



Report in accordance with section 103 of the Garda Síochána Act, 2005 (“the Act”) relating to the policing of the Union of Students in Ireland Protest March on 3 November 2010.

Introduction

On 3 November 2010, a reported 40,000 third level students attended a pre planned march through Dublin Centre City in protest at a government plan to raise the third-level registration fee from €1,500 to €3,000.

The protest march was organised by the Union of Students in Ireland; the Garda Síochána had prior warning of the event and had been involved in the planning.

The protest was planned to occur in Dublin on 3 November 2010 with participants scheduled to assemble from 12:30 hrs. at the Garden of Remembrance/Parnell Square North and East and proceed to Dáil Éireann/Government Buildings at Merrion Street.

This was to occur via the following route:

Parnell Square North; Parnell Square East; Cavendish Row; O’Connell Street; O’Connell Bridge; D’Olier Street; College Green; Nassau Street; and Merrion Square into Merrion Street at Government buildings.

For the most part, the protest proceeded peacefully and lawfully, however shortly before 13:35 hrs a large number of protestors, numbering approximately 2,000, broke away from the protest route and proceeded to the Department of Finance, Merrion Row. At 13:35 hrs between 30 and 50 protest participants gained entry to the lobby area of the Department of Finance.

Complaints to the Garda Síochána Ombudsman Commission (“GSOC”)

In total, GSOC received 40 separate complaints regarding the actions of gardaí present; 24 of those complaints were deemed admissible and investigations were

initiated pursuant to section 98 of the Garda Síochána Act, 2005 (“the Act”). Subsequently 21 of these were discontinued and three were directed for further investigation into potential breaches of the Garda Síochána (Discipline) Regulations, 2007.

Investigation

On 11 June 2013, GSOC forwarded to the Garda Síochána three reports each containing a statement of facts pursuant to section 97(1) of the Act, concerning the actions of four gardaí and recommending that disciplinary action should be considered.

In addition to the three reports referred above, GSOC has noted the following systemic concerns.

Delays in the Provision of Information

Throughout the investigation unnecessary delays occurred in relation to the provision of material requested from the Garda Síochána. This was exacerbated by the provision of information by the Garda Síochána that proved to be inaccurate; the details of which are outlined below.

Due to the large volume of material anticipated to be generated from such an incident GSOC wrote to the Garda Síochána on 26 November 2010 requesting that a Garda Liaison Officer be appointed to facilitate the provision of requested documentation. A request for Garda documentation including all statements, reports, notebook entries, CCTV, duty sheets, baton reports and video footage was also made at that time.

No reply or acknowledgement of the document request of 26 November 2010 was received.

Further letters were sent by GSOC on 14 February and 4 March 2011.

In a letter dated 17 March 2011, the Garda Síochána indicated that an Inspector from Pearse Street had been appointed to act as liaison officer but due to the large volume of documentation more time was required to facilitate the request.

Protocols on the exchange of information between the Garda Síochána and GSOC require information to be provided within 30 days. At this point the documents requested had been outstanding for 111 days.

On 9 May 2011, 24 weeks after the original request for documentation, the Garda Síochána wrote to GSOC requiring that it outline in detail the relevance of each document being sought.

GSOC is of the view that the determination of relevance is a matter for GSOC alone.

GSOC's Director of Operations then communicated directly with Garda senior management. The Garda Síochána informed GSOC that a new Inspector had been appointed as liaison officer for the purposes of the requests in these cases.

On 3 July 2011, some 224 days after the initial information request, GSOC received documentation from the Garda Síochána. In total five documents were received. Two of these were Operational Orders prepared in advance of the protest and three were reports compiled by Inspectors involved in the policing of the protest. One of the reports was dated June 2011.

GSOC then wrote to the Garda Síochána requesting confirmation that no further reports or statements were held by the Garda Síochána in relation to the policing of the student protests.

On 31 July 2011, the Garda liaison officer informed GSOC that *'No reports or statements have been submitted by individual Gardaí who were on duty at the protest'*

This was misleading and later proved to be incorrect.

Subsequently, on 18 April 2012, during an interview of a garda in relation to the protest, the garda provided a statement that had been prepared on 16 December 2010 and which had been available to the Garda Síochána. Another garda, in interview, also indicated that statements had been prepared by gardaí involved in the policing of the protest and that a file had been submitted to the Director of Public Prosecutions ("DPP").

Further correspondence between GSOC and the Garda Síochána established that a Garda investigation file had been completed shortly after the event. Neither the contents of the file nor its existence had been disclosed to GSOC despite protracted correspondence, repeated requests and the appointment of an Inspector to act as a liaison officer between the two agencies.

A copy of the Garda investigation file was received by GSOC on 21 August 2012, approximately one year and nine months or 634 days from the date of the incident. The file contained over 60 statements made by gardaí, shortly after the protest for the purpose of a Garda prosecution file.

The existence of these statements contradicted the information provided by the Garda Liaison Officer on 31 July 2011 that no statements or reports had been prepared by any gardaí. They were also subject of the initial documentation request

which was made on 26 November 2010, which requested all statements made by gardaí in relation to the policing of the protest.

Further correspondence was also received from the Superintendent who stated that GSOC had not been entitled to receive the documentation until the DPP had directed on the Garda file.

The position expressed by the Superintendent was contrary to the agreed Protocols between the Garda Síochána and GSOC. GSOC is also of the view that no such impediment exists.

An examination of the Garda investigation file revealed evidence within the previously undisclosed statements, which would have had a significant impact on GSOC's investigations and significantly expedited the process of identifying the gardaí concerned.

It was established that at least two gardaí present on the day of the protest were equipped with official helmet mounted video recording devices. GSOC had previously on 26 November 2010 requested all video footage retained by the Garda Síochána; however the Garda Síochána had never disclosed the existence of the helmet video recordings.

GSOC received copies of the helmet video recordings on 23 October 2012; nearly two years after the protest had occurred. On review, this video footage was directly relevant to the on-going investigations and provided evidence to support the identification of gardaí concerned.

It is clear that the efficient and timely investigation of the complaints arising from the policing of the student protests was considerably delayed and hindered by the failure of the Garda Síochána to provide the documentation and materials in their possession. This delay affected both the complainants and the gardaí subject to investigation.

Dress Code for Gardaí and Civilian members

Due to the public nature of the Student Union protest a large amount of video coverage was present, both in official capacities such as the Garda helmet video devices and that of the public present using various digital devices.

With the vast amount of video footage taken during the protest, GSOC attempted to visually identify the gardaí concerned in various complaints.

During this process it was noted that a number of gardaí were not displaying the correct epaulette numerals and identification as required under section 4.8 of the "Dress Code for Gardaí and Civilian members' Handbook".

This particular issue made it difficult, not only for GSOC but also for the Garda Liaison Officer to identify the gardaí concerned with the complaints. Further instances of gardaí without the correct dress code can be supported with video and photographic evidence.

Whilst it is recognised that care of the uniform is the role of each garda, it should also be noted that the Garda Operational Order for the policing of the protest and section 4.8 of the “Dress Code for Gardaí and Civilian members’ Handbook” places a requirement on supervisors in that *‘When parading for duty, supervisors will ensure that members are wearing their embroidered epaulettes in the correct fashion and that same are clearly visible.’*

Additionally, it should be noted that the Operational Orders for the event, written by the Garda Síochána Senior Management Team, directed that gardaí on duty would wear High Visibility jackets and District numbers on their outer garments.

Section 6.2 of the main Operational Order specifically states that:

“Any member not meeting the required standard of dress will be returned to his/her station and a report submitted to this office.”

To the knowledge of GSOC, no garda was returned to his/her station, or any report submitted, in relation to incorrect uniform. In any Public Order incident it is in the interests of public accountability that the gardaí are easily identifiable to ensure that the actions of the gardaí are accountable and that no garda can act with impunity.

Correct epaulette, helmet numerals and markings are the quickest and easiest way to identify each garda during an event of this type.

Baton Reports

On 3 July 2011, GSOC received two documents which purported to be official Baton Reports in relation to the incident. The first was a copy of a two page email sent between an Inspector and the office of the Special Detective Unit, Harcourt Square. This email was dated 3 November 2010 and timed at 20:28 hrs, which places it shortly after the march was complete. The second document was a one page report from a different Inspector and made to the local Superintendent. Neither of the documents contained sufficient evidence to identify those gardaí who used their batons, nor to identify those whose actions may have been subject to allegations of misconduct.

On 31 July 2011, the Garda Liaison Officer informed GSOC that no garda had completed a baton report following the protests.

It is accepted that Garda policy at the time of the incident appeared to allow this method of reporting, where gardaí act as a group or 'party'; in that instance Garda policy authorised the Member in Charge of the party to make a report in writing to the Member in Charge of the station setting out an account of the baton use.

From the video footage recorded throughout the protest, it is clear that a number of gardaí drew and used their batons at numerous times throughout the day. This was specifically referenced and evidenced in one of the three files sent to the Garda Síochána which related to the use of batons by the Garda Public Order Unit outside the Department of Finance, Merrion Row, Dublin.

In that video footage, an estimated 20 gardaí were visible, all with their batons drawn. Five of these gardaí are seen to use their public order batons against the seated crowd. Each of these five gardaí was located at different sections of the crowd and therefore all were interacting with different members of the public, and were likely to be facing different scenarios to their fellow gardaí. This would include the level of aggression from the member of the public concerned, whether they were seated or standing, whether they were in possession of an implement (placard, stick etc), or whether they were known, to outline just a few of the variables.

The usage of a baton is set out in Garda training material, which explains that force, is only to be used for legal law enforcement purposes, when strictly necessary, justified and proportionate to the lawful objective.

The training material also outlines the '*Powers of the Gardai to Use Force*'.

In addition, section 10.1 of the Operational Order for the event reads that:

'Members will not draw their batons or use force unless explicitly instructed to do so by their immediate Supervisor save where the members find themselves isolated and under serious threat to their personal safety.'

The Baton Report provided by one Inspector attempted to cover the above areas with the following:

'I felt that the risk of harm to the members of the Unit at that time was serious and I called on the members to draw their batons'; and

'I believe the use of batons by the members was necessary in this instance as all other means to achieve the objective had failed.'

In the report made by the second Inspector, he makes the distinction between a garda drawing their baton, and them actually using it, stating:

'However, I suggest that where a party of Gardai are under the control of a senior officer at a protest or event then they should only draw their batons on his instructions and, consequently, it falls to the senior officer, rather than the individual Garda, to write a report outlining the rationale behind his decision to give such an order and describe the events that followed.'

However, the only reference in the second Inspector's Baton Report regarding the actual use of batons reads:

'At several points there were clashes between Gardai and missile throwing protestors and Gardai used their batons to disperse the disorderly elements.'

It should also be noted that neither of the Baton Reports include any details regarding the number of baton strikes, the gardaí who were involved, and the members of the public who may have been struck, or any details of any injury they may have caused.

GSOC is concerned that a baton report completed by the Member in Charge of the party may not include sufficient details of why each individual garda came to the conclusion that each individual baton strike was required in their unique situation. As previously stated, in any use of force the decision must be made by the garda individually, in that the action is strictly necessary, justified and proportionate to the lawful objective.

GSOC would not seek to inhibit the lawful and proportionate use of batons by gardaí where it is necessary but would suggest that the recording of such matters is subsequently available to provide the rationale and context for the baton use. Without the benefit of individual Baton Reports from the gardaí who decided to use their batons, GSOC would have concerns over a use of force action based solely on the direction from a Senior Officer.

GSOC notes that the recent Garda Policy Use of Batons v5.0 appears to have superseded the previous Garda policy which allowed the completion of an overarching Baton Report by the Member in Charge of a party. Specifically, the Garda Policy Use of Batons v5.0 places primary responsibility for the use of batons on the individual garda. Additionally, it also requires that in every circumstance where a baton is used, each individual garda is required to justify the legality, necessity and proportionality of his/her actions.

In relation to the above areas, GSOC now understands that following the direction of the Garda Policy Use of Batons v5.0 no further overarching Baton Reports can be made by the Member in Charge of a party, and that each individual garda will now complete a Baton Report or notebook entry justifying the legality, necessity and proportionality surrounding their decision to use force.

Conclusion

GSOC feels that it is vital that the contents of this Report are brought to the attention of the Garda Síochána, in order to address any systemic issues that may be present and assist to prevent any reoccurrences.

At this stage, GSOC considers the investigations concluded and we await notification of any disciplinary action taken on foot of the three reports forwarded to the Garda Síochána.

Garda Síochána Ombudsman Commission