

Media document clarifying GSOC duties/procedures

After almost three months in operation, the Garda Ombudsman wishes to clarify certain aspects of its role and responsibilities.

This is prompted by various queries and certain statements in the media and elsewhere.

Referral under Section 102 (1) Garda Síochána Act, 2005

Under this Section, the Garda Commissioner must refer to the Garda Ombudsman:

'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 Act requires the Garda Ombudsman to ensure that any such referral is investigated.

The Act does not differentiate, in this context, between the conduct of a Garda who is on duty and that of a Garda who may be off duty.

In practice, the Garda Commissioner's responsibility to refer incidents is discharged at operational level, usually by a Superintendent or Inspector.

The investigative response to the referral is undertaken by an officer of the Garda Ombudsman, usually a Senior Investigation Officer (SIO).

Investigations in the 'Public Interest' - Section 102 (4) of the Garda Síochána Act, 2005

Section 102 (4) of the Garda Síochána Act, 2005 provides that the Garda Ombudsman:

'may, if it appears to it desirable in the public interest to do so and without receiving a complaint, investigate any matter that appears to it to indicate that a member of the Garda Síochána may have

(a) committed an offence

or

(b) behaved in a manner that would justify disciplinary proceedings.'

To date the Garda Ombudsman has launched one public interest investigation. On July 27th, it announced that it has decided to undertake an investigation into the circumstances surrounding the death of Terence Wheelock in 2005.

Powers and Duties of the Garda Ombudsman

Investigations on foot of a referral from the Garda Commissioner, in common with public interest investigations, can be conducted under the criminal law or as an investigation under the Disciplinary Regulations governing the Garda.

In the case of an investigation under the criminal law, officers of the Garda Ombudsman have the powers, immunities, privileges and duties of gardaí. Such an investigation may lead to a file being sent to the Director of Public Prosecutions, who has the power to direct criminal charges if he deems it appropriate.

Investigations by the Garda Ombudsman into any disciplinary matter may lead to a file being sent to the Garda Commissioner, who has the power to initiate a disciplinary process if he deems it appropriate.

It follows that statements taken, and evidence secured, by the Garda Ombudsman's officers may, where appropriate, be used in criminal or disciplinary proceedings.

Informing Certain Parties

Section 103 (1) of the Garda Síochána Act, 2005 provides that the Garda Ombudsman:

"shall provide the following persons with sufficient information to keep them informed of the progress and results of an investigation under this (Section 102) Part;

- (a) if the investigation resulted from a complaint –*
 - (i) the complainant,*
 - (ii) the member of the Garda Síochána whose conduct is the subject matter of the complaint,*

- (iii) *the Garda Commissioner, and*
 - (iv) *any other person that the Commission considers has a sufficient interest in the matter.*
- (b) *if the investigation is one to which Section 102 applies -*
- (i) *the member of the Garda Síochána whose conduct is the subject matter of the investigation,*
 - (ii) *the Garda Commissioner,*
 - (iii) *the Minister, and*
 - (iv) *any other person that the Commission considers has a sufficient interest in the matter”.*

However, the Act makes clear that this duty to keep persons informed is subject to an important caveat, namely that the Garda Ombudsman must not provide or disclose information that would, in its opinion:

- (a) prejudice a criminal investigation or prosecution;
- (b) jeopardise a person’s safety; or
- (c) for any other reason not be in the public interest.

It will be apparent from the foregoing that the extent to which the Garda Ombudsman will be able to make public the progress and results of its investigations will vary from case to case.

As with any process that may lead to legal proceedings, sub judice considerations apply and must take primacy.

It should, however, be noted that the Garda Ombudsman also provides family liaison services through appropriately trained officers. These officers will operate within the constraints outlined above.

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