-inflicted. The jury recommended that as a "matter of urgent concern," the "relevant authorities and bodies" should be requested to review "the circumstances and processes in which a minor may be detained by the High Court in secure accommodation." The High Court, in mid 2007, conducted an inquiry into the circumstances of the boy's death. The judgment set out a range of procedures, safeguards and measures (including certain recommendations concerning the work of the Garda Síochána) that might be appropriate in relation to the implementation of detention orders.¹

Subsequent to the High Court inquiry, which did not make findings of fact, the complaint was made to GSOC. The complaint was outside the time limit permitted by the legislation. However, as it had previously been submitted to the Ombudsman for Children and because of the seriousness of the issues raised, the Commission took the view that sufficient grounds existed for an extension of time.

The conduct alleged, if proven, would amount to a breach of discipline, namely a neglect of duty, contrary to Schedule 5. No.2 of the Garda Síochána (Discipline) Regulations 2007. The complaint was forwarded to the Garda Commissioner for investigation, in accordance with Section 94(3) of the Garda Síochána Act 2005. This provides for the supervision by GSOC, in the public interest, of an investigation conducted on its behalf by the Garda Síochána.

¹ High Court Record 2006/1974P www.courts.ie

Background

The boy had not been residing at his mother's home for some time. He had been living, apparently on an *ad hoc* basis, with certain other families in the district.

He was a vulnerable boy. He was effectively out of the educational system and was not attending school.

He had come to the notice of his local gardaí on a number of occasions, having engaged in what the High Court described as extremely challenging behavior.

Early in 2006, his behavior was referred by his mother to the H.S.E. From this point, he also had ongoing contact with various H.S.E professionals. In mid 2006, he was placed in a residential centre but when lodged in a step-down centre he absconded and returned to his home district. A month before his death, suspicions arose that he been sexually abused by a woman who was in her midtwenties.

The High Court ordered that he should be taken immediately into residential care.

Events immediately preceding

For most of the four day period leading up to his death, having learned that he was to be returned to the residential centre, he had absented himself from his home and from the neighbours with whom he sometimes stayed. He did not turn up to meet his social worker for a proposed meeting. There is evidence that he received a number of mobile communications over this time from his mother as well as from his H.S.E. social worker. However, it appears that neither his mother nor the H.S.E. knew his location. Having discussed the matter with her supervisor, the social worker had earlier spoken to him by telephone, told him of the existence of the High Court order and that he would be required to return to the centre. It was felt that in order to maintain trust with him it was better to apprise him of this reality.

According to a friend, with whom he spent much of the four days, he was in "bad form" and "depressed" about the prospect of having to return to the centre.

He returned to his home at 22.30 on the night/morning of his death. Having expressed to his mother his anxiety and disinclination to return to the centre, he drove away from the house in his mother's car.

The boy's mother made contact with the gardaí at station 'X' at 23.05 and alerted them. She was not satisfied with the response she received and this formed part of her subsequent complaint.

A neighbouring householder who encountered the boy some time later, at approximately 00.30 (half past midnight) also alerted the gardaí at station 'Y'. However, despite a search undertaken on foot of information received during this call as to the boy's location, the boy was not located. The gardaí state that they searched the area, covering all roads, with no success. A complicating factor was that there are two townlands of the same name in the area. The gardaí searched both townlands. The car had, in fact, been driven 700 yards off the road and was in a field where it would have been fully out of sight.

The boy's mother stated that she called station 'X' at 01.05 following a call from her son. She stated that she also gave the gardaí information as to her son's location. Part of her subsequent complaint to GSOC expressed dissatisfaction that no action appeared to have been undertaken by gardaí as a result of this call. No garda record of this call having been received by gardaí exists. Gardaí who were interviewed stated that they have no recollection of this call. As this investigation was of a disciplinary, rather than a criminal, nature, telephone records were not sought. This is in accordance with normal legal procedure.

At approximately 04.30 in the morning two men going out to work from a nearby house found the boy's body, at a location beside a public road in the vicinity that his mother says she identified to gardaí in her call at 01.05. This location was approximately 2Km from the car he had been driving.

Superintendent "M's" Investigation

Following the decision of GSOC to admit the complaint, there was considerable delay in the commencement of the investigation. The reasons for the delay are set out in the commentary, paragraph 12, on page 6/7. It was finally agreed that Superintendent "M" would conduct the investigation, supervised by GSOC. An agreed investigation strategy was determined. GSOC met Superintendent "M" on a number of occasions before the final presentation of the Superintendent's report. The investigation by Superintendent "M" concluded as follows:

The order of the High Court had been communicated by Garda Command and Control to the gardaí at the boy's local station and to the District Headquarters (Station "X").

The local Sergeant, referred to hereafter as Sergeant "C" made efforts to determine the boy's whereabouts. Sergeant "C" visited shops, take-aways and other premises known to be frequented by the boy and made inquiries from a number of his associates.

When Sergeant "C" went off duty he handed over responsibility for the matter to a garda, hereafter referred to as Garda "P."

Garda "P" did not undertake certain other operational steps which might have enabled the boy's whereabouts to be pinpointed. This was a neglect of duty.

Garda "P" is now retired and, as such, no longer subject to Garda Síochána (Discipline) Regulations 2007.

The investigation interviewed the gardaí who interacted with the boy's mother on the night/morning that he left the house, taking her motor car. Statements made at a subsequent inquest were reviewed and, where necessary, fresh statements were taken.

The investigation found no breaches of discipline on the part of these members.

The investigation found that gardaí at the district headquarters (Station "X"), which the boy's mother called at 23.05, alerted all available mobile units in the area (including the patrol car assigned to Station "Y") to the fact that the boy had taken his mother's car and that he was in a distressed state. However, no garda unit succeeded in locating either the boy or the vehicle at this time. The call and the action taken were recorded on the PULSE system and in the Station Occurrence Book at Station "X".

The investigation found no garda record of the boy's mother having called station 'X' at 01.05. Gardaí who were interviewed stated that they have no recollection of this call.

The Commission, having considered the report of the investigation, is satisfied that Garda "P" was in breach of discipline in his failure to conduct adequately the search for the boy once his superior, Sergeant "C", went off duty.

However, as Garda "P" is retired he is not now amenable to any disciplinary action.

GSOC is satisfied that no evidence has emerged to show that any other garda member investigated was in breach of discipline.

Commentary by the Commission

1. As with many tragedies, the death came about not through one single cause but because of a convergence of factors.

The death by suicide was not necessarily predictable. Nonetheless, there had been a documented history of threatened self-harm and potentially dangerous behavior of which all of the relevant agencies were aware through case-conferences.

2. The report of the investigation by Superintendent “M” draws attention to what the Superintendent considers to have been questionable decisions by H.S.E. staff, notably that of informing the boy of the fact that he was to be returned to the centre. The Commission acknowledges and understands that there can be significant differences of approach between agencies with differing responsibilities – in this case between the gardaí and the H.S.E.

4. The Commission is of the view that Garda “P” may have been in breach of discipline, by way of neglect of duty, in his efforts to locate the boy when he took up duty on December 2nd 2006.

5. The Commission is of the view that Sergeant “C” made diligent and reasonable efforts to locate the boy during his period of duty.

6. The Commission is of the view that the gardaí who were telephoned by the householder who met the boy on the night/morning of his death made diligent and reasonable efforts to locate the boy.

7. The Commission finds it surprising and disquieting however, that responsibility for a matter as serious as the execution of an order of the High Court, pertaining to the safety of a minor, with a known history of dangerous behavior, appears to have been devolved to a solitary garda, working on his own in a village station over a long weekend.

There is no detail of any supervisory or managerial intervention or assistance having been offered or provided to Garda “P”, once Sergeant “C” went off duty.

There is nothing to indicate that Garda “P” had been instructed or advised by his superiors to undertake certain other investigative steps that would normally be expected. No such instruction or advice appears on the handwritten note left by Sergeant “C” for Garda “P” when he came on duty.

Although the existence of the High Court Order had been communicated to the district headquarters (Station “X”) four days before the tragedy, although it had not been executed

and although the boy had gone missing, none of these facts appear to have been known to the gardaí at Station “Y”, within the same district, almost four days later.

The garda from Station “Y” who subsequently took the telephone call from the householder, recalls that while “with a prisoner or dropping over post” at Station “X” at around 23.30 hrs on the night/morning of the tragedy he became aware of the missing person report about the boy and about the report of his mother accusing him of stealing her car.

Stations “X” and “Y”, within the one Garda district, are located in sizeable, busy towns, about 20 km apart, while the boy’s home village is located almost equidistantly between them.

It is disquieting that a matter as important as the non-enforcement of a High Court Order concerning a minor’s safety was not, apparently, in the general knowledge of all members on duty in this district and in these two adjacent towns.

No detail is provided to indicate, over the period in which he was on duty, whether Garda “P” was queried by anyone in the chain of authority if the High Court Order had been executed and, if not, why not?

8. The Commission finds somewhat perplexing the content of Garda Headquarters Directive No: 162/03² (which at the material time dealt with children in custody on foot of court orders) insofar as it ought to have applied in this case.

The Directive states that responsibility for locating, arresting and lodging a minor who is the subject of a court order shall rest with the Superintendent in charge of the District where the relevant centre is located. In this case this would have been the Superintendent in which district the Centre is located. However, while this Superintendent was notified by Garda Command and Control of the making of the High Court order neither he nor any other personnel in this Garda district appear to have had any role in the efforts to locate the boy in the days leading up to his death.

9. The report of the investigation does not detail what action, if any, was taken by the Garda Síochána authorities, after the boy’s death became known, to ascertain why the High Court Order had not been executed.

10. It does not detail what action, if any, was taken by the Garda Síochána authorities, after the boy’s death to establish the facts of his mother’s interaction with the gardaí on the night/morning of his death and the failure of the gardaí to locate the boy.

² Directives are deemed confidential by the Garda Síochána and are not reproduced here.

11. It does not detail what response, if any, has been made by the relevant authorities to the judgment issued by the High Court, following its inquiry in mid-2007.

12. On November 16th 2010 SIO Croke wrote to Superintendent “M” seeking details of any internal correspondence or reports within the Division relevant to the events of December 1st to December 5th 2006 concerning the High Court Order of Mr. Justice J. and the boy’s death.

On December 8th 2010, Superintendent “M” replied to SIO Croke confirming that no official report on these matters was forwarded on these matters beyond the Superintendent’s office at Station “X”.

It would thus appear that no correspondence was either sought from or provided to the Chief Superintendent of the Division in relation to the non enforcement of the High Court Order or the events surrounding the boy’s death.

13. The response of the Garda Síochána to the supervised investigation commenced by GSOC at the end of November 2007 was highly unsatisfactory. Given the seriousness of the issues involved, it might have been expected that the investigation would have been pursued with a great deal more diligence and expedition.

Initially, the assignment of a Deciding/Investigating Officer by Chief Superintendent “B” was flawed in that it was contrary to Section 94 (1) (b) of the Garda Síochána Act 2005 as well as Section 14(5) of the Garda Síochána (Discipline) Regulations 2007 which states that the appointed member “shall not have been involved in any capacity in relation to an earlier aspect of the case.”

This error alone added four months to the investigation.

For a further fourteen months, the investigation was in the hands of Superintendent “T”, after which it was assigned to Superintendent “M”. The Commission is of the view, considering the very slow progress of the investigation by Superintendent “T”, that it should have been reassigned at a much earlier stage by Chief Superintendent “B”, who had operational responsibility for the Division within which these events had taken place. In making these observations, the Commission intends no criticism of Superintendent “M” who fulfilled his task efficiently within his terms of reference.

14. This case reflects a breakdown in relationships and a failure of care and enforcement systems, with tragic consequences.

This investigation can concern itself solely with these failures insofar as they may be attributable to the Garda Síochána.

Nonetheless the Commission recognizes and understands that garda management may feel that certain decisions in the handling of the case by the H.S.E. created particular difficulties for the local officers.

15. The Commission notes that Garda Headquarters Directive No 162/03³ (which in 2006 was the operative set of instructions in relation to the detention of children on foot of court orders) has been superseded by Directive 74/09, issued on May 25th 2009. This Directive, in turn, is based on a Joint Protocol on Missing Children agreed between the Garda Síochána and the H.S.E. and signed on April 22nd 2009.

The Protocol and the Directive 74/09 represent a much more detailed, graduated set of responses by both agencies in cases where children who are at risk are discovered to be absent from their place of care, as determined by the Courts.

At the top end of the processes envisaged, the active engagement of senior operational personnel is prescribed. In the case of the Garda Síochána this extends to the regional Assistant Commissioner.

In the previous directive (162/03) the most senior rank mentioned as requiring to be engaged with the enforcement of a court order is Superintendent. This directive makes it clear that this is a matter for which responsibility is held at Superintendent Rank.

In the case under investigation no detail is provided of the engagement of any member above the rank of Sergeant. From 6 pm on the day the order was made there is no detail to indicate that any member above the rank of garda was engaged.

16. Notwithstanding the Protocol and the new Directive, the Commission suggests, where such orders are made, that their execution be monitored and, where necessary, managed/directed to completion by a named and specified officer not below the rank of Superintendent or by an Inspector acting in the place of a Superintendent.

17. The Commission is of the view that the supervised investigation, commenced on November 30th 2007, was one in which the Appointing Officer should preferably have been a Chief Superintendent from another division, rather than the Chief Superintendent with command responsibility for the division within which this tragedy occurred.

While it is the usual practice within the Garda Síochána for a Divisional Chief Superintendent to be named as Appointing Officer for a disciplinary investigation within his/her own division, and

³ Directives are deemed confidential by the Garda Síochána and are not reproduced here.

while it is usual for him/her to appoint a Superintendent under his/her command to act as Investigating/Deciding Officer, this is not a requirement under the Garda Síochána (Discipline) Regulations 2007.

It is open to the Garda Commissioner to nominate a Chief Superintendent from any other division or assignment to act as Appointing Officer in any disciplinary case. The Commission is of the view that this would be preferable in certain cases where very serious issues, such as loss of life, are involved or where there appears to have been a serious failure of systems.

Date 14th April 2011

Garda Síochána Ombudsman Commission