



Garda
Ombudsman
INQUIRY INDEPENDENCE IMPARTIALITY

Submission to the Commission on the Future of Policing In Ireland

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Background

GSOC – Introduction

The Garda Síochána Ombudsman Commission (GSOC) was established as an independent oversight body for the Garda Síochána in 2005 and became operational in 2007.

GSOC's principal function is to deal with complaints from the public about alleged misconduct by members of the Garda Síochána as effectively and fairly as possible.

Our statutorily defined objectives are:

- To provide a system for receiving complaints and dealing with issues of Garda misconduct in a manner that is efficient, effective and fair to all concerned, and
- To promote public confidence in the process for resolving those complaints.

GSOC Functions and Remit

GSOC's functions are outlined in Section 67 of the Garda Síochána Act 2005 ("the 2005 Act"). The main route by which alleged misconduct by gardaí is brought to GSOC's attention is through complaints from members of the public concerning their experience with garda members whose conduct may amount to either:

- A criminal offence or,
- Behaviour contrary to the Garda Síochána (Discipline) Regulations 2007 (the Discipline Regulations).

GSOC has several other responsibilities not directly related to complaints but nonetheless related to the conduct of garda members. These are:

- To conduct independent investigations, following referral by the Garda Síochána, in circumstances where it appears that the conduct of a garda may have resulted in the death of, or serious harm to, a person (Section 102 of the 2005 Act);
- To investigate matters in relation to the conduct of gardaí when it is in the public interest, even if a complaint has not been made (Section 102(4)), and;
- To examine any "practice, policy or procedure" of the Garda Síochána which may give rise to complaints (Section 106 the 2005 Act). Two such examinations have been completed by GSOC to date.
- Referrals from the Minister (section 102 and 106)
- Referrals from the Policing Authority (section 102)

GSOC has been operational for more than a decade during which time we have dealt with close to 20,000 complaints from the public, some 900 referrals from the Garda Síochána and numerous other investigations undertaken at the request of the Minister for Justice and Equality or, more recently, at the Ombudsman Commission's own initiative.

Informed by these ten years of experience, this submission sets out GSOC's views on the matters now being considered by the Commission on the Future of Policing. Part 1 specifically addresses the Commission's Terms of Reference and Part 2 provides a perspective on the broader Justice environment in which GSOC and the Garda Síochána operate. The submission is accompanied by our Proposal for Legislative Change for GSOC which has been provided to the Minister for Justice and Equality in December 2017.

Part 1. Terms of Reference of the Commission on the Future of Policing

1. Appropriate leadership and management capacity to deliver effective and accountable policing

Accountability within a policing service allows for an open exchange of information and confidence building with the community which it serves. In particular many of the complaints that have been made to GSOC in its ten years of operation are at a level which have been and are capable of being dealt with locally by the gardaí themselves. However the existence of GSOC is seen as a vehicle to pass over the responsibility of solving an issue and the system requires a particular individual or individuals to be “responsible” for the behaviour giving rise to the complaint. Seldom is there an intervention by a senior officer, a sergeant for instance, to take “responsibility” for a set of circumstances in a corporate sense and seek to resolve the complaint on behalf of the Garda Síochána. It is the experience of GSOC that apologies are not given, even where it is obvious that same should arise, and where any other business would give such a response. This lack of corporate accountability is a management issue which needs to be taught, learnt and put into practice at all levels throughout the service.

2. There are adequate management and supervisory systems in place

In light of the above it is important that leadership and management training commence as early as possible in a garda’s career and not be left until senior promotion. The leadership of a unit, an investigation team, and the management of the behaviour of the members of that unit or team is essential for the proper investigation of a crime or criminal activity. The complaints GSOC has received over the years about poor service in the course of an investigation or a failure to investigate, inevitably involves the lack of supervision by a senior officer, a lack of accountability as to whose job it was to do what, and a failure to recognise across the board that a victim of a crime, or a witness to a crime, needs to know what is happening on their behalf. While the Criminal Justice (Victims of Crime) Act 2017 goes some way to deal with some of the serious deficits that have arisen over the years, it does not deal with supervision and the management of an investigation. If the skills of leadership and management are not seen and learnt while someone is a garda or sergeant, there may be no other opportunity for such learning as not every member moves on to senior management.

In 2016 and 2017, some 40 per cent of complaints received by GSOC contained allegations of neglect of duty¹. This category covers allegations that a garda failed to take an action that could have been reasonably expected – such as, at one end of the scale, returning a phone call or, at the other end, properly investigating an alleged serious crime. It is the view of GSOC that many of these complaints could have been avoided had there been proper management of investigations and supervision of individuals within units and teams.

¹ A complaint by a member of the public may contain more than one allegation so that, for example, a person complaining about their treatment by gardaí may allege abuse of authority, discourtesy and neglect of duty. Thirty one per cent of all allegations in 2016 and 29 per cent in 2017 were of neglect of duty.

GSOC has commenced, in conjunction with the Chief Superintendent from Pearse Street Garda Station, a local intervention initiative from the 1st of January 2018. The objectives of this pilot programme are to reinstate the ability of local garda management to deal with inappropriate behaviour, encourage positive behaviour in gardaí, build and keep public confidence in the Garda Síochána in dealing with complaints, deal with appropriate “service delivery” complaints effectively and efficiently, provide immediate intervention at a local level which will not result in unnecessary, lengthy investigation, and strengthen relationships with GSOC. As part of the pilot, where practicable, all persons that attend at the Garda Stations in the DMR South Central wishing to make a complaint will be dealt with by a member of sergeant rank. The complainant will be given the opportunity to have their complaint dealt with by “local intervention”.

Similarly a complainant from the DMR South Central division who contacts GSOC directly will be asked, if appropriate, whether they wish to have their complaint dealt with by way of “local intervention”.

In each case if a complainant is willing to deal with their complaint in this fashion, the written complaint is forwarded to a nominated inspector who, having appraised himself/herself of the matter, will meet with the complainant. Contact is then made with the member concerned who is given an opportunity to provide an explanation and/or offer a solution to the complaint. A timeframe of six weeks is envisaged for the process to resolve matters with all parties’ agreement.

Failure to resolve the matter still allows the complainant to continue with the process through GSOC.

The business owner of the pilot programme is the Chief Superintendent. This initiative was agreed between GSOC and the DMR South Central as an effort to meet all the goals of the project and in particular to build confidence in both organisations in the process. There is clear leadership and management envisaged throughout the proposed structure. There is to be an evaluation in June 2018 to see how this pilot is working. Currently it is a project outside the legislative framework but one that leaves open to the member of the public all his/her rights under the legislation.

GSOC sees this as a valuable and worthwhile project to undertake. It is a way forward for both organisations and would be part of a legislative change as proposed by GSOC.

It is also a programme that should instil “ownership” of poor performance and response to the public’s needs where it belongs, and will also instil “ownership” in changing that performance and response.

3. Appropriate composition, recruitment and training of personnel to ensure the optimal composition of policing services between sworn officers, unsworn personnel and the Garda reserve.

GSOC would welcome a more diversified service of trained personnel, both sworn and unsworn, to take on the many tasks that are required of a modern police service. An issue likely to arise with such an altered composition is the question of who is responsible for

investigating or resolving a complaint made to GSOC by a member of the public and relating to unsworn personnel. While GSOC has not sought an expanded remit to cover unsworn members of an expanded force, this is an area which will be reviewed having regard to interactions with members of the public and unsworn personnel.

4. Personnel reflecting the diversity of Irish society.

GSOC would encourage a police service which reflects the changing face of Ireland. It is important in integrating people with different backgrounds into the gardaí that a clear standard of behaviour towards the new entrants be set. The experience of GSOC in dealing with protected disclosures has included allegations of bullying and harassment. It will be important to recognise that prejudices can, and do, exist towards members of different communities and should not be tolerated within the Garda Síochána. The Code of Ethics deals with “Respect and Equality” which entails a commitment to *recognize and respect the dignity and equal human rights of all people*. It would be important to have a clear commitment within the Garda Síochána in relation to internal treatment of colleagues. Consideration should be given to including the Dignity at Work Policy, which covers civilians working in the garda, in the Discipline Regulations so that it covers members. The experience of GSOC has been that there is little faith in the effectiveness of the garda procedures dealing with bullying and harassment. It may be that an expanded definition in the disciplinary code of “discreditable conduct” should be included to cover inappropriate behaviour towards colleague gardaí and civilian members. While it is preferable that good behaviour be taught and encouraged in any workplace, making such behaviour a breach of discipline could underline the importance being placed on such behaviour at the highest level.

5. Appropriate ongoing professional development for all personnel to meet the challenges of modern policing.

Continuous professional development (CPD) is a standard part of career building in many professions. This is particularly pertinent to a service where there are regular legal changes and, as a result, regular changes to obligations imposed on members. This is currently coupled with technological developments which impinge more and more on crime prevention, detection and solving. The use of social media as a reporting tool generally means that gardaí at all levels must be aware of its challenges and values and how to use it to their advantage. While younger members may have more personal knowledge of such media, this should not be an excuse for more senior members to be ignorant of such developments. It is not enough to provide more resources, for instance, for investment in technology without the training in responsible use of such resources.

Customer service is clearly an area that GSOC would be anxious to see addressed directly, and on an ongoing basis. A public counter in a garda station is the first contact for many people with the gardaí. Whether it is to report a crime or get a form completed, the interaction that takes place at that first contact may shape the view the member of the public has of the whole service thereafter. Complaints by members of the public of experiencing rudeness, of being ignored or of not being responded to have come to GSOC over the years. There is an ongoing need to train personnel in the importance of such encounters and equip the members to deal with what are often difficult and fraught

situations. Members need to be supported through training in that regard. Like legal updating or reviewing best investigation techniques, dealing with the public needs to be revisited from time to time.

Regard must also be had in the ongoing professional development of members to the fact that members transfer from time to time. What was appropriate, either in crime investigation or dealing with the public, in one district may have to change having regard to the demands of a new district. While good local mentorship is important in changes of work places, a more even professional approach should prevail to ensure consistency throughout the districts.

GSOC is also conscious of the challenges gardaí face in an organisation governed by HQ Directives. In 2017 alone there were 75 directives, some of which must be read in conjunction with previous directives. It would be difficult for any organisation to keep up with directions in this manner but the current paper-based work practice of the gardaí makes it particularly challenging. GSOC has one example in particular of the challenges of taking directives and putting them into practice.

Directive 10 of 2010 was signed on the 26th of January 2010 to primarily deal with obligations to refer matters to GSOC under s. 102(1) of the Garda Síochána Act 2005 and the garda governing policy in that regard. Also encompassed in that Directive was the area involving a duty to notify certain matters to GSOC. This relates to the discharge of a firearm, Taser discharges and incapacitant discharges. The directive distinguishes the statutory referral under s. 102 (1) of the 2005 Act from the duty to notify GSOC of such discharges. (It is important to note that this Directive came about without consultation with GSOC at the time.) A requirement imposed on the gardaí in notifying GSOC of the various discharges as above is that such notifications are to be made ***within 48 hours*** (emphasis directly from Directive 10/10.)

In 2012 a new set of Directives, 47/2012, were introduced to cover the policy on the Garda Use of Force. This set of directives includes the overriding policy and separate policies for baton use, Taser, incapacitant spray and other related areas. This Directive 47/12 is to be read in conjunction with Directive 10/10 (i.e. there is still a 48 hour notification period).

As a result of these internal Directives GSOC gets notified on a regular basis of the various types of discharges, incapacitant spray being by far the most frequent. However a review of the notification requirement within GSOC over the last two years has revealed an overall inability to make the notifications to GSOC within the 48 hour timeframe.

This breach of the Directives was raised with garda management and a further Directive, 67 of 2017, was introduced. Signed the 6th of November 2017 it included the relevant email addresses GSOC had set up to assist in the 48 hour time requirement, the majority of notifications still arriving by post. It reiterated the need to make the notification within 48 hours. Our numbers showed as of the 7th of November 2017 of the 502 notifications of use of incapacitant spray alone in 2017, only 33 had come within the required 48 hour period. Two notifications arrived on the 18th of December 2017 which related to events of discharge of incapacitant spray on the 15th of October 2017.

It is important to note that the notifications are sent by or on behalf of the relevant superintendent in the area.

While this is only a small area of garda responsibility, fortunately not touching on crucial areas of policing or the responsibilities of GSOC, it is perhaps indicative of the challenges faced by an organisation that directs policy on a paper-based, and often not helpfully codified method. It is noted that the final line of Directive 67/2017 reads

This Directive should be read in conjunction with H.Q. Directives 59/07, 101/07, 10/10, 047/12, 50/13 and 77/13.

GSOC sees a modern policing service assisting its own members with efficient ways of dealing with the challenges of law, policy and practice that are regularly faced by the members of the Garda Síochána. It is possible to envisage in the not too distant future that members will be equipped with hand held devices that are easy to navigate and which will provide immediate access to the laws, rules of evidence, and directives relevant to a given situation to allow the member to respond to an incident in both a lawful and timely fashion.

6. The culture and ethos of policing.

It would be the view of GSOC, based on its ten years of experience, that the Garda Síochána is slow to embrace openness and slow to respond to change. Policing has been seen as the preserve of gardaí, and contributions from outside agencies have not always been welcome. This has been shown by instances where helpful contributions to improve policing, and the lives of the gardaí on the ground, from the Garda Inspectorate have not been acted upon by both the Department of Justice and Equality and the Garda Síochána.

The process of getting information from the Garda Síochána has been difficult, in the experience of GSOC. This suggests an unwillingness on the part of the Garda Síochána both to cooperate with GSOC and to open itself to scrutiny. The introduction of a formal system to facilitate the disclosure of information, termed the Gearáin² process, has allowed for a more ordered way of GSOC getting documentation in particular, but this has given rise to another difficulty – the perception by many gardaí that Gearáin is the only route for information sharing.

It has been the experience of GSOC that the concept of oversight of the actions of The Garda Síochána has never been accepted at any level. At the ground level, this reluctance to engage with oversight at the start of GSOC in 2007 was not helped by the events of the recession. Lower ranking gardaí were often unsupervised due to a reduction in numbers

² In February 2012 during a meeting with the then Garda Commissioner and senior personnel and GSOC issues as to effective investigations were reviewed. It was noted, and confirmed in writing after the meeting, that in 69% of the cases delay in criminal investigations resulted from the non-delivery of documentation following requests made to the gardaí by GSOC. On foot of that complaint a system was devised by the gardaí called the Gearáin process where all requests are centralised through an agreed channel and a delivery period of not more than 30 days was fixed. While a centralised system clearly brings efficiency of service, this garda process has not always distinguished requests for “evidence” from ordinary documents and paperwork.

combined with lack of promotions within the ranks. The criticisms in the O’Higgins report about failures of supervision noted:

The supervision of, and assistance to junior members is essential to the proper functioning of any garda district.

The duties of unit sergeants in supervising and assisting members of their units, not merely on request, but as a matter of routine, should be stressed, and monitored regularly by superintendents or divisional officers.

Evidence has been given that a new performance management system is about to be introduced into The Garda Síochána. The commission suggests it be implemented immediately. A systematic approach to management of performance, for members and officers, should be part of the culture of The Garda Síochána.³

Oversight within the ranks has been difficult and the existence of a cumbersome, lengthy process by an outside body has done little to enhance the concept.

Internal oversight has been hindered by an unwieldy internal discipline process. This phenomenon predates the period of recession with Mr. Justice Morris having referred to the trials and tribulations of the system as far back as 1998. The Garda Síochána Discipline Regulations 2007 make for a complicated, and often uneven, process of discipline. Mr. Justice Charleton in his recent Second Interim Report referred to the comments of Mr. Justice Morris in 1998 and further noted:

The system requires reform along the lines suggested by Mr. Justice Morris. Those gardaí accused of ill-discipline should be subject to correction by senior officers without the need to resort to the elaborate structures set up that constitute what is in effect a private trial using procedures akin to our criminal courts. A simplified structure is called for.⁴

The lack of an efficient internal discipline process further complicates an independent oversight role. Where GSOC recommends disciplinary proceedings be considered, the complexities of the garda process and an adversarial approach to same, undermine what should be a rank-based disciplined organization.

Under the 2007 Discipline Regulations all that the gardaí are required to do in disciplinary proceedings arising out of a complaint to GSOC is report the “outcome” back to GSOC. This has led to much frustration over the years for the members of the public who complained to GSOC but got little explanation as to why certain outcomes came about. At the end of 2016 GSOC had provided the Garda Commissioner with three case summaries where no reasons for not disciplining officers have been given.⁵ In 2017 it was agreed that, in deciding not to commence discipline proceedings internally where GSOC had recommended such a course of action, the Garda Commissioner (or the Garda Síochána) should now provide reasons for

³ Paragraph 15.6 Commission of Investigation (Certain Matters Relative To The Cavan/Monaghan Division Of The Garda Síochána) 25th April 2016

⁴ P. 75 Second Interim Report of the Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matter. 30th November 2017.

⁵ These summaries are contained in Appendix A for the Commission’s attention and assistance.

such decisions. It is hoped that this will give a better understanding of the role of decision makers in such cases.

It is the view of GSOC that the above evidenced reluctance to make information available to this oversight body coupled with the reluctance to explain why decisions have been made is indicative of a general slowness to open up the garda organisation to appropriate scrutiny. The future development of the garda service needs to incorporate an understanding of concepts of transparency and accountability and the application of those concepts in a way that does not interfere with issues of security and protection.

The Code of Ethics, introduced in January 2017, sets out standards which should be voluntarily accepted and endorsed. A breach of the Code is not to be considered a breach of discipline as such, but the behaviour complained about will often also be a breach of the Discipline Regulations. The integration of the terms of the Code into everyday practice will be a developing process, albeit much of what is set out in the Code should have been – and often was - applicable long before the written document codified such good behaviour. The question of a stick-and/or-carrot approach to assist the integration of behaviour outlined in the Code of Ethics may have to be reviewed over time.

A real positive of the current garda structure is the fact that it is still generally an unarmed force. In its ten years of operation GSOC has fortunately dealt with only one fatal garda shooting of a civilian and five other shootings which caused injury to persons other than gardaí. It is recognised that increasingly gardaí are exposed to violence at the highest levels, including gun violence, but have maintained an unarmed ethos. The challenges in that regard will continue, and increase, but the ability of gardaí to police without resorting to an armed response is an important factor in keeping the trust of the greater population.

Part 2. GSOC's Operational Environment

1. The GSOC Operational Environment

1.1 GSOC's Place in the Justice Sector

GSOC, along with the other police oversight bodies, operates under the aegis of the Department of Justice and Equality. In regard to the oversight of the police service the Department itself has a very important role to ensure that the Garda Síochána is providing the State with a properly functioning police service.

Section 80 of the 2005 Act, deals with GSOC's statutory reports to the Minister for Justice and Equality ("the Minister"). The Minister in turn places such reports before the Oireachtas. In legislative terms such reports are the only reporting mechanism available to GSOC to highlight matters of a policing nature which are of concern to it.

The Chairperson is accountable to the Public Accounts Committee as an accountable entity in relation to organisational expenditure (the Comptroller and Auditor General annually audits the financing of GSOC). In recent years the Commission has also been requested to attend before other Oireachtas committees notably:

- Oireachtas Joint Committee on Public Service Oversight and Petitions (July 2013)
- Oireachtas Joint Committee on Public Service Oversight and Petitions (February 2014)
- Oireachtas Joint Committee on Justice, Defence and Equality (May 2014)
- Oireachtas Joint Committee on Justice and Equality (September 2016).

Such attendances enable GSOC to provide in-depth explanation and account of its actions in the oversight of the Garda Síochána and is viewed by GSOC as a positive system in the examination of GSOC's own accountability and transparency.

1.2 Towards an independent and effective oversight body

The roles of GSOC, the Garda Inspectorate and the Policing Authority are distinct but complementary and should help to enhance public confidence in the operation of a strong, fair and transparent police force.

GSOC believes, however, that its ability to influence the building of real accountability in the Garda Síochána will be inhibited without significant change in three major respects;

- General governance of the oversight framework
- Legislation under which GSOC operates and which is addressed in the accompanying Proposal for Legislative Change
- Ability to self-determine Resources (or Autonomy or Control over GSOC's Resources).

The Commission feels that the close alignment of the Department of Justice & Equality and the Garda Síochána, which has developed over time, has not assisted in the proper establishment and acceptance of the oversight function. In the absence of realignment of this relationship oversight of policing will not function as effectively as it should and be of benefit, to the extent desirable, to the State and its citizens.

1.2.1 Governance

The alignment of GSOC with the Department of Justice and Equality, alongside the Garda Síochána, in a governance context, does not assist in the achievement of GSOC's statutory objectives.

Credibility in the capacity of GSOC as an independent oversight organisation is adversely affected as a result of being under the aegis of the Department of Justice and Equality. For example, reporting, finance and human resources management have been controlled through Departmental structures, thereby restricting GSOC's autonomy and capacity to operate fully independently. In practice, the impact of such a restrictive approach is manifested through, for example, recruitment and maintenance of sufficient staffing levels to provide the desired level of service within the organisation.

We believe that the designation of GSOC as a fully independent body with its own voted financial resources and an autonomous Accounting Officer answerable to the Public Accounts Committee in its own right, would be in line with recent developments in the areas of human rights and policing: the Irish Human Rights and Equality Commission and the Policing Authority were created by recent legislation giving them their own accounting officer thereby underlining their independence. It would also be in line with recent developments regarding oversight agencies, such as the decision of Government to make The Office of the Director of Corporate Enforcement an independent agency. Consideration is also being given to making the Data Protection Commission an independent agency in order to comply with requirements of the European directive on data protection⁶.

While noting recent commentary relating to the proposed reorganisation of the Department of Justice and Equality, GSOC believes that the approach outlined above would increase GSOC's independence, enhance the efficiency and effectiveness of the organisation, and have a positive impact on public perception.

The public perception of GSOC's independence is also adversely affected by the fact that more than half of GSOC's investigations are conducted by gardaí. In 2016, for example, some 43 per cent of investigations opened by GSOC were conducted by gardaí unsupervised by GSOC, and a further 14 per cent were conducted by a garda officer supervised by GSOC. The involvement of gardaí also gives rise to delays, and those delays, combined with the complexity of the process, reduce satisfaction for complainants.

GSOC believes that this structure has had an adverse effect on developing the appropriate relationship between GSOC as a police oversight body and the Garda Síochána, the body whose behaviour it is tasked with overseeing.

1.2.2 Comprehensive legislative change

GSOC's decade of experience of implementing the provisions of the 2005 Act (amended by the Garda Síochána (Amendment) Act 2015) has highlighted that the legislation does not allow for proportionate, effective and customer-friendly handling of complaints and

⁶ The General Scheme of the Data Protection Bill 2017 replaces the Data Protection Commissioner with the Data Protection Commission and envisages that the question of whether the Commission will have a separate vote and accounting officer will be examined during the drafting process.

provision of oversight of our police force. We believe that the current Act prescribes processes that are too complicated and that it should be replaced with a stand-alone piece of legislation setting out revised processes for the exercise of GSOC's statutory functions. GSOC has recently submitted proposals for legislative change to the Minister for Justice and Equality – see attached submission.

1.2.3 Resources

Since its inception, GSOC has operated at below the staffing level agreed and sanctioned by the Department of Justice and Equality. The original approved staffing level of 98 was reduced to 86 during the years of austerity, but a public-sector wide moratorium on recruitment and promotion meant that GSOC operated at below even this reduced level in the past six years.

While there has been a significant easing across public services of restrictions on recruitment and promotion since 2015, there has been, due primarily to minor legislative changes, an increase in GSOC's workload which, even without the far-reaching legislative changes we are seeking, will most likely continue to increase our workload in the foreseeable future.

In addition, legislative change which would result in GSOC conducting all of its own investigations will require significantly increased resources for the organisation.

For reasons outlined above, GSOC believes it should be designated as an autonomous agency, with independence from the Department of Justice and Equality in terms of its own resources and how they are deployed (accountability to the Comptroller and Auditor General and the Public Accounts Committee are of course a prerequisite in this regard).

1.3 GSOC Recommendations arising from Oversight of Policing

GSOC does not see itself as a policing body and does not purport to have expertise in the overall science that is the functioning of a police service. We have, however, acquired a level of expertise in identifying systemic or managerial issues within the Garda Síochána and believe that, by sharing our findings and recommendations with the Garda Síochána, we can reduce complaints against that service.

While GSOC's primary focus in dealing with the complaints from members of the public is to establish if breaches of Garda discipline and/or criminality have occurred, complaints are also viewed as a source of learning and improvement for GSOC and the Garda Síochána.

In the course of our investigations, we have been able to identify issues/actions which have led to specific changes in complaint trends but which are due, not so much to the behaviour of an individual garda as, to a systemic or management issue.

While there is no statutory basis for GSOC doing this – and we have made a case for such a statutory framework – GSOC regularly shares its observations and recommendations⁷ with

⁷ Among the areas in which GSOC has made numerous recommendations relating to Garda policy and policing practice in recent years are: Record keeping which includes the appropriate use of note-taking, notebooks and log books; Searches and how they are conducted, recorded and premises secured; Use of PULSE including the incidents to be recorded on it and the circumstances in which it is to be accessed; Treatment of detained persons

The Garda Síochána with the intention of constructively informing Garda policy, practice and procedures in a way that brings lasting improvements to the services provided to the public.

The response by the Garda Síochána, which is not legally obliged to act on the recommendations, has been mixed.

In some cases, systemic recommendations have been acknowledged and appear to have led to changes in practices; in others, no response has been forthcoming. It is noted in more recent annual reports that a number of recommendations by GSOC have been repeated more than once, where similar circumstances led to similar complaints.

Our experience of participating in the Garda Síochána Lessons Learned Project⁸ was that the Garda Síochána do not share either our views or the value of our input on these matters.

The capacity of GSOC as an independent organisation to make recommendations would be enhanced were it placed on a legal footing. Such an approach would, at a minimum, place an onus on the policing service to consider the recommendations made by GSOC and to record their rationale for either adopting or rejecting those recommendations. This process would bring transparency to this aspect of oversight and imbue greater public confidence in oversight of policing.

1.4 Examinations of Garda Síochána Practice, Policy and Procedure

In addition to highlighting issues which emerge from its investigations, GSOC can and does conduct particular examinations into specific garda polices, practices or procedures which it believes may lead to – or already has – contributed to a significant number of complaints. The purpose of the examinations is to enable GSOC to ultimately identify interventions which could be utilised so as to prevent or reduce the incidents of complaints – and GSOC would, if resources allowed, increase the number of such examinations.

GSOC is conscious of the Garda Inspectorate's functions in relation to the assessment of the Garda Síochána performance and in undertaking our examinations would consult in order to avoid unnecessary duplication of effort.

GSOC considers that the effective obligation on the Minister for Justice and Equality to publish the reports of such examinations makes it more likely that meaningful results may be achieved.

It is GSOC's view that these examinations and the systemic recommendations should act as a framework for the development of initiatives aimed at enhancing policing.

⁸ The Garda Síochána Strategy Statement 2010—2012 described its Lessons Learned Framework as a formal mechanism for capturing lessons learned by the organisation and standardising how those lessons would be considered, implemented and disseminated. Inputs were to be accepted from within the organisation, from external stakeholders and from outside agencies. GSOC was one of the outside agencies which engaged, for a time, with the Framework.

1.5 Change to the Organisation/Structure of the Garda Síochána

GSOC is conscious that changes to the structure of the Garda Síochána may emerge on foot of recommendations from the Commission on the Future of Policing and will have significant implications for GSOC. For example, the splitting of the Garda Síochána into two separate structures, one dealing with Policing and the other managing State Security has been widely discussed in various fora; GSOC would be of the view that such a structural change would necessitate a review of GSOC's powers and capacity to provide oversight **to both** elements of the restructured service.

Such change should not inhibit in any way GSOC's capacity to maintain its function of oversight and to perform same in line with our objectives and functions. GSOC would advocate the introduction of agreed protocols (including the revision of current protocols) to manage any such new operational environment. The protocols would deal with all aspects of the oversight functions and would dispense with the need for prior approval at Ministerial level in regard to necessary actions proposed by GSOC in the course of investigations.

Appendix A - Enclosure – Section 103 Reports

The Appendix includes the following Section 103 Reports:

1. Investigation following a complaint of abuse of authority made in January 2015
2. Investigation following a referral received in September 2013 from the Garda Síochána of an allegation of sexual assault
3. Investigation following complaints of neglect of duty made in March and April 2014.

Appendix A



Investigation following a referral received in September 2013 from the Garda Síochána of an allegation of sexual assault

**A Garda Ombudsman report
(under section 103 of the Garda Síochána Act 2005)**

Introduction

A Garda superintendent made a referral to the Garda Síochána Ombudsman Commission, under section 102(1) of the Garda Síochána Act 2005, as a result of an allegation made at a Garda station.

A young woman had alleged that, earlier that day, a male garda, who had arrested her for a minor offence, accessed her mobile phone and viewed personal and intimate content on it, while in her cell with her alone. She further alleged that he had sexually assaulted her in the cell. The garda concerned was identified to GSOC.

The matter was designated for investigation under section 98 of the Garda Síochána Act 2005, that is, an investigation into possible criminal offences.

The woman provided a statement to GSOC investigators at the Garda station where she had gone to make the complaint. She admitted the minor offence for which she had been arrested. She described being arrested and brought to the Garda station, where she was processed, searched and taken to a cell. She stated that the male garda who arrested her came to her cell sometime later and opened the door. He was holding her phone and spoke to her about an adult caution. She states that the member was looking at her phone and asked, 'Is that you?' She states that she could see he was looking at personal and intimate content, which could not possibly be needed for any Garda investigation or enquiry.

She described how she left the cell with the garda to call her boyfriend, and how, on their return, he told her to take off her shirt and shoes and put them outside the cell door, which she did, then sat on the bed. She alleged that the garda then sexually assaulted her. She reported being shocked and said that she started crying. She reported that the garda left the cell, saying he would go and look for an inspector in connection with her adult caution, but returned shortly after and said that there was no inspector around. She said that he was still looking at her phone, again looking at personal and intimate content.

The Investigation

Inquiries conducted included obtaining CCTV from the Garda station for the relevant time period, reviewing Garda documentation in relation to the detention, and conducting witness interviews and a cautioned interview with the garda concerned.

Of particular significance to the investigation was the CCTV recovered from the Garda station. It confirmed that neither the Gaoler nor the Member in Charge checked on the prisoner during her period of detention. It showed that the male garda entered her cell unaccompanied on several occasions and that he had what appeared to be her phone on his person in the cell area.

The CCTV footage is generally consistent with the complainant's account, which lends her account credibility.

The CCTV shows the male garda entering the cell of the young woman on three different occasions over a period of some 50 minutes. The young woman claimed that she had been sexually assaulted by the male Garda during one of these unaccompanied visits in her cell.

The same footage shows other gardaí speaking to prisoners in different cells. In contrast to this particular case, the other gardaí speak to the prisoners through the hatch in the cell, and do not enter the cell of a female without another garda present.

Although it is the duty of the Garda Member in Charge or Gaoler to check on prisoners, at no time does this take place. The female Gaoler is seen to check on other prisoners, but did not check on the young woman. The garda who arrested the young woman appears to have uncontrolled access to the young woman's cell, and is seen to be walking around with her mobile phone in his possession.

In his prepared account, the garda described arresting and processing the young woman. He described entering the cell to inform her about the adult caution process. He stated that he handed her back her phone for her to retrieve her boyfriend's phone number, brought her out of the cell to make a call, then returned her to the cell. The garda denied coming into physical contact with her at any time.

In his interview after caution, the garda was shown CCTV clips and asked a number of questions. He admitted entering the young woman's cell unaccompanied on a number of occasions and accessing her phone in an attempt to retrieve her boyfriend's number, saying that he couldn't find it as it was in another language. When shown the CCTV clip of the woman providing the number to gardaí when she was being processed into custody, he stated that he didn't have the number. He stated that he did not see any personal items or pictures on her phone while he had it in the cell area.

The Garda was asked if he was aware of any Garda instructions about entering the cell of a female prisoner, He stated 'I'm not sure if there's any proper procedure, but I know it's not good practice'.

The Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006 deals with conditions of custody of all prisoners at Garda stations. It sets out the rights of prisoners, and details certain procedures which must be followed. Section (7) of Regulation 19 states that, 'A member shall be accompanied when visiting a person in custody of the opposite sex who is alone in a cell'.

Accounts were requested from the Gaoler and the Member in Charge of the Garda station at the time.

The Gaoler recalled that the woman was cooperative and that, in her view, there was nothing out of character in the way

that the male garda dealt with her, that it was entirely routine. The Gaoler stated that she did not attend the cell area to check on the prisoner while she was in custody because the arresting garda was dealing with her.

In his account, the Member in Charge said that he did not speak to, nor see, the prisoner at any stage during her time in custody. He stated that he had delegated his functions as Member in Charge to the Gaoler. His only knowledge of the prisoner was when the garda spoke with him in relation to her Adult Caution.

The investigation under section 98 of the Garda Síochána Act 2005 concluded that there was insufficient evidence to prove the allegations made by the young woman against the garda.

Nonetheless, due to the gravity of the offences alleged, which resulted in the garda's suspension from duty, it was considered appropriate that a file be sent to the Office of the Director of Public Prosecutions for independent consideration. This was done in March 2014 and the DPP directed no prosecution.

Section 110 of the Garda Síochána Act 2005, which makes it an offence to knowingly provide false or misleading evidence to GSOC, was considered carefully. However, it was not possible to prove whether either the young woman or the garda may have provided false or misleading information to investigators.

It was decided that further investigation was warranted under section 95 of the Act, because the initial investigation under section 98 had disclosed that there may have been breaches of discipline on the part of Garda members. A male garda had entered the cell of a young female unaccompanied, on several occasions. Issues were also raised in relation to the handling of her property by the garda, namely her mobile phone.

In addition to the account and interview given by the garda previously, a submission was received from the garda's solicitor on behalf of her client, addressing these matters and denying that he acted in a negligent manner.

Recommendations and Conclusion

In June 2015, GSOC sent the investigation file to the Garda Síochána. GSOC recommended that proceedings in relation to a "less serious" breach of discipline should be instituted under the Garda Síochána (Discipline) Regulations 2007.

The following reasons were stated for the recommendation, in relation to entering the cell:

Regulation 19 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 deals with Conditions of Custody. It states that:

"A member shall be accompanied when visiting a person in custody of the opposite sex who is alone in a cell".

A Section of the Garda Code which provides instruction in relation to members who may enter a prisoner's cell, and to which the actions in this situation appeared to be contrary, was also highlighted.¹

From the accounts given and the CCTV obtained, it was established that the garda concerned entered the cell of a female prisoner, unaccompanied, on several occasions during her detention. His reasons for entering the cell include believing she had a mobile phone in the cell with her; explaining the adult caution process; obtaining a contact number; and believing she may have been self-harming. Of the four explanations, it is GSOC's view that only a belief that she was self-harming might be considered to be a reasonable explanation for needing to enter a young woman's cell unaccompanied. From the CCTV obtained and documents received in relation to her detention, there is no record or sign of any emergency as regards an attempt at self-harm by the prisoner, although the garda can be heard speaking to the prisoner about marks on her arms and can be heard to ask her if she would like to see a doctor, which she declines.

It is clear from the CCTV that the garda did indeed discuss the adult caution with her there. The explanation that he entered the cell because he thought she had a mobile phone in the cell does not seem credible, in light of the fact that the prisoner had been searched and the garda was in possession of her property. Similarly, the explanation related to obtaining a phone number is undermined

by the fact that the prisoner had already given the number. In any case, it is GSOC's view that none of these explanations provides sufficient reason to enter the cell alone.

It appeared to GSOC that the garda may have breached both Regulation 19 of the Custody Regulations, and also the Garda Code.

With at least one female Garda member present in [REDACTED] Garda station for the duration of the young woman's detention, there does not appear to be a reason why the assistance of a female officer was not sought when attending the prisoner.

The following reasons were stated for the recommendation, in relation to having the prisoner's mobile phone:

In his account, the garda outlined that he took the prisoner's passport and mobile phone 'to verify her details'. The Garda Code permits this action to assist in the identification of the person arrested. It may not, however, extend to attending the cell unaccompanied with her mobile phone on his person.

The explanation used by the garda that he tried to access her phone in an attempt to retrieve a contact number for her partner, is undermined by the CCTV evidence, where she is clearly seen providing his number while she is being processed, with him beside her. The footage does not show the garda taking note of the number at that time, however, and he stated that he had no recollection of her giving it.

¹ This is not quoted as the Garda Code is a confidential document.

Possible breaches of discipline by the Gaoler and the Member in Charge, regarding the application of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006 were also highlighted in GSOC's report to the Garda Síochána. Specific issues pertaining to the maintenance and completion of the custody record; the handling, securing and logging of the prisoner's property; the frequency of the checks on the prisoner, as well as the control of access to the prisoner whilst she was in custody were itemised.

In July 2016, GSOC received a letter from the Garda Síochána stating that no members of the Garda Síochána were found to be in breach of discipline in relation to this matter.

A brief summary of the reasons was provided, as follows:

In relation to the male garda, GSOC was informed that, whilst the reviewing Garda officer found that the member had committed a technical breach of discipline, it was considered that it was not intentional and therefore the member was found not to be in breach.

In relation to the female Gaoler, the reviewing Garda officer stated that, whilst there was a technical breach of discipline regarding the management of the prisoner's property, it was done to facilitate the processing of the prisoner. The reviewing Garda officer also found

that there were technical breaches of discipline regarding the failure of the Gaoler to check on the prisoner and to restrict access to the prisoner, but concluded that it was reasonable for her to assume that the prisoner was safe, as the arresting male garda was dealing with her, and there were other members present in the cell area. Therefore the Gaoler was found not to be in breach of discipline.

In relation to the male Member in Charge, the reviewing Garda officer found that he was not in breach of discipline, as he had delegated his duties to the Gaoler in writing.

GSOC was informed that the reviewing Garda officer recommended that the process of managing prisoners and property at this particular Garda station be more clearly defined, and further recommended that the role of supervisory officers regarding oversight of the custody process also be more clearly defined.

On 20 July 2016, GSOC wrote to the Garda Síochána, seeking a copy of the Garda reviewing officer's full report and rationale, rather than such a brief summary of the findings. We explained that it would be helpful to properly understand the decision process resulting in no member being found in breach in these circumstances, where there appeared to be breaches. It could enable GSOC to cut short investigations where there is no likelihood of a garda being found in breach of discipline.

GSOC had not received a substantive report or detailed rationale as requested, at time of writing.



Investigation following complaints of neglect of duty made in March and April 2014

**A Garda Ombudsman report
(under section 103 of the Garda Síochána Act 2005)**

Introduction

A man made two complaints to GSOC, in March and April 2014 respectively, that the Garda Síochána had failed to respond appropriately to his reports of alleged breaches of court orders on two separate occasions.

He said that he had reported to the Garda Síochána that he was the victim of ongoing harassment, assault and threats to his life, by two named individuals. He said that two gardaí came to his house in March 2014, but did not offer him any protection or follow up in any way, despite saying that they would be in contact. He said that gardaí came to his house again in April, following a further report of ongoing harassment, assault and threats, but that there was no follow-up on that occasion either.

It was decided that the two complaints should be dealt with via the same investigation and that this should be a disciplinary investigation, conducted by a Garda Síochána Investigating Officer (GSIO), supervised by a GSOC Investigating Officer.

The Investigation

The investigation, under section 94(5) of the Garda Síochána Act 2005, was to establish whether there was neglect of duty on the part of any identified gardaí in relation to this matter.

Terms of reference and an investigation strategy were agreed between the GSIO and the supervising GSOC Investigating Officer. The Garda investigator proceeded

to investigate and reported the following to GSOC:

- In relation to the first incident which the man said he had reported to gardaí, there were no records that he had reported it, or that gardaí had dealt with him.
- In relation to the first visit to the man's house in March, two gardaí who had dealt with the man were identified. The GSIO found that no PULSE record had been created to document attendance at the man's house or any details of the reported crime, as required by Garda policy on domestic violence. The GSIO recommended that one of the gardaí be found in breach of discipline because of this.
- In relation to the second visit to the man's house in April, two gardaí who had dealt with the man were identified. The GSIO found that one of these gardaí did look into his reports and submitted a file to a superintendent, in August 2014. The superintendent directed that there should be no prosecution in relation to the matter, but the alleged victim was not informed of this until a month after the superintendent's decision. The GSIO recommended that the garda be found in breach of discipline because of the delay in communicating with the alleged victim.

Conclusion

GSOC considered the available evidence and the circumstances as established by the GSIO and endorsed his findings. GSOC sent a report, in June 2016, to the Garda Commissioner advising that the investigation appeared to have identified neglects of duty, resulting in potential breaches of discipline of a “less serious” nature.

GSOC recommended that a disciplinary process pursuant to the Garda Síochána

(Discipline) Regulations 2007 be undertaken in relation to each potential breach. A statement of reasons, highlighting the evidence, was provided, including the recommendation from the Garda Investigating Officer.

In September 2015, GSOC received a letter from the Garda Síochána stating that neither garda was found to be in breach of discipline. GSOC requested a rationale for this decision by return letter, but no response was received to this request.



**Investigation following a complaint of abuse of
authority made in January 2015**

A Garda Ombudsman report
(under section 103 of the Garda Síochána Act 2005)

Introduction

A man was arrested on [REDACTED]. A homeless man with mental health issues, arrested for allegedly using drugs in a lane, he is a person who could be considered vulnerable.

The following day, he made a complaint to the GSOC in relation to his arrest. In his complaint, he alleged that, during his arrest, he was beaten with a baton and pepper sprayed before being taken to the Garda station.

An investigation into any possible criminal offences by the two garda members concerned (that is, assault) was first undertaken by GSOC, under section 98 of the Garda Síochána Act 2005. It did not establish evidence of criminal behaviour. Although the gardaí deployed baton and pepper spray when making the arrest, it was deemed that they provided adequate justification for the necessity of such use of force.

However, it was considered that an investigation into non-criminal matters, under section 95, should follow. This investigation identified a potential abuse of authority by one of the arresting gardaí in his interaction with the complainant. CCTV and audio footage from the Garda station [REDACTED] shows the garda behaving in an unprofessional manner towards the homeless man in custody, including referring to him as “you fucking idiot”, “you clown” and “a prolific fucking pest”. The complainant appears from the

footage to be in a distressed and disoriented state.

The GSOC Investigation

The investigation under section 95 looked into the possibility that, during the course of this man’s detention at a Garda station on 15 January 2015, the arresting Garda member abused his authority by behaving in an oppressive manner towards the man, in terms of language and demeanour towards him.

The interaction in question, which appears to take place while the prisoner is being processed, before being put in a cell, was captured on CCTV and audio footage from the Garda station on the 15 January 2015. A transcript was made of three extracts from this footage:

Time on camera: 18:38:36

Prisoner appears from the footage to be disoriented. He is standing wringing his hands and rubbing his eyes near a bench, with Garda 1 sitting opposite him and Garda 2 is unseen, appearing to be behind a counter.

Garda 1: That's the end of the needles now... that's the end of pointing needles.

Prisoner appears to say "I wasn't" but response is unclear.

Garda 1: Do you want it again?

Prisoner: What?

Garda 1: Do you want it again?

Prisoner: Want what again?

Garda 2: The pepper spray.

Prisoner: No I don't want pepper spray.

Garda 1: Stop rubbing it.

A different garda who passes through points to Garda 1 and says "Stop smiling."

Garda 1: Junkie.

Another garda passes through and, seeing the prisoner agitated, wringing his hands and rubbing his eyes, asks: "Are you alright lad? Doing the funky chicken?" The gardaí laugh together.

Time on camera: 18:42:07

Garda 2 (to prisoner): Were you here last week?

Garda 1: He was. He's a prolific fucking pest.

Prisoner: Talking inaudibly. Then says "Do you have my SIM card?"

Garda 1: Just fucking shut up.

Time on camera: 18.47.53

Prisoner picks up clothes and starts to wander away in a disoriented manner.

Garda 2: Where's he going?

Garda 1: Come back here you fucking idiot.

Prisoner walks back and puts clothes back down on the bench.

Garda 1: You'd better start complying with our directions or you'll be sprayed.

Garda 1: Open your eyes you clown.

Prisoner: I can't open them.

Garda 1: I'll open them for you.

GSOC issued a disciplinary notice advising the garda that a potential breach of discipline related to the above interaction was being investigated. A submission in response to the disciplinary notice was received by the GSOC on 10 August 2015 from the garda's legal representatives. Consideration was given to the detailed submission and the legal arguments contained therein. Whilst noting the content of the submission, GSOC took the view that the alleged breach of discipline warranted the undertaking of the disciplinary process under the Garda Síochána (Discipline) Regulations 2007.

Conclusion

The investigation identified a potential abuse of authority of a "less serious" nature.

GSOC sent a file to the Garda Síochána in September 2015, recommending that a disciplinary process pursuant to the Garda Síochána (Discipline) Regulations 2007 be undertaken. GSOC provided a statement of reasons, highlighting the evidence of the continuum of behaviour on the CCTV and audio footage, which shows a garda behaving in an oppressive and unprofessional manner towards a prisoner in custody.

Such behaviour, in the view of the GSOC, falls far short of the standard expected of professional police officers in the

execution of their duties. It also displays a lack of understanding on the part of the garda of his obligation to ensure the human dignity and rights of a person detained are not violated. It was suggested that the behaviour observed in the footage is in contravention of the advice given to Garda members in relation to the human rights of a detained person, as set out in HQ Directive No. (087/2014). This Directive says that “Members carrying out their functions shall at all times respect a person’s personal rights and his/her dignity as a human being and

shall not subject any person to ill treatment of any kind”.

In May 2016, GSOC received a letter from the Garda Síochána stating that the garda concerned was found not to be in breach of discipline. GSOC requested a rationale for this decision but this was refused, with the letter stating that ‘there is no obligation on the Garda Commissioner to provide same in accordance with the Garda Síochána (Discipline) Regulations, 2007, as amended’.