



Investigation into complaints of neglect of duty in the investigation of alleged child sexual assault

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

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Introduction

In February and April 2014 respectively, two separate complaints were made to GSOC, by the parents of two different children, allegedly sexually assaulted by the same teenager in 2008.

The first complaint, made by a woman who we shall refer to as Ms A, was that, due to delays in the Garda investigation of the alleged rape of her eight-year-old daughter, charges against the alleged perpetrator were dropped. This followed a judicial review in January 2014, which centred on Garda delays in processing the case and argued that the alleged perpetrator's rights as a child had been infringed.

The second complaint, made by a woman who we shall refer to as Ms B, was that the alleged sexual abuse of her daughter by the same teenager, also reported to the Gardaí in 2008, was not properly investigated.

The allegations were the subject of a lengthy investigation, which has now concluded and is described in this report. A more detailed report has been submitted to the Garda Commissioner, in line with section 97 of the Garda Síochána Act 2005.

Recommendations resulting from this investigation are made with a view to assisting in the prevention of the occurrence of similar complaints in the future.

Complaint 1: That due to delays in the Garda investigation of the alleged rape an eight-year-old, charges against the alleged perpetrator were dropped

Ms A alleged that, at a party to celebrate a family event in July 2008, the son of a family friend took Ms A's daughter, who was eight at the time, into a bathroom, locked the door and told her to take her panties off. He then raped her vaginally and either attempted to, or did, penetrate her anally. The child appears to have told her mother the following evening and a complaint was immediately made to the Garda Síochána. An investigation commenced, led by a sergeant. On the following day, the child was taken to hospital. The alleged perpetrator's home was also searched on that day and he went to a Garda Station with his mother, where he made a voluntary cautioned statement in relation to both Ms A's daughter and another child, Ms B's daughter.

Ms A stated that the case was originally assigned to a Garda sergeant who we shall call investigating sergeant 1. She said that this sergeant told her that the alleged perpetrator would be dealt with under the National Juvenile Liaison Officer scheme, whereby he would be given counselling and then reviewed to see if he had reformed, if not he would be formally charged.

Ms A's husband died in December 2008 and she said that she did follow up on the matter for a time, while grieving and attending counselling.

She said that in the meantime the investigating sergeant was transferred to another area and the case was not followed up for a number of years. In 2011 or 2012, a different Garda sergeant, who we shall call investigating sergeant 2, began to investigate the matter and the suspect was charged. The suspect sought a judicial review of the charges in the High Court, as a result of the delays, and argued that his rights as a child had been infringed. The case concluded in January 2014. The prosecution was prohibited from proceeding any further against the alleged perpetrator. Ms. A stated that Ms Justice Iseult O'Malley, in her judgment, expressed the view that the Garda Síochána had mishandled the case. Ms A states that she did not complain before the conclusion of the High Court case as she was told "to wait for the system to get justice".

Complaint 2: That the alleged sexual abuse of a seven-year-old by the same teenager, also reported to the Gardaí in 2008, was not properly investigated.

Ms B alleges that her seven-year-old daughter was sexually abused in 2008 by the same teenager, who was the son of a friend. She said that she reported the matter to the Garda Síochána and the child was interviewed in two separate Garda stations.

Ms B alleged that she was told that the DPP was not going to prosecute in relation to her daughter "because she talked like a child" and that they were going to use Ms A's daughter's testimony to "get justice for the two of them".

She said that in January 2014, the case relating to Ms A's daughter was thrown out of court and that the Judge stated this was because of mistakes in the Garda investigation. She was concerned that similar mistakes may have been made in relation to her daughter's case. A two year gap occurred before the case was assigned to the Garda who dealt with it up to the point of the DPP decision. Ms B was concerned that the delay in reassigning the case may have influenced the DPP's decision.

¹ What was called the National Juvenile Liaison Office is now called Garda Youth Diversion Office. It is part of the Garda Community Relations Bureau and is the national office for the management and implementation of the Diversion Programme. The Diversion Programme offers young people who accept responsibility for their offending behaviour the opportunity of a caution instead of going to court. The caution is administered by a Juvenile Liaison Officer and a period of supervision may be included. Juvenile Liaison Officers (still called this, also referred to as JLOs) are attached to Garda districts, answering to local superintendents.

The Garda investigation

The following chronology of the Garda investigation was compiled from Garda submissions:

9 July 2008: Statement taken from Child A by means of a memo of a question and answer session.

18 July 2008: Complaint taken from Child B, by means of a memo of a question and answer session.

22 July 2008: Report from investigating sergeant sent to National Juvenile Liaison Office and forwarded to alleged perpetrator's local Garda station.

5 August 2008: Blood sample provided voluntarily by alleged perpetrator in the company of his mother.

11 August 2008: Samples from Child A and alleged perpetrator received by the Forensic Science Laboratory.

12 August 2008: Presence of semen in the panties of Child A reported.

30 August 2008: Documents (unspecified) sent to National Juvenile Liaison Office.

2 September 2008: Report from investigating sergeant and statement of Child A sent to National Juvenile Liaison Office.

September 2008: Alleged perpetrator assessed by St. Louise's Unit.

September 2008: National Juvenile Liaison Office requested a "skeleton file" and a "suitability" report.

22 October 2008: Report confirmed that alleged perpetrator's DNA was on Child A's panties.

24 November 2008: St. Louise's Unit reported on assessment of alleged perpetrator.

26 November 2008: "Suitability" report on alleged perpetrator forwarded to National Juvenile Liaison Office by a sergeant from his local Garda Station.

27 November 2008: Investigating sergeant 1 transferred to another division.

28 November 2008: National Juvenile Liaison Office acknowledged receipt of "suitability" report. It requested a report on the alleged perpetrator from an Interagency Treatment Team. It also requested "a statement from [Child A] if one becomes available."

10 and 16 December 2008: Communications between gardaí, stated to be "in respect of advancing the Juvenile Liaison Officer issue".

30 April 2009: Hospital report on Child B.

30 June 2009: National Juvenile Liaison Office requested a "skeleton file".

14 and 24 September and 13 and 22 October 2009: Communications between Garda Síochána and National Juvenile Liaison Office "in respect of advancing the JLO issue."

12 January 2010: National Juvenile Liaison Office confirmed that it had the file and the "suitability" report and sought the statement of Child A. (Investigating sergeant 2, who was only assigned to the

case the following year, speculated that confusion may have been caused by the fact that the statement, which had been sent in September 2008, was in question and answer format. In any event, there is no evidence that the request was responded to in any fashion.)

4 April 2010: National Juvenile Liaison Office sought an "update".

18 April 2010: A statement was taken from Child B.

11 May 2010: National Juvenile Liaison Office requested the full file.

9 June 2010: Case documentation forwarded by Garda Síochána to National Juvenile Liaison Office.

17 July 2010: National Juvenile Liaison Office communicated a direction that the applicant was not suitable for inclusion in the Diversion Programme.

25 September 2011: Investigating sergeant 2 was assigned to "complete the file".

30 October 2011: Investigating sergeant 2 took a statement from mother of Child B. Sergeant B notes in her affidavit that Ms B stated that she had informed investigating sergeant 1 of the allegations in respect of her daughter on 6 July 2008.

10 November 2011: National Juvenile Liaison Office issued a decision that alleged perpetrator would not be admitted to Diversion Programme in respect of allegations by Child B.

14 January 2012: Investigating sergeant 2 sent the file and covering report, relating

to both Child A and Child B, to the Director of Public Prosecutions.

3 July 2012: Director of Public Prosecutions directed prosecution of alleged perpetrator on the two charges relating to Child A.

July 2012: Alleged perpetrator was arrested and charged with rape and attempted rape of Child A.

The judicial review

A High Court judicial review was taken on behalf of the accused, which prevented the prosecution from proceeding. (See Judgment of Ms Justice Iseult O'Malley in G. -v- Director of Public Prosecutions (2014), IEHC 33, High Court Record No. 2112 975 JR, delivered on 24 January 2014.)

Ms Justice O'Malley granted the application in the light of the breach of the special duty imposed upon the prosecution authorities to expedite cases involving children and the resulting loss of legal protection on the part of the applicant.

The following extract from the Judgement explains the issues explored in the judicial review:

...the applicant in this review was born on the 24th August, 1992. The offences were alleged to have been committed in July 2008, shortly before [his] sixteenth birthday. He was not charged until four weeks before his twentieth birthday, in July 2012. The main issue in the case was

the claim that the delay had amounted to a breach of [his] right to be tried with due expedition. It is further argued that the delay constituted a breach of the special obligation of the Director of Public Prosecutions to deal expeditiously with juvenile accused persons and has caused the applicant to lose the benefit of protections granted to such juveniles.

The following legal provisions were cited in the judicial review and were examined as part of this investigation:

- For the purposes of the Children Act 2001, a person under the age of 18 is in law a child. This status confers a number of protections in relation to the criminal process which are not available to adults.
- Firstly, where a child, who is over the age of criminal responsibility and under the age of 18, accepts responsibility for criminal behaviour, unless the interests of society require otherwise, he or she must be considered for admission to the Diversion Programme provided for in Part 4 of the Children Act 2001. If admitted to the programme, the child may be supervised, may be the subject of conferences attended by the relevant parties and may be required to comply with an "action plan", including any reparation or rehabilitative measures thought appropriate.
- The statutory criteria for inclusion are set out in Section 23 of the Children Act 2001 and require, on the part of the child, the acceptance of responsibility and his or her consent to

a caution and supervision by a Juvenile Liaison Officer. The Director of the programme must be satisfied that the admission of the child would be appropriate, would be in the best interests of the child, and would not be inconsistent with the interests of society or of any victim. The views of victims are to be given "due consideration", but admission to the programme is not dependent upon their consent.

- Section 47 of the Children Act 2001 empowers the Minister for Justice to make regulations which may, inter alia, exclude specified types of criminal behaviour from consideration for the Programme unless, in a given case, the Director of Public Prosecution directs otherwise. (No such regulations appear to have been introduced.)

The GSOC complaints and investigation

On 25 March 2014, the investigation into the complaint of Ms A began. On 8 April 2014, the investigation into the complaint of Ms B began. The same GSOC Designated Officer was assigned to investigate both complaints.

Nine Garda members were identified as being in potential neglect of duty and issued with notifications of the investigation. All of the members provided lengthy submissions which helped to establish the chronology above. Investigating sergeant 2 was not complained of or assessed as being in

potential neglect of duty, but also assisted the GSOC investigation by responding to questions.

Additional information such as HQ directives, Garda training doctrine and current legislation were obtained and examined.

Ms A believed that there was a delay in the investigation of the alleged rape of her daughter.

GSOC found that, within one month of the complaint, the Garda investigation was almost completed. The delays occurred when the Garda investigation file tried to move forward through the National Juvenile Liaison Office. A decision which could have been made in a quick time frame was left for two years.

An excessive amount of time elapsed between the incident being reported, the admissions of the alleged perpetrator, the file's progress through channels, submission of the file to the DPP and direction to charge. GSOC's investigation revealed multiple causes for this investigative delay, including training deficiencies, communication difficulties and lack of knowledge and/or understanding of procedures.

There were also several incidents of serious failure of the system in this case, as commented upon by the judicial review. Notably, it is known that the alleged perpetrator and his family were engaging with the Interagency Treatment Team, but no report of the alleged perpetrator's progress in this programme was viewed by the Garda Síochána.

Recommendations to help address these issues are laid out below.

Ms B believed that the alleged sexual assault of her daughter was not properly investigated.

GSOC established that the Garda Síochána became aware of Child B as a result of their cautioned interview of the alleged perpetrator in Child A's case. We found that gardaí acted upon the information at that time and the matter was investigated. It was established that the decision not to prosecute in the case of Child B was made due to factors other than garda delay.

It is the opinion of the GSOC investigation that no blame can be attributed to any Garda members in this regard.

Conclusion

At the conclusion of the investigation, the Ombudsman Commission considered that no Garda member could be singled out and held to account for the delay in this investigation. It was not recommended that proceedings be instituted under the Garda Síochána (Discipline) Regulations 2007 against any member of An Garda Síochána.

Considering the available information and evidence established by the investigation, the Ombudsman Commission is of the view that a serious failure of the system occurred in this case. This occurred from shortcomings in Garda internal communication, external communication,

policy, directives, training and guidance at the time of the reported incidents (2008).

The Ombudsman Commission acknowledges that, following the judicial review and internal Garda reviews conducted, significant changes have been implemented at the Garda Youth Diversion Office (formerly called the National Juvenile Liaison Office). Nonetheless, we believe that it is to the benefit of the system for recommendations based on the findings of this investigation to be communicated to the Garda Síochána and other interested parties.

Recommendations

We are aware of the Garda Inspectorate's recommendation that the Department of Justice and Equality convene a cross-departmental and multi-agency working group, to progress the development of a co-located and fully integrated youth offender service. (See Part 10/5 Offender Management section of the Crime Investigation report issued by the Garda Inspectorate in October 2014.)

GSOC supports this recommendation and reiterates the following key actions put forward by the Garda Inspectorate, which are relevant to this particular investigation:

- Examine the role of the Garda Youth Diversion Office (GYDO), in pre-charge decision-making processes involving juvenile offenders suspected of serious crimes such as murder and rape.
- Review the participation requirements for treatment programmes for young offenders, particularly those who have committed sexual offences.
- Improve the current operation of the Garda Youth Diversion Programme, including consideration of the following key actions:
 - Ensure that all eligible cases are referred to GYDO for decisions.
 - Ensure that the processing of young offenders is completed in a timely manner.
 - Ensure that cases deemed as unsuitable for Juvenile Liaison Office cautions are progressed towards prosecution.

GSOC further recommends:

1. **That staffing levels at the Garda Youth Diversion Office be continually assessed to take account of the work load at that office.** It is understood that over 27,000 referrals were made in 2008 (the year relevant to this investigation).
2. **That divisional Juvenile Liaison Officers report directly to the Director of the Diversion Programme in all matters relevant to the Diversion Programme.**
3. **That regulations under section 47 of the Children's Act 2001 be sought from the Minister for Justice and Equality.** A key action in this regard is the identification of a list of excluded offences (which would require the consent of the Director of Public Prosecution to be included in the Diversion Programme). In this regard,

it should be noted that a list of excluded offences was in force until the Juvenile Liaison Scheme was placed on a statutory basis (listed in Garda directive HQ 91/1991). The failure to enact these regulations was mentioned by Ms Justice O'Malley in her judgement. The primary requirement for this recommendation is to provide necessary guidance and clarity to members of An Garda Síochána. In this context, the following points are worth highlighting:

- The investigation was informed by the Garda Juvenile Liaison Officer in this case that HQ Circular 91/1991 was still in force. Meanwhile the Superintendent Director of the National Diversion Programme stated that it was made redundant by the Children's Act 2001. Section 18 of the Children's Act 2001 outlines that a child who has taken responsibility for their actions should be considered for admission into the Diversion Programme.
 - The investigation found that the Garda College in their training doctrine provided to gardaí on the Children Act 2001 and the Diversion Programme, in Lecture No. 19 (for 2008 and 2009), listed the excluded crimes with reference to HQ Directive 220/2000 which had been cancelled on 29 January 2007 by HQ19/2007.
- It is suggested that all current Garda directives relevant to the Diversion Programme be consolidated into a single directive or, where possible, enacted as regulations.
4. **That relevant training be provided to members of An Garda Síochána who act as Juvenile Liaison Officers to ensure they can discharge their duties in a proper and effective manner.** The Garda Juvenile Liaison Officer in this case indicated in the suitability report that she was unable to make a recommendation on this case, as she was not suitably experienced or qualified to do so. The provisions of section 46 of the Children's Act 2001 state that the Commissioner will ensure that all members of An Garda Síochána who act as facilitators, receive whatever training the Commissioner considers sufficient and appropriate for the proper and effective discharge of their duties while acting in that capacity.
 5. **That a guidance document made available to this investigation, "General guidelines for JLO's when dealing with Youth Sexual Offenders", be updated and become an official Garda policy document.** GSOC was informed that this document was only intended for use by the Garda Office for Children and Youth Affairs (GOCYA) and that the document is currently in the process of being updated. It is believed that, had the instructions in the above-cited document been in force in 2008, the outcome of this case could have been

entirely different, as this guidance document places the responsibility on the Juvenile Liaison Officer to obtain assessment reports, stating that they are best placed to do so. This is because the consent of the young offender and their family is required for the above, and the JLO has responsibility for contact with them. GSOC concurs that this approach is appropriate.

6. **That a dedicated file tracking system be employed with the capacity to track the movement of files and flag appropriate reminders to ensure directions issue in a timely manner be considered.** It is suggested that the systems in use at the office of the Director of Public Prosecutions and the Probation Services be considered to improve the current system.
7. **That a fast track system be put in place in cases involving serious offences, to allow the prosecuting authorities to carry out their special duty to deal expeditiously with cases against children** (this special duty was highlighted in the judicial review). Instances were found in this investigation of important actions being delayed because of communications being routed through a number of offices. It is further suggested that such a fast track system be supervised by a member of An Garda Síochána of Inspector rank, to ensure its proper and effective operation within a specific time frame. This provision would expedite cases and avoid any loss of legal protection on the part of the children, such as

happened in this case. Our investigation established that significant changes have occurred in Garda Youth Diversion Office since the Judicial review, including the scanning of documents submitted, the use of PULSE to record referrals and Garda oversight of civilian staff, however we still believe that a fast track system could be beneficial.

8. **That methods be put in place to ensure that communications occur in a more effective manner to clarify actions and responsibilities.** In this regard, the following two points are worth noting:

- In her judgement Ms Justice O'Malley stated that an impression was given that the investigating Gardaí and the National Juvenile Office were to some extent leaving things up to each other. The result was that the decision was made a matter of days before the applicant's eighteenth birthday.
- In November 2008, the Superintendent Director of the Diversion Programme wrote to the Superintendent of the district concerned, acknowledging the suitability report of the Garda Juvenile Liaison Officer and sought a copy of an assessment report mentioned in it. The then District Officer forwarded the request for the attention of the original investigating sergeant in December 2008, but it

emerged that the sergeant did not receive the correspondence as he had been transferred to a Garda Station in a different county fifteen days earlier. The assessment report requested by the Director of the Diversion Programme was never obtained. It is suggested that the Juvenile Referral Form should contain the mobile number for the Garda member

investigating the matter to facilitate any contact that may be necessary in a situation such as this.

It is the hope of the Garda Síochána Ombudsman Commission that this investigation and its recommendations will assist with improving how victims of crimes committed by youth offenders are treated, and thus reduce the incidence of similar complaints in the future.