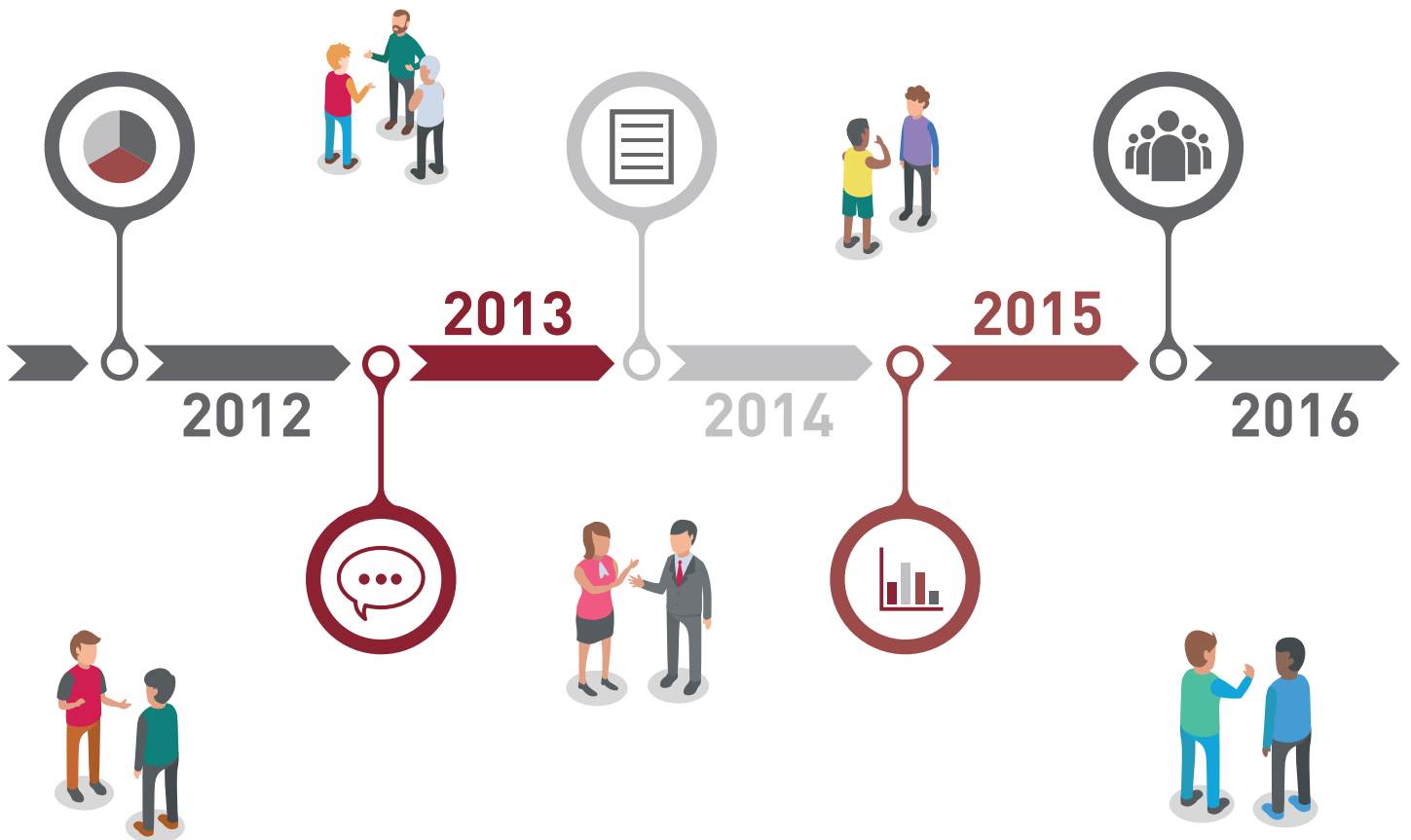




Garda  
**Ombudsman**  
INQUIRY INDEPENDENCE IMPARTIALITY

# GARDA SÍOCHÁNA OMBUDSMAN COMMISSION

## **FIVE YEAR REPORT**



Mr Charlie Flanagan TD  
Minister for Justice and Equality  
94 St. Stephen's Green  
Dublin 2

8 December 2017


Dear Minister,

It is with pleasure that we submit to you the second Five Year Report of the Garda Síochána Ombudsman Commission, which covers the period 1 January 2012 to 31 December 2016. This Report is submitted in accordance with section 80 of the Garda Síochána Act 2005.

Yours sincerely,



Justice Mary Ellen Ring,  
Chairperson



Kieran FitzGerald,  
Commissioner

Garda Síochána Ombudsman Commission.

## GLOSSARY OF ABBREVIATIONS AND TERMS

<b>Admissibility</b>	All complaints are assessed against the criteria listed in section 87 of the Act to decide whether they can legally be admitted for investigation or not.
<b>Allegation</b>	Each complaint is broken down into one or more allegations, which are individual behaviours being complained about. For example if a person said that a garda pushed them and used bad language, this is one complaint with two separate allegations.
<b>Article 2</b>	Article 2 of The European Convention on Human Rights (ECHR) states that everyone's right to life shall be protected by law.
<b>Complaint</b>	An expression of dissatisfaction made to GSOC by a member of the public, about the conduct of an individual member of the Garda Síochána. A complaint may contain one or more allegations, against one or more gardaí. Each allegation against each garda is assessed individually for admissibility.
<b>Discipline Regulations</b>	The Garda Síochána (Discipline) Regulations 2007, as amended. These can be seen at: <a href="http://www.irishstatutebook.ie/eli/2007/si/214/made/en/print">http://www.irishstatutebook.ie/eli/2007/si/214/made/en/print</a>
<b>DPP</b>	(Office of the) Director of Public Prosecutions.
<b>ECF</b>	Employment Control Framework
<b>ECHR</b>	European Convention on Human Rights.
<b>Garda Ombudsman</b>	Garda Síochána Ombudsman Commission (the organisation).
<b>GSOC</b>	Garda Síochána Ombudsman Commission (the organisation).
<b>Informal resolution</b>	This is a process offered in the case of less serious allegations, for example rudeness. It involves a GSOC case officer speaking to both parties with the aim of each getting a better understanding of the other's point of view and coming to an agreement that the matter is resolved.
<b>Investigation</b>	If a complaint cannot be resolved informally, it must be investigated. Any complaint containing an allegation of a criminal offence is investigated by a GSOC investigator, in line with section 98 of the Act. A complaint containing an allegation of a disciplinary nature is usually investigated by a Garda Síochána Investigating Officer, under the Discipline Regulations, in line with section 94 of the Act. If the Ombudsman Commission deems it appropriate, these investigations may be supervised by a GSOC investigator.
<b>IRM</b>	The Independent Review Mechanism was established by the Minister for Justice and Equality, in consultation with the Attorney General, in May 2014. Its function was to consider allegations of Garda misconduct or inadequacies in the investigation of such allegations, with a view to determining to what extent and in what manner further action may be required in each case. It was one of the actions agreed by Government as a response to the Guerin report.
<b>Ombudsman Commission</b>	The three Commissioners of the Garda Síochána Ombudsman Commission.
<b>The Act</b>	The principal act governing the functioning of GSOC, which is the Garda Síochána Act 2005, as amended. This can be seen at: <a href="http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/print">http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/print</a>

# GARDA SÍOCHÁNA OMBUDSMAN COMMISSION

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## FOREWORD

This five year report of the Garda Síochána Ombudsman Commission (GSOC) is submitted to the Minister for Justice and Equality in accordance with Section 80 of the Garda Síochána Act 2005 (“the 2005 Act”).

It seeks to give a general picture of the operation of GSOC in the second five-year period of its existence and may be read in conjunction with the Annual Reports for a more detailed account.

The period under review saw the emergence of a number of challenges for GSOC. The years 2012 to 2016 encompassed a period of austerity which has had implications for GSOC’s capacity to fulfil its remit. The public sector-wide moratorium on recruitment and promotion meant key posts went unfilled, and, as GSOC had not attained its full complement of staff before the moratorium was imposed, it operated at below-optimal staffing levels throughout the period.

The years also encompassed a turbulent period for the Justice sector wherein GSOC operates. Controversies surrounding the treatment of garda whistleblowers and certain practices within the Garda Síochána led to the departures of the Minister for Justice, the General Secretary of the Department of Justice and the Garda Commissioner over a four-month period in 2014. Concerns about the accountability of the Garda Síochána and the need for reform of that organisation have remained high on the political agenda since then, with consequent demands on oversight bodies including GSOC.

Shortcomings in legislation under which GSOC operates became increasingly apparent in the second half of the decade in which GSOC has operated: at the same time, legislation was introduced with little consideration of, or consultation about, its potential impact on GSOC. It is against this backdrop that GSOC has endeavoured to develop an independent, fair and balanced system of police oversight.

GSOC believes that, while there has been progress over the last five years in meeting its strategic objectives of building its effectiveness, raising awareness and gaining acceptance, informing policy development and policing practice and delivering quality public service, much work remains to be done.

Choices have had to be made in the allocation of resources to some activities at the expense of others; GSOC has at all times sought to prioritise those activities that contribute most to protecting public confidence in GSOC and the system of oversight while being fair to all stakeholders.

With the benefit of ten years’ experience and learning, GSOC is currently engaged in a review of all aspects of GSOC’s operations. It looks forward to further meaningful engagement with stakeholders, including the legislature and others in the Justice sector, with a view to creating an environment in which a robust and independent system of police accountability will flourish.

# CHAPTER 1: OVERVIEW

## 1.1 GSOC

The second five-year period of GSOC's existence saw a number of changes in the leadership of the organisation. Mr Simon O'Brien who had served as Chairman since 2012 returned to the UK in 2015, and Ms Carmel Foley who completed two terms as a Commissioner left in 2016. At the end of 2016, Ms Justice Mary Ellen Ring, who had been at the head of the organisation for over a year, was nominated by the Government for re-appointment as Chairperson for a new term. Dr Kieran FitzGerald, who had served as Commissioner since 2011 was reappointed, and Mr Mark Toland, who had a 30-year career with the Metropolitan Police Service in the UK and served for four years as Deputy Chief Inspector of the Garda Inspectorate, was appointed Commissioner.

## 1.2 SUMMARY OF ACTIVITY TO DATE

A number of statistical charts and graphics in Chapter 3 provide an overview of the work of GSOC over the past five years and a comparison with the work over the previous five years.

However, a sense of GSOC's work may be gleaned from the following highlights.

- In the five years to the end of 2016, GSOC received 10,110 complaints, containing 25,166 allegations.
- GSOC referred 115 investigation files to the Office of the Director of Public Prosecutions (DPP). The DPP directed prosecution in relation to 24 of these files.
- GSOC responded to 276 referrals (compared to 650 in the previous five years) from the Garda Síochána under Section 102 of the 2005 Act<sup>1</sup>. This latter figure contrasts sharply with the number in the early years of GSOC's existence—247 Section 102 referrals were made in 2007 alone—when there was a considerable lack of clarity about the requirements for these referrals.

- GSOC undertook 39 investigations in the public interest, as provided for under sections 102 (4) and 102 (5) of the Act, compared with six in the previous five year period. More than half (10 in 2015 and 11 in 2016) arose from the Independent Review Mechanism (IRM) which was established by the Minister for Justice and Equality in 2014 to consider allegations of Garda misconduct or inadequacies in the investigation of such allegations, with a view to determining to what extent and in what manner further action may be required in each case.
- The Protected Disclosures Act 2014 added to the remit of GSOC during the five years under review, and by the end of 2016, GSOC was considering eleven cases arising from the Act.

## 1.3 STAFFING AND PERSONNEL

At the establishment of GSOC in 2006/7 the Department of Justice and Equality and the Department of Finance agreed and sanctioned a staffing level of 98 in order for GSOC to fulfil its legislative mandate. However, by the start of the five-year period reviewed here, the staffing level was reduced to 86 through the introduction of the Employment Control Framework (ECF)—but GSOC operated at below even this reduced level throughout the five years up to the end of 2016

A public sector-wide moratorium on recruitment and promotion during the period meant that at no stage was the ECF figure of 86 reached. During the five years up to December 2016 the average staffing level in GSOC has been 77. This represents an overall shortfall of 21.5 per cent on the 2007 agreed staffing level and a 10.5 per cent shortfall on the current ECF.

GSOC pointed out to the Department of Justice and Equality and to the Department for Public Expenditure and Reform<sup>2</sup> on several occasions that even with the full sanctioned

1 Section 102 of the Garda Síochána Act 2005 requires the Garda Commissioner to notify GSOC when it appears that a person may have suffered death or serious harm as a result of the conduct of any member of the Garda Síochána.

staff complement of 86, GSOC would be under-resourced to achieve its objectives of functioning efficiently and to a high level of quality.

While a new ‘delegated sanction agreement’ between GSOC and the Department of Justice and Equality has facilitated an improvement in recruitment in the current year, GSOC remains concerned about the organisation’s capacity to provide the level of service to which its stakeholders are entitled.

The period ended with a substantial gap between numbers employed and numbers approved (see Figure 1).

The impact of this gap over the period has been compounded by the absence of certainty as to the extent, and possible impact on the role of GSOC, of actual and proposed legislative changes within the Justice sector. While it is anticipated that the role and remit of GSOC will change and demands on our resources will increase (a fact which is already evident) there does not appear to have been any consideration given to the possibility of a progressive/incremental change to staffing levels to account for the changes to date, and those to come.

As an example of the increasing demands on our resources, the additional workload arising from the Protected Disclosures Act 2014 and the amendments provided for in the Garda Síochána (Amendment) Act 2015 compounded the challenges faced by staff. As a result, GSOC remains of the view that we still do not have the resilience within our resources to enable us to maintain, or improve, the standards of efficiency and effectiveness which are demanded of our sector.

**Figure 1: Staffing level**

Year	Staff number
2012	80 (86)*
2013	78 (86)
2014	74 (86)
2015	77 (86)
2016	77 (86)

(\*86 is the number of staff approved under the Employment Control Framework)

### 1.4 STAFF DEVELOPMENT

GSOC encourages staff to engage in professional development through ongoing education and training. In any given year, in the region of twenty workshops and courses covering matters as diverse as family liaison, financial reporting, child protection and mental health awareness training are attended by GSOC staff. A number of staff members are also facilitated and assisted in the pursuit of advanced degrees including Masters in Criminology, PhD in Forensic Computing and Cybercrime Investigation and Doctorate in Governance.

A heavy workload and budgetary considerations did, however, mean staff development was somewhat constrained between 2012 and 2016; the capacity of the organisation to release staff for training and development was reduced.

### 1.5 EFFICIENCY AND EFFECTIVENESS

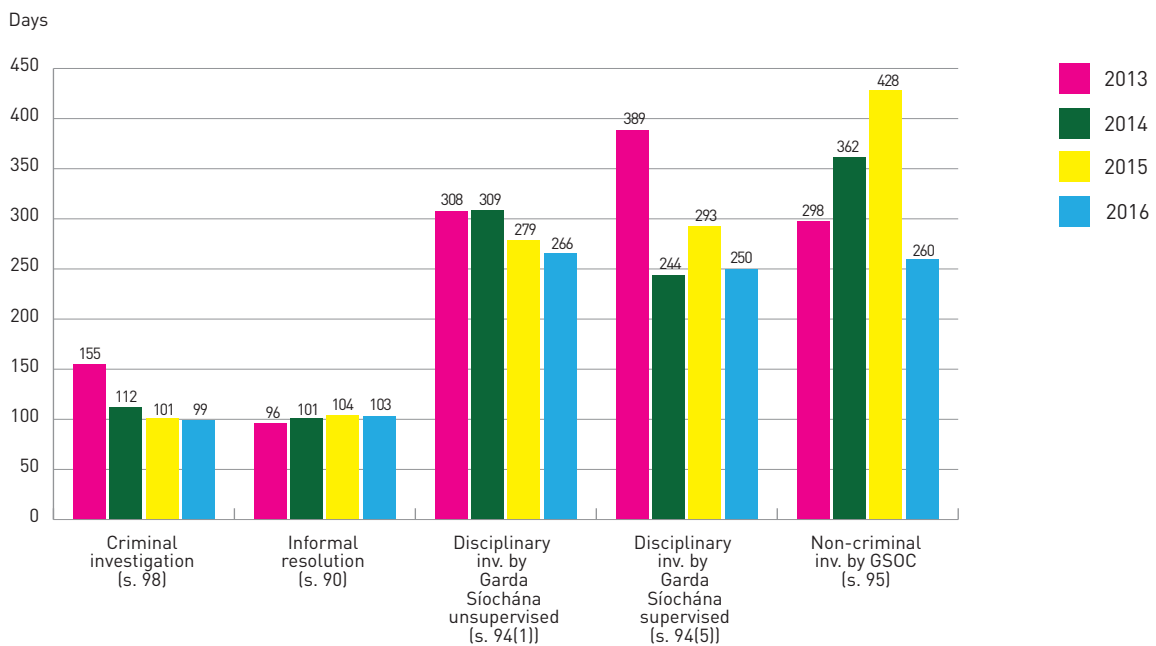
Notwithstanding these difficulties, GSOC believes that it has emerged from its second five years in existence with an adaptable, resourceful and experienced workforce.

Section 67 of the 2005 Act states that one of the objectives of GSOC is “to ensure that its functions

2 The Commission outlined its concerns about staffing levels in a letter dated November 2013 to the Secretary General of the Department of Justice and Equality; the Annual Report 2014 (p37) noted GSOC was under resourced and that there were 12 vacancies out of a sanctioned staff complement of 86; and the matter was raised regularly at meetings with the Department.



**Figure 2: Time taken to complete investigations**



are performed in an efficient and effective manner with full fairness to all persons involved in complaints and investigations”.

One of the most visible indicators of this efficiency and effectiveness relates to the time taken to deal with cases. It is acknowledged that, inevitably, some cases take much longer than others to investigate. The complexity of the case and delays in receiving the input of individuals outside of GSOC affect the time taken. It is also imperative that speed of processing must not affect the fairness, thoroughness and completeness of the investigation.

At the same time, GSOC is acutely conscious of its responsibility to ensure that cases are concluded within a satisfactory timeline. Over the past few years, the number of days taken to complete all types of investigations was reduced considerably, as Figure 2 shows.

## 1.6 COMMUNICATION AND OUTREACH

### 1.6.1 The Public

GSOC acknowledges its obligation to engage with the public and, notwithstanding constraints on the number of staff, has sought to build on the work done in the first five years of GSOC’s existence to inform the public of its existence and functions. Public attitude surveys, conducted every two years, show that awareness remains high, having increased from a not-unexpectedly low base of 66 per cent in 2008 to more than 80 per cent in early 2016<sup>3</sup>.

Seven in ten people polled in the 2016 survey believed that GSOC provides an important service; of those expressing an opinion, seven in ten are aware that GSOC is independent, while three in ten think it is part of the Garda Síochána.

The relative consistency in the number of engagements with the public also suggests a satisfactory level of awareness of what GSOC is and what it does.

<sup>3</sup> Public Attitudes Survey reported in 2015 Annual Report, p 51

It is a matter of concern to GSOC that a lack of resources necessitated some curtailment of GSOC's lo-call helpline in 2015, a situation which persists. Due to the high volume of calls received, staff's ability to deal with existing work was impeded and therefore callers are now invited to leave voice messages or use alternative means of communication outside of certain hours.

However, a number of initiatives, following on from the lifting of the moratorium on recruitment, have been undertaken with a view to increasing public engagement. Our complaint form was updated in 2016 and a new collection of information materials, including leaflets explaining how to complain as well as leaflets specifically aimed at victims of crime, was designed and distributed.

GSOC is confident that a new website, sanctioned in 2016 and due to become operational in late 2017, will be significantly more user-friendly for the public. It will make it clear from the outset what issues GSOC can and cannot deal with, and how complaints are likely to be handled. Information on the site relating to making a complaint will now also be given in the ten languages most often used in interactions with GSOC.

Recognising that social media can be a positive force, GSOC will increase its social media activity, principally with the use of Twitter, to communicate with the public and direct members of the public to the new website.

### **1.6.2 Garda Síochána**

GSOC's communication and information outreach/engagement with members of the Garda Síochána, commenced during the first five-year period, continued into the second five years.

GSOC regularly delivered workshops to gardaí at the Garda College with the intention of providing clear information to the Garda Síochána about how GSOC operates. With the recommencement of recruitment to the service, the level of such activity increased so that in 2016, half-day workshops were delivered to almost 400 newly-promoted gardaí at the Garda College, and an information booklet based on the most frequently-asked questions at those sessions was created and delivered. GSOC also provided a number of workshops for the Armed Support Unit and the national Emergency Response Unit.

Meetings are held on a frequent basis with senior garda management, from Garda Commissioner down, to discuss and escalate issues at the highest level.

### **1.6.3 The Legislature**

GSOC has welcomed the opportunity to meet regularly with Ministers for Justice—Minister Alan Shatter from 2011 to 2014, and Minister Frances Fitzgerald from 2014 to 2016—and officials from the Department of Justice and Equality. GSOC also made submissions to the Joint Oireachtas Committee on Justice and Equality (formerly the Joint Committee on Justice, Defence and Equality) in 2014<sup>4</sup> and 2016<sup>5</sup>. The 2016 submission contributed towards the Report on Garda Oversight and Accountability<sup>6</sup> produced by the Joint Committee on Justice and Equality.

### **1.6.4 Police Oversight Bodies**

GSOC met regularly with the Garda Inspectorate over the five years, and has met the Policing Authority since its inauguration in 2016. These meetings contribute to work being done by all three oversight bodies and assist in establishing areas of common interest into the future.

4 GSOC (2014) *Response to the Invitation from The Joint Committee on Justice, Defence and Equality on the Effectiveness of Legislation Relating to Oversight of An Garda Síochána*, available at: <https://www.gardaombudsman.ie/news-room/archive/gsoc-today-made-submission-joint-oireachtas-committee-justice-defence-equality-effectiveness-legislation-relating-oversight-garda-siochana/>

5 GSOC (2016) *Submission to Joint Oireachtas Committee on Justice and Equality*, available at: <https://www.gardaombudsman.ie/news-room/archive/dail-debate-garda-oversight-accountability/submission-to-joint-oireachtas-committee-on-justice-and-equality-september-2016/>

6 Joint Committee on Justice and Equality (2016) *Report on Garda Oversight and Accountability*, available at: <https://www.gardaombudsman.ie/news-room/archive/dail-debate-garda-oversight-accountability/>

## **1.7 PROTOCOLS WITH THE GARDA SÍOCHÁNA**

The 2005 Act required that certain Protocols be agreed between GSOC and the Garda Commissioner. The original Protocols have been subject to a number of reviews and a Memorandum of Understanding on Protocols and Agreement on Operational Matters was signed in 2013 by the-then Chairperson of GSOC and the-then Garda Commissioner.

It is acknowledged by both GSOC and the Garda Síochána that the Protocols, which prescribe how operational business is to be conducted between the police service and the oversight agency, are central to the relationship between GSOC and the Garda Síochána.

It is also acknowledged that the Protocols are not static, immutable documents and that they may be reviewed and revised at any time.

Such a review was underway at the end of 2016.

# CHAPTER 2: LEGISLATIVE ENVIRONMENT

## 2.1 LEGISLATION

A number of legislative changes made during the period had significant implications for GSOC. The changes expanded the obligations of GSOC, adding to the workload at a time when there was no corresponding increase in resources. GSOC believes there is a need for dialogue when legislation which will have an effect on its work is being considered and would welcome any opportunity to contribute to future legislation or amendments under consideration.

The implications of certain legislative changes on the work of GSOC are described in the next section.

GSOC, informed by its years of experience, recommends other significant legislative changes, the precise details of which are well documented elsewhere. The rationale for the changes is, however, outlined in Section 2.3.

## 2.2 LEGAL CHANGES MADE

### 2.2.1 Protected Disclosures Act 2014

The enactment of the Protected Disclosures Act 2014 (“the 2014 Act”) was significant for GSOC. Under the 2014 Act and the subsequent Statutory Instrument 339/2014, the three members of the Garda Síochána Ombudsman Commission became prescribed persons to whom any worker in the Garda Síochána could disclose allegations of wrongdoings.

By the end of 2016, GSOC was dealing with 11 cases arising from such disclosures, in addition to the existing caseload. Further resources that would allow for dedicated staff to deal with cases opened under the 2014 Act have been sought and agreed. GSOC continued to work on developing processes and procedures for dealing effectively with this specific type of case, including seeking legal advice on the reconciliation of responsibilities under the 2014 Act and procedures laid out in the 2005 Act. It has become clear that significant friction has been generated between the duties imposed on GSOC by the 2014 Act and those imposed by the 2005 Act.

### 2.2.2 Garda Síochána (Amendment) Act 2015

The enactment of the Garda Síochána (Amendment) Act 2015 (“the 2015 Act”) has had a number of implications for GSOC. The

most significant is that it gave GSOC the power to initiate examinations of Garda Síochána practices, policies or procedures for the purpose of preventing or reducing the number of complaints arising from those practices, policies and procedures. Prior to the 2015 Act, such examinations had to be requested by the Minister. GSOC exercised its new power to initiate examinations into two issues which had featured in GSOC investigations over many years. Both investigations were ongoing at the end of 2016.

One looked at certain aspects of the application of the Criminal Justice (Public Order) Act 1994, with which issues had been highlighted by numerous investigations over the years following referrals under section 102 (1) of the 2005 Act, and the other looked at what consideration was or should be given to the safety and welfare of occupants of seized vehicles, an issue which has been the subject of over 40 complaints to GSOC over the years.

GSOC believes that these examinations have the potential to contribute constructively to improving police practices.

Additional staff is required, however, for GSOC to be able to identify issues and carry out examinations. Also, such examinations may be more appropriate for the Garda Inspectorate and may relate to work being done by that oversight body. GSOC can, also, feed into the agenda and work being done by the Policing Authority.

Other new powers given under the 2015 Act have yet to be explored.

### 2.2.3 Freedom of Information and Data Protection

Requests for access to data are increasingly becoming a significant element of the work of GSOC which became subject to the Freedom of Information Act 2014 (“the FOI Act”) in April 2015.

Twenty-nine requests for information under the FOI Act were received in 2015 and 31 in 2016. The number of data access requests under the Data Protection Acts 1988 and 2003 has also increased in the last five years, with 32 requests in 2012, 46 in 2013, 30 in 2014, 31 in 2015 and 64 in 2016.

The number is expected to increase considerably with the coming into effect of the General Data Protection Regulation in May 2018 under which GSOC's obligations in respect of holding and processing personal data will become significantly more onerous.

As with other oversight agencies, the nature of GSOC's work means it acquires and processes certain personal data of a large number of people (including complainants and gardaí); the new legislation, which places the onus on GSOC to demonstrate its compliance, will have implications for how GSOC secures, retains and uses that data.

### **2.3 LEGISLATIVE CHANGE SOUGHT**

GSOC operates in line with the provisions of the 2005 Act (as amended by the 2015 Act). A decade of experience of implementing the provisions of this very detailed legislation has highlighted that, in several areas, the legislation does not allow for proportionate, effective and customer-friendly handling of complaints and provision of oversight.

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 the more serious level of complaint, the concept of gardaí conducting investigations on behalf of GSOC is questionable in terms of its independence and effectiveness.

The current system, as dictated by the 2005 Act, places too much focus on retribution and not enough on resolution because it channels non-criminal matters primarily towards investigations in line with the Garda Síochána (Discipline) Regulations 2007, which are focused on garda members and which do little to provide satisfaction to the public. The system is also unpopular and costly for the Garda Síochána which estimated the cost in 2012 at an average of €2,200 per investigation. The investigation of complaints, of which there are in the region of 300 being dealt with by senior gardaí at any one time, is not a key priority for garda superintendents.

A less bureaucratic way for service issues 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. The use of informal resolution, which may prove satisfactory for both the public and garda members, could also be increased if GSOC was allowed to determine when this method was appropriate.

In situations where a formal investigation is appropriate we believe such investigations should be subject to genuine oversight. In particular, we believe that the concept of the Garda Ombudsman having no power, at the end of a supervised investigation or one undertaken by a GSOC investigator, to seek a rationale should the Garda Síochána deciding officer go against our recommendation to discipline a garda member is questionable in terms of effective oversight.

GSOC's concern in seeking legislative changes in the above areas is to ensure it can fulfil its remit to provide genuine and effective oversight of the Garda Síochána.

Effective oversight not only serves to strengthen public confidence in the Garda Síochána but also underlines good practice while highlighting bad practice.

# CHAPTER 3: VOLUME OF BUSINESS AND ACTIVITIES

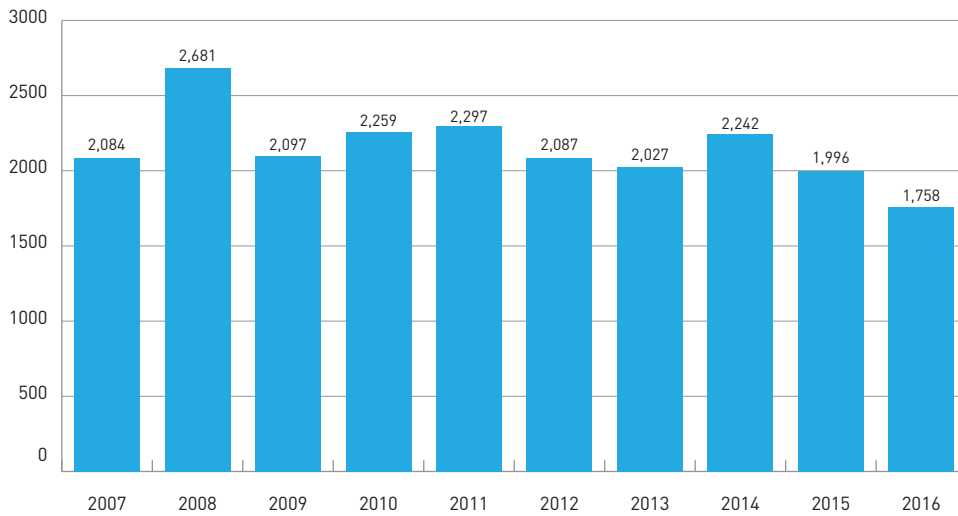
## 3.1 VOLUME OF BUSINESS

GSOC has received an average of 2,022 complaints a year from 2012 to 2016, slightly down on the 2,284 average in the previous period.

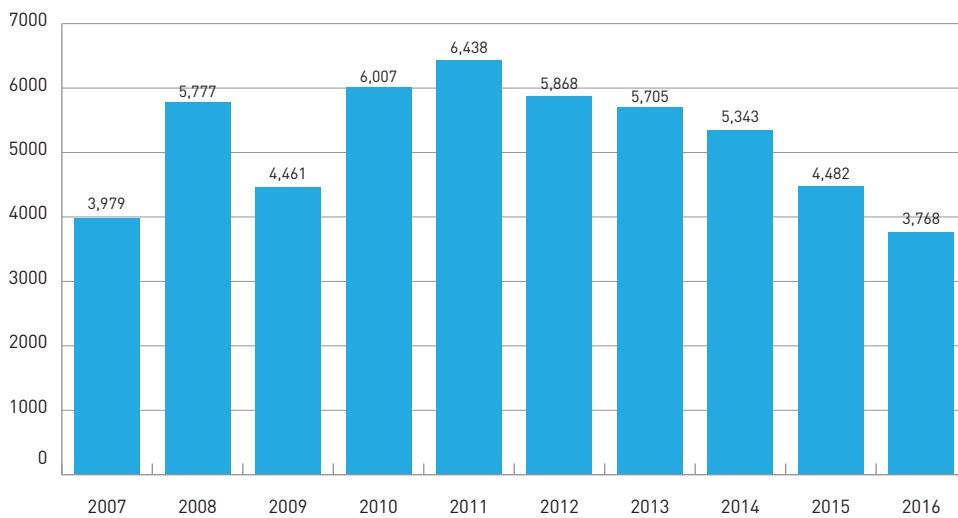
As a complaint can contain several allegations, the number of allegations, at 25,166 in the period, is

considerably higher than the number of complaints which stood at a total of 10,110. A complaint, for example, may allege misconduct on the part of several gardaí or a complaint may allege several different instances of misconduct by an individual garda.

**Figure 3: Complaints 2007 – 2016**

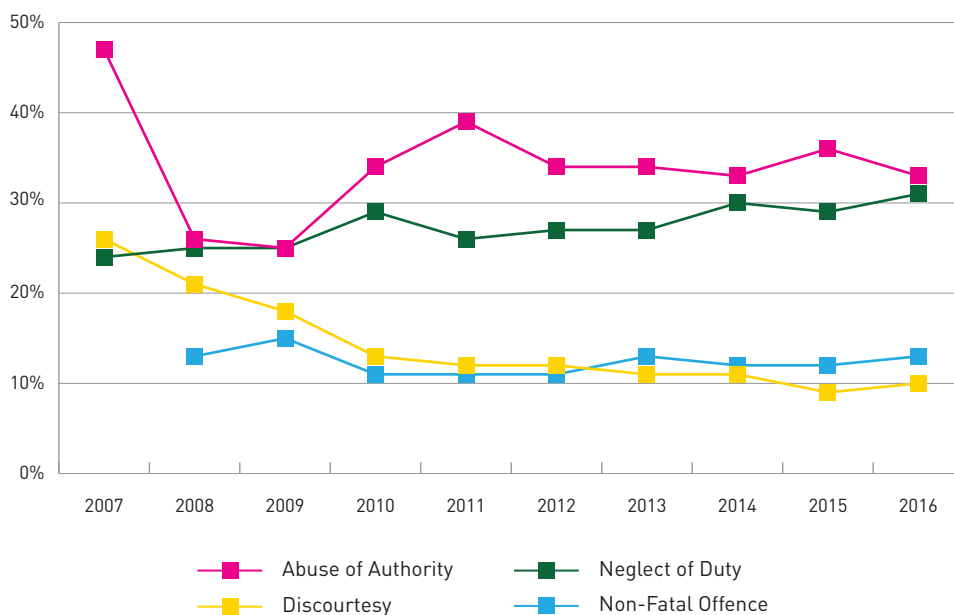


**Figure 4: Allegations 2007 – 2016**



[The number of allegations in this figure may differ somewhat from figures published in annual reports because additional allegations can emerge during the course of investigations; such allegations are recorded in the year they emerged rather than the year in which the complaint was received]

**Figure 5: Allegation Types 2007– 2016**



### 3.2 ALLEGATION TYPES

The four most common allegation types, largely unchanged from the previous period, are (a) abuse of authority; (b) neglect of duty; (c) non-fatal offences (which effectively translates as an allegation of assault); and (d) discourtesy.

### 3.3 REFERRALS TO GSOC FROM THE GARDA SÍOCHÁNA

Referrals from the Garda Commissioner to GSOC are required in certain circumstances under section 102 (1) of the 2005 Act which states:

*“The Garda Commissioner shall refer to the Ombudsman Commission any matter that appears to the Garda Commissioner 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 number of such referrals declined quite significantly in the early years of GSOC’s operations (from 247 in 2007 to 90 in 2011) when the processes were new and there was a tendency by some gardaí to err on the side of referral even in relatively minor incidents.

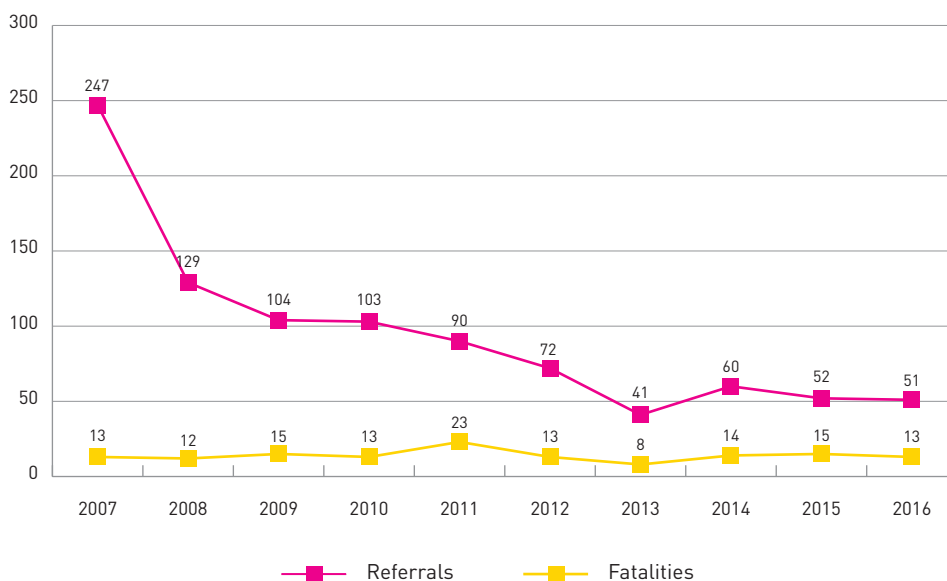
The number of referrals has levelled out in recent years. The most significant factor giving rise to referrals remains road traffic incidents which make up, on average, 50 per cent of referrals.

### 3.4 INADMISSIBLE COMPLAINTS

Between 30 per cent and 40 per cent of complaints received by GSOC every year are deemed inadmissible. The most common reason for inadmissibility (accounting for 68 per cent of such decisions in 2015 and 75 per cent in 2016) is that, even if proven, the behaviour complained of would not represent a breach of the Discipline Regulations. This describes situations where the person making the complaint believes that a garda was doing something that s/he was not allowed to do, but in fact the behaviour/act was permitted.

The second most common reason (23 per cent of inadmissible complaints in 2015 and 16.5 per cent in 2016) is that the complaint was received outside the time limit specified in section 84 of the 2005 Act. Small numbers of complaints are deemed inadmissible every year because:

**Figure 6: Referrals and Fatalities 2007– 2016**



**Figure 7: Inadmissible complaints & allegations 2012-2016**

Year	Inadmissible Complaints	Inadmissible Allegations
2012	851	1,315
2013	856	1,340
2014	945	1,330
2015	831	1,113
2016	619	868

- the complainant is not authorised to make a complaint (that is, they are not affected in any way by the alleged behaviour)
- the complaint is “frivolous or vexatious”<sup>7</sup>
- the garda complained of was not on duty, or
- the person complained of is not in fact a garda.

### 3.5 OUTCOMES

GSOC’s investigations into complaints can lead to a range of outcomes, set out in the table below. As can be seen, investigations into a large number of allegations are discontinued every year because

further investigation is not necessary or reasonably practicable.

The most common scenarios in which investigations are discontinued are:

- the absence of independent evidence to prove the complainant’s or garda’s version of events;
- the non-cooperation of the complainant with the investigation;
- the complaint is found to be “frivolous or vexatious” after the investigation had begun.

<sup>7</sup> Under s. 87 (2) (d) of the 2005 Act this is listed as one of the grounds for not admitting a complaint.



**Figure 8:** Outcomes of Allegations Investigated and Closed 2012 – 2016

Outcomes	2012	2013	2014	2015	2016	Total
Discontinued – no further investigation	1,964	2,277	2,367	2,146	1,850	10,604
No Breach of discipline identified	1,001	1,176	1,228	867	524	4,796
Allegation Withdrawn	345	307	292	258	154	1,356
No misbehaviour identified	419	220	251	95	33	1,018
Breach & Sanction applied	131	94	114	116	75	530
Informally Resolved	33	24	22	12	8	99
Regulations no longer apply	7	7	7	15	18	54

### 3.6 FILES TO THE DIRECTOR OF PUBLIC PROSECUTION

In addition to the above outcomes, GSOC referred 115 investigation files to the DPP during the five year period under review. The DPP directed prosecution in relation to 24 of these investigation files, seven of which related to Section 102 referrals from the Garda Síochána.

It is the practice of GSOC, in keeping with the obligations imposed on Ireland by Article 2 of the European Convention on Human Rights, to send a file to the DPP where there has been a death following garda contact with an individual. Article 2 places an obligation on Ireland to investigate, independently of the Garda Síochána, death which may have resulted from the acts or omissions of the State, its servants or its agents such as the Gardaí.

### 3.7 INFORMAL RESOLUTION OF COMPLAINTS

GSOC believes the relatively low incidence of informal resolution of complaints, 99 cases in five years, is noteworthy. Many multiples of that number were deemed suitable for informal resolution—in 2016, for example, 167 complaints closed had been deemed suitable for IR but only eight were in fact informally resolved—but

were either escalated into formal disciplinary investigation or discontinued. In many cases, the complaints were escalated or discontinued because of the legislative requirement for the consent of both parties (the complainant and the garda complained of) to the process.

While informal resolution is not appropriate for all complaints and allegations received, GSOC is of the view that greater use of informal resolution in a greater number of complaints would be more satisfying for the public, less disruptive and costly for the Garda Síochána as an organisation and less stressful for the individual members against whom complaints are made.

### 3.8 GARDAÍ HANDLING THE INVESTIGATION OF CERTAIN COMPLAINTS.

Garda superintendents have continued to question the value of their engaging in GSOC inquiries which they say account for 20 to 30 per cent of their time. The provision of such form of investigation under the 2005 Act does little to instil confidence in the concept of independent investigation and oversight.

## CHAPTER 4: CHALLENGES IN THE PERIOD

### 4.1 INTRODUCTION

Aside from carrying out its functions as described in the legislation, GSOC engaged with a number of inquiries and investigations during what proved to be a sometimes turbulent period for the Garda Síochána and on occasion, for GSOC.

At different stages during the period under review the Garda Síochána and/or GSOC found themselves the focus of much political and media attention. A number of controversies led to the establishment of inquiries or commissions, sometimes involving GSOC to a greater or lesser degree.

In the first half of 2014, controversy arose when news of an operation to investigate the suspected bugging of GSOC headquarters became public. At the same time, the issue of garda 'whistleblowers' became a topic of public debate.

In not unrelated developments, the Minister for Justice and Equality resigned, the General Secretary of the Department of Justice asked to be reassigned from his post, and the Garda Commissioner retired in the space of a few months.

In 2015, an inquiry into the actions of designated officers of GSOC, the first of its kind, was conducted after the tragic death of a member of the Garda Síochána.

During the same year, GSOC engaged with two Commissions of Investigation, one headed by Mr Justice Nial Fennelly and the other by Mr Justice Kevin O'Higgins. These are described in brief below.

### 4.2 COOKE REPORT

A non-statutory Inquiry into Reports of Unlawful Surveillance of Garda Síochána Ombudsman Commission was conducted by retired judge, Mr Justice John Cooke, in February 2014 after a story in a Sunday newspaper led to extensive media commentary and political interest. The story related to an investigation some months earlier into the possibility that GSOC's headquarters had been subject to unlawful surveillance. The Cooke

Report found that GSOC had acted in good faith but, while certain anomalies raised concerns about security within GSOC, the evidence did not support the proposition that actual surveillance of the kind asserted in the newspaper report took place.

### 4.3 CONNAUGHTON INQUIRY

A fact-finding investigation into how certain confidential information relating to a security sweep of GSOC offices got into the public domain was commissioned by GSOC and conducted by Mr Mark Connaughton, Senior Counsel. The investigation was unable to establish individual responsibility for any disclosure, either on the part of any GSOC employee or any other party. GSOC subsequently put in place a number of measures, both policy and technical in nature, to enhance security of information in relation to its business.

### 4.4 CLARKE INQUIRY

A judicial inquiry<sup>8</sup> into the conduct of designated officers of GSOC was opened in 2015 following the tragic death of Sgt Michael Galvin in May 2015. This arose in the course of an investigation following a referral by the Garda Commissioner of the death of a young woman in a road traffic incident.

The report by Mr Justice Frank Clarke (now Chief Justice) made a number of recommendations which were subsequently considered and acted upon by GSOC. Among Mr Justice Clarke's recommendations were that;

- legislation be reviewed to bring greater clarity;
- more detailed guidance be given by GSOC to its designated officers regarding the precise circumstances in which progress updates should be given during investigations;
- more detailed information be made available to members of the Garda Síochána about the way in which GSOC investigations are carried out, and;
- consideration be given to changing the practice whereby gardaí are notified solely by the Garda Síochána of a criminal investigation by GSOC to one where notification was also carried out by GSOC.

8 Under Section 109 of the Garda Síochána Act 2005, the Minister may request the Chief Justice to invite a judge to inquire into the conduct of a designated officer in performing functions under Sections 98 or 99 of the Act.

## 4.5 THE O’HIGGINS COMMISSION OF INVESTIGATION

A Commission of Investigation was established in February 2015 to investigate and report on certain matters relative to the Cavan/Monaghan Division of the Garda Síochána. The matters were, essentially, allegations by Sgt Maurice McCabe about the conduct (by gardaí) of a number of criminal investigations. Mr Justice Kevin O’Higgins was the Commission’s sole member.

GSOC, which had previously dealt with complaints from a number of people about the conduct of those particular garda investigations, engaged with the O’Higgins Commission on those matters. Mr Justice O’Higgins’ report, published in May 2016, concluded that a number of victims of crime were not well served by gardaí, but it made no adverse findings in respect of GSOC.

### 4.5.1 GSOC Investigation

In June 2016, the Minister for Justice and Equality requested GSOC to carry out a public interest investigation into matters arising from the O’Higgins Commission. GSOC was requested to establish the facts in relation to a reference reportedly made during the O’Higgins Commission to matters discussed at a meeting between Sgt. Maurice McCabe and two senior officers in August 2008. That investigation was ongoing at the end of 2016.

## 4.6 FENNELLY COMMISSION OF INVESTIGATION

GSOC also engaged with Mr Justice Nial Fennelly’s investigation into the installation and operation of garda telephone recording systems in garda stations between January 1980 and November 2013. The Commission’s terms of reference included the level of knowledge of the existence, operation and use of such recording systems within the Office of the Minister for Justice and Equality, the Office of the Attorney General, the Chief State Solicitor’s Office, the Office of the Director of Public Prosecutions, the Office of the Data Protection Commissioner and GSOC. The final report had yet to be made at the end of the five year period under review.

## 4.7 OTHER INVESTIGATIONS

GSOC conducted a number of particularly complex investigations during the period. Noteworthy among these were the Investigation of Fixed Charge Notice Cancellations 2009 to 2014, conducted at the request of the Minister for Justice; an investigation into the policing of anti-water charge protests in Dublin in 2014/2015; and an investigation arising from complaints by Deputy Clare Daly that gardaí had leaked details of her arrest on suspicion of drunk driving.

GSOC also opened a public interest investigation in 2012 arising out of a section of the Commission of Investigation Report into the Catholic Diocese of Cloyne which indicated that the Garda Síochána did not act upon information that it had, in relation to complaints of sexual abuse in the Roman Catholic Diocese of Cloyne. The GSOC investigation concluded that while evidence suggested some failures, no offences appeared to have been committed and no disciplinary proceedings were recommended.

Twenty one GSOC investigations were commenced on foot of the Independent Review Mechanism (IRM). The IRM was established by the Minister for Justice and Equality in May 2014 to consider allegations which had been made to the Minister of garda misconduct or inadequacies in the investigation of such allegations, with a view to determining to what extent and in what manner further action may be required in each case.

Following this review, the Minister requested GSOC, under section 102 (5) to investigate 21 of the cases in the public interest — ten of the investigations were opened in 2015 and eleven in 2016. Of the 21, eleven were investigations into criminal matters. Six of these were still open at the end of 2016, four had concluded with insufficient evidence of criminal misconduct by a garda found to merit any further action, and one investigation was discontinued due to lack of cooperation from the complainant.

Of the ten investigations into non-criminal matters, nine remained open at the end of 2016 and one investigation had concluded finding no evidence of a breach of discipline by a garda.

Other complex investigations which were ongoing at the end of 2016 included one relating to Mr Ian Bailey, and another arising from the death in a road traffic collision of Mr Shane O'Farrell.

In addition, GSOC undertook a number of investigations into allegations that gardaí had failed to properly investigate complaints of sexual assault and domestic violence. These complaints included historic complaints of failures to investigate alongside, worryingly, more current complaints.

#### **4.8 VICTIMS**

The coming into force of the EU Victims Directive in November 2015 brought new obligations and challenges for GSOC. However, much work had been done in the preceding years by way of general good practice within GSOC which assisted with the new responsibilities under the Directive. GSOC was also involved with the Department of Justice and Equality in the consultation giving rise to the Criminal Justice (Victims of Crime) Bill 2016.

## CHAPTER 5: THE NEXT FIVE YEARS

The establishment of the Policing Authority in 2016 completed a third pillar to garda oversight. The roles of GSOC, the Garda Inspectorate and the Policing Authority are distinct but complementary and help to enhance public confidence in the operation of a strong, fair and transparent police service. Coming out of a period of austerity allows for greater resourcing of oversight by Government in a meaningful way.

The agenda for GSOC into the next five years will include the appropriate statutory changes to give more autonomy to the organisation and allow for a more efficient, independent, and transparent method of dealing with complaints against garda members. The legislative extension of the remit of GSOC up to the end of 2016 needs to be matched by further statutory changes and increased personnel. Public trust in GSOC can only grow if the public sees outcomes that are timely and appropriate to the complaints made by the public. This will require a willingness on the part of the Garda Síochána to engage seriously with oversight and commit to the importance of giving a voice to members of the public who have had, at the very least, discourteous engagements with the Garda Síochána or at worse, have been the subject of criminal acts.

GSOC has begun its own process of reviewing its effectiveness under the current legislative framework which takes account of possible statutory changes. The Business Improvement Team (BIT) process begun in early 2017 is nearing completion and has involved personnel at all levels in the organisation. The appointment of a training officer within GSOC in 2017 underlines the importance of bringing personnel to, and keeping them at, the appropriate professional levels required for the various roles within the organisation. The process of filling previously vacant positions within the organisation has begun and further positions are being identified through the BIT process.

The establishment of the Commission on the Future of Policing in Ireland in 2017 is seen by GSOC as an opportunity to cement the role of complaint handling undertaken by GSOC within an efficient 21st century policing structure in Ireland. Of concern will be the commitment to implementation of reform by both the Garda

Síochána and politicians in a real and tangible fashion in light of the failure to have regard to the many reports of the Garda Inspectorate over the years. It is clear that the public looks forward to change into the future and GSOC will support such public concern in the years ahead.



Garda  
**Ombudsman**  
INQUIRY INDEPENDENCE IMPARTIALITY

Garda Síochána Ombudsman Commission  
150 Abbey Street Upper  
Dublin 1

☎ (01) 871 6700

☎ Lo-Call 1890 600 800

📠 (01) 814 7026

🖱 [www.gardaombudsman.ie](http://www.gardaombudsman.ie)

✉ [info@gsoc.ie](mailto:info@gsoc.ie)

🐦 [@gardaombudsman](https://twitter.com/gardaombudsman)