



**Garda  
Ombudsman**  
INQUIRY INDEPENDENCE IMPARTIALITY



**30**

**THE GARDA SÍOCHÁNA OMBUDSMAN COMMISSION**  
**Questions & Answers**

**AN INFORMATION BOOKLET FOR  
MEMBERS OF THE GARDA SÍOCHÁNA**

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## **AN INFORMATION BOOKLET FOR MEMBERS OF THE GARDA SÍOCHÁNA**

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### **IMPORTANT**

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This document is for guidance only. It is not a legal document. It should not be read as a legal interpretation of the Garda Síochána Act 2005.

## A NEW SYSTEM

From midnight on May 8th 2007, the Garda Síochána Ombudsman Commission (GSOC) will be responsible for receiving and dealing with all complaints made by members of the public concerning the conduct of members of the Garda Síochána.

The Garda Síochána Complaints Board will no longer receive complaints after this date.

The mission of the Garda Síochána Ombudsman Commission (GSOC) will be to search for, and to establish truth, based on evidence that is legally obtained. It will fully respect the legal rights and human rights both of the individual who has a complaint against a garda as well as the rights of the gardaí themselves.

Insofar as is possible, GSOC will seek to resolve complaints by local resolution or by mediation. Where this may not be possible, it will use its legal powers to investigate complaints that may constitute a breach of Garda discipline or an offence.

The following pages set out 30 important questions and answers about GSOC, its operations and how it will impact on the work of members of the Garda Síochána.

Further information may be had from the GSOC website [www.gardaombudsman.ie](http://www.gardaombudsman.ie) or from GSOC's Communications and Research Team. You may write to the Communications and Research Team at GSOC, **150 Upper Abbey Street, Dublin 1** or you may e-mail it at [communications.research@gsoc.ie](mailto:communications.research@gsoc.ie)

GSOC cannot deal with complaints by gardaí.

Alternatively, you may ask for further information from Garda management or from the Garda staff associations.

## QUESTION 1

### WHAT IS THE GARDA SÍOCHÁNA OMBUDSMAN COMMISSION (GSOC)?

#### ANSWER

GSOC is an independent, statutory body, established under the Garda Síochána Act 2005 (The Act).

It is not part of the Garda Síochána, the Department of Justice, Equality and Law Reform or the Garda Síochána Inspectorate.

It is headed by three Commissioners. They are **Mr Justice Kevin Haugh** of the High Court (Chairman); **Mr Conor Brady** former editor of The Irish Times and **Ms Carmel Foley** former Director of Consumer Affairs.

The Commissioners are appointed by the President of Ireland on the nomination of the Government and on the vote of the Oireachtas – the Dáil and the Seanad. They are answerable to the Oireachtas. They hold office for 6 years and their appointment may be renewed.

## QUESTION 2

### WHAT ARE THE OBJECTIVES OF GSOC?

#### ANSWER

The Garda Síochána Act 2005 sets out two objectives for GSOC:

- to establish a system for dealing with complaints against gardaí that is efficient, effective and fair to all concerned; and
- to promote public confidence in that system.

### QUESTION 3

#### WHERE WILL GSOC BE LOCATED?

#### ANSWER

The principal office is at 150 Upper Abbey Street, Dublin 1. It is also intended to have offices at Roscrea, Co. Tipperary and in Longford town.

### QUESTION 4

#### WHO CAN MAKE A COMPLAINT TO GSOC?

#### ANSWER

Section 83 of the Act states that any member of the public who is directly affected by, or who witnesses conduct by a garda that is alleged to constitute misbehaviour, may make a complaint.

In certain circumstances, a person may make a complaint on behalf of another with his/her consent. This may happen if the complainant is incapable of giving consent because of age or a physical or mental condition.

There are no lower age limits in regard to persons who can make a complaint. The test is whether a child or young person can give an 'intelligible account' of matters relating to the complaint.

However, it would generally be expected that complaints from, or on behalf of, a child or young person would be made by a parent, guardian or responsible adult person.

## QUESTION 5

### HOW AND WHERE DOES A PERSON MAKE A COMPLAINT TO GSOC?

#### ANSWER

A complaint may be made to any member of the Garda Síochána at any Garda station; to any member of the Garda Síochána at or above the rank of Chief Superintendent at a place other than a Garda station; to the Garda Commissioner; or directly to an officer or member of GSOC.

A complaint may be made directly to GSOC by calling in person to the Dublin office during the stated hours of public business; in writing; by fax; or by using the appropriate form available on the GSOC website [www.gardaombudsman.ie](http://www.gardaombudsman.ie)

GSOC's lo-call telephone number is 1890 600800.

## QUESTION 6

### CAN GSOC RECEIVE COMPLAINTS FROM MEMBERS OF THE GARDA SÍOCHÁNA?

#### ANSWER

No. GSOC can only receive complaints from, or on behalf of, members of the public.



## QUESTION 7

### **WILL GSOC RECEIVE ALL COMPLAINTS AGAINST MEMBERS OF THE GARDA SÍOCHÁNA?**

#### ANSWER

Yes. But a great many admissible complaints, not suitable for informal resolution or mediation, will be returned to the Garda Síochána and will be investigated by the Garda Síochána itself.

It is important that the Garda Síochána continues to hold front-line responsibility for the conduct of its members.

The investigation of a complaint by the Garda Síochána against any of its own members may, however, be supervised by GSOC.

## QUESTION 8

### **WHAT WILL HAPPEN TO COMPLAINTS MADE TO THE OUTGOING GARDA SÍOCHÁNA COMPLAINTS BOARD BUT NOT RESOLVED BEFORE THE START-UP OF GSOC ON MAY 9TH 2007?**

#### ANSWER

Some of the complaints lodged with the Garda Síochána Complaints Board before this date, and which are being processed by the Board, will automatically pass to GSOC.

However, in cases where an Investigating Officer (a member of the Garda Síochána) has already been assigned by the Board to investigate a complaint, the Garda Síochána Complaints Board processes will continue until the matter has been completed.



## QUESTION 9

### WHAT IS THE DIFFERENCE BETWEEN THE GARDA SÍOCHÁNA COMPLAINTS BOARD AND GSOC?

#### ANSWER

There are a number of important differences.

GSOC may, in certain circumstances, conduct an investigation without receipt of any complaint.

It can investigate, if it appears to it to be desirable in the public interest to do so, any matter that appears to indicate that a garda has committed an offence or behaved in a manner that would justify disciplinary proceedings. No complaint is necessary.

It can also examine any 'practice, policy or procedure' of the Garda Síochána at the request of the Minister for Justice, Equality and Law Reform (The Minister).

An important difference is that GSOC has its own staff of Designated Officers who have powers of gardaí in respect of their investigations under Section 98 of the Act.

These include powers of entry, search, arrest, detention, charge or summons of a person and the taking of samples and other evidence such as fingerprints and photographs of a person.

GSOC also has powers, in certain circumstances, to search Garda Stations and persons found there and to take possession of evidence there.



## QUESTION 10

### CAN GSOC IMPOSE PENALTIES OR SANCTIONS?

#### ANSWER

No. It has no punitive function. It can make a recommendation to the Director of Public Prosecutions for directions in an instance of alleged criminality. In a case of alleged breach of discipline, it can recommend to the Garda Commissioner that disciplinary proceedings be instituted.

## QUESTION 11

### WHAT COMPLAINTS MUST BE INVESTIGATED BY GSOC ?

#### ANSWER

If a complaint concerns the death of, or serious harm to, a person as a result of Garda operations or while in the custody or care of the Garda Síochána, GSOC must direct a Designated Officer (D/O) to examine, report and, if GSOC so decides, to conduct an investigation (Section 91 Garda Síochána Act 2005).

The Garda Commissioner shall refer to GSOC any matter that appears to him or her to indicate that the conduct of a garda may have resulted in the death of, or serious harm to, a person.

GSOC is also obliged to investigate any matter that appears to it to indicate that the conduct of a garda may have resulted in death of, or serious harm to, a person.



## QUESTION 12

### **CAN GSOC INVESTIGATE COMPLAINTS AGAINST GARDAÍ IN RESPECT OF THEIR CONDUCT WHEN OFF DUTY?**

#### ANSWER

Sometimes. A complaint against a member of the Garda Síochána is not admissible if it concerns his or her conduct while off duty – unless the alleged conduct, if proved, would be likely to bring discredit on the Garda Síochána.

But where the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person, the Act (Section 102) does not differentiate between a garda who is on duty or otherwise.

Also, Section 102 of the Act states that GSOC may investigate, if it appears desirable in the public interest to do so, any matter that appears to it to indicate that a garda may have (a) committed an offence or (b) behaved in a manner that would justify disciplinary proceedings. This Section does not differentiate between a garda who is on duty or otherwise.

## QUESTION 13

### **CAN GSOC INVESTIGATE 'HISTORIC' OR 'COLD' CASES?**

#### ANSWER

Yes. In the ordinary course, a complaint will be considered by GSOC if it is made within six months beginning on the date of the conduct in question. However, GSOC may extend that time limit if it considers that there are good reasons for so doing.

However, GSOC can, if it is of the view that it is desirable in the public interest to do so, and without receiving a complaint, investigate any matter that indicates that a garda may have committed an offence or behaved in a manner that would justify disciplinary proceedings.

This could include allegations that the conduct of a Garda may have resulted

in the death of, or serious harm to, any person.

GSOC shall also conduct such an investigation if requested by the Minister. In these situations no time limit applies.

## QUESTION 14

### **IS THERE A TIME LIMIT FOR A COMPLAINT TO BE MADE TO GSOC AGAINST A GARDA?**

#### ANSWER

Section 84 of the Act states that in order for a complaint to be admissible, it must be made within six months beginning on the date of the conduct complained about.

However, GSOC may extend this time limit if it considers that there are good reasons for so doing.

## QUESTION 15

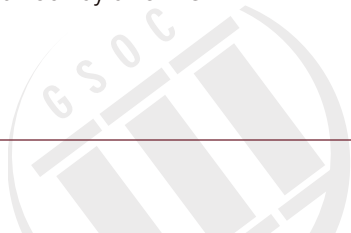
### **CAN GSOC INVESTIGATE COMPLAINTS AGAINST FORMER GARDAÍ?**

#### ANSWER

A complaint may be admissible even if the member of the Garda Síochána in question has retired or resigned after the making of the complaint.

However, if the complaint concerns conduct that could amount to a breach of discipline, GSOC shall discontinue the investigation if it considers that further investigation is not necessary or reasonably practicable, having regard to all the circumstances.

It is anticipated that former gardaí will not be subject to the Garda Disciplinary Regulations 2007. However, any allegation of criminal behaviour by a former garda will be investigated.



## QUESTION 16

### WHO WILL BE THE INVESTIGATORS AND CASE OFFICERS FOR GSOC?

#### ANSWER

GSOC investigators come from a wide variety of backgrounds. They include some former gardai. They also include Irish people who have experience with police forces outside Ireland. Nationalities represented at present include the UK, Australia, New Zealand, Malta and South Africa. Some investigative staff have had service with other Irish law-enforcement agencies such as the Competition Authority, the Health and Safety Authority, etc.

GSOC investigators will also go through a training programme designed and provided in association with the University of Portsmouth.

A number of Garda Superintendents will also work, on secondment, under the terms of the Garda Síochána Act 2005, with GSOC.

GSOC Case Officers will largely be drawn from the public service and will be appropriately trained in a programme designed and provided in association with the University of Portsmouth.

## QUESTION 17

### HOW WILL I KNOW IF THERE IS A COMPLAINT AGAINST ME?

#### ANSWER

If the complaint alleges a breach of discipline and if it is deemed inadmissible by GSOC, you will be notified in writing. If it is deemed to be admissible, you will be notified by the Garda Commissioner who will specify the nature of the complaint and the name of the complainant.

If the complaint alleges behaviour of a criminal nature, you may not necessarily be informed at an early stage in the investigation.

## QUESTION 18

### WHAT ARE MY RIGHTS AND ENTITLEMENTS?

#### ANSWER

If the complaint alleges a breach of discipline, you will be able to read your rights and entitlements in the Garda Disciplinary Regulations, expected to be issued by the Minister in 2007.

If the complaint concerns a possible criminal matter, you have exactly the same rights (including rights of access to legal advice) as any other citizen.

You may also be required to account for your actions on duty to an officer of GSOC.

## QUESTION 19

### IF GSOC WISHES TO INTERVIEW ME, WHERE WILL THIS TAKE PLACE?

#### ANSWER

GSOC will make every reasonable effort to accommodate members of the Garda Síochána whom it requires to interview. Interviews, (including interviews under caution) may take place at the member's station, home or at another Garda station, at a GSOC office in Dublin, Roscrea or Longford, or at any other suitable venue to be agreed.

However, if a member of the Garda Síochána is to be detained, this will take place at a Garda station. For the purposes of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987), a Designated Officer of GSOC will act as Member-in-Charge during any such interviews.

## QUESTION 20

### HOW WILL LOCAL RESOLUTION/MEDIATION WORK?

#### ANSWER

Section 90 of the Act enables GSOC to publish guidelines for the resolution, by mediation or other informal means, of admissible complaints against gardaí.

GSOC has consulted over a period of some months with the Garda staff associations, with Garda management and other stakeholders and the Guidelines now being set down reflect what has been learned in this process.

To obtain the full text of the Guidelines, please access the GSOC website at [www.gardaombudsman.ie](http://www.gardaombudsman.ie). Alternatively, write or e-mail GSOC's Communications and Research Team and a copy will be sent to you.

The Garda Síochána and GSOC have agreed in their Memorandum of Understanding and Protocols to utilise as fully as possible, the available processes for informal resolution and for mediation.

A local intervention may be attempted BEFORE a complaint is received by GSOC.

Persons seeking to register a concern or issue concerning Garda action or behaviour will be offered the alternative of an 'intervention' by a garda member. However, it will be made clear in every instance that if they wish to proceed with a formal complaint they may do so.

On receipt of a complaint, GSOC will determine if it is suitable for either informal resolution or mediation under the guidelines.

Complaints alleging criminal behaviour or a serious disciplinary breach cannot be dealt with by informal resolution or mediation.

In order to attempt to resolve a complaint by informal resolution or mediation, the consent of both the complainant and the garda is required.

If resolution by informal means is attempted, this may be undertaken by a Case Officer of GSOC or by a Garda member of supervisory rank. If mediation is to be attempted, a trained mediator will be nominated by GSOC.

The complainant and the garda against whom the complaint has been made must agree to the nominated mediator if the process is to go ahead. If the initially nominated mediator is not acceptable, GSOC will nominate a second and, if necessary, a third mediator.

If a garda consents to the mediation process, such consent is not to be taken as an admission of any allegation made in a complaint. This is explicitly provided for in the Act.

The mediation process is confidential to the complainant, the garda against whom the complaint has been made, the mediator and GSOC.

No answer or statement made in the course of mediation or an attempted mediation may be used in any civil or criminal proceedings, including disciplinary proceedings.

## QUESTION 21

### WHO WILL BE THE MEDIATORS?

#### ANSWER

Mediators may be a suitably trained member of GSOC's Mediation Unit or mediators drawn from a panel of suitably qualified persons. Mediators will not be garda members.



## QUESTION 22

### WHAT IF THE COMPLAINT IS RESOLVED?

#### ANSWER

If the complaint is resolved through local resolution or mediation, the following happens:

- GSOC notifies the Garda Commissioner that the matter has been resolved. The Garda Commissioner receives no further details.
- The garda member in question will receive confirmation in writing from GSOC that the matter has been resolved and that the Garda Commissioner has been so advised.
- Nothing stated in the course of the resolution can be used as evidence in any proceedings, including disciplinary proceedings.
- Garda management will expunge any and all records of the complaint against the garda member. This is explicitly provided for in the Act and reaffirmed in the Memorandum of Understanding and Protocols agreed between GSOC and the Garda Síochána.
- If a complaint is resolved under the Guidelines, the member of the Garda Síochána against whom the complaint was made shall not be discriminated against by way of dismissal, reduction, denial of opportunity for promotion or otherwise, by reason only of the complaint.

## QUESTION 23

### WHAT IF I DON'T LIKE THE WAY MEDIATION IS GOING?

#### ANSWER

Mediation and/or local resolution of complaints require the consent of both the complainant and the garda member involved. If either party withdraws its consent it may withdraw from the process at any time.

GSOC will then consider whether to proceed with the complaint through disciplinary procedures and, if deemed necessary (following initial investigation), on a criminal basis.

## QUESTION 24

### WHAT ARE THE DUTIES OF A GARDA VIS-À-VIS GSOC?

#### ANSWER

The Garda Síochána Act 2005 requires GSOC and the Garda Commissioner to agree written protocols in a number of areas, including the use of Garda stations for detention facilities by GSOC, the shared management of incidents or crime scenes and the sharing of information, including evidence.

The Act also obliges the Garda Síochána to render assistance, where required, to GSOC.

This may require members of the Garda Síochána, in certain circumstances, to take and carry out the lawful instructions of a designated GSOC officer.

Section 89 of the Act requires the Garda Commissioner to ensure that gardaí, on becoming aware of a complaint, will take measures that are lawful, necessary and expedient for the purposes of obtaining and preserving relevant evidence.

## QUESTION 25

### HOW WILL GSOC OFFICERS AND STAFF BE IDENTIFIED?

#### ANSWER

The GSOC logo and colours, which are grey and magenta, will be promulgated and will also be easily recognisable. They are displayed in this booklet. GSOC warrant cards, marked vehicles and equipment will carry the GSOC logo and colours.

GSOC officers on duty will carry their warrant cards at all times and will produce them as necessary.

GSOC is not a uniformed agency. But personnel may use suitably marked work-wear or vehicles, for example, in outdoor situations.

Authorised forms for GSOC use will be marked with the logo and colours and specimen forms will be lodged with Garda Headquarters.

## QUESTION 26

### **WHAT PART WILL GSOC PLAY IN REGARD TO THE NEW GARDA DISCIPLINARY REGULATIONS?**

#### ANSWER

GSOC will investigate alleged breaches of the regulations. It may hold hearings and it has powers of compulsion in regard to such hearings. GSOC will set out the rules governing these hearings.

If GSOC forms the view that a breach of discipline may have occurred it then so informs the Garda Commissioner with a recommendation that disciplinary processes be put in train.

The Garda Commissioner must advise GSOC of his/her response. In the event that he/she declines to put the disciplinary process in train, GSOC can ask him/her to reconsider that decision.

## QUESTION 27

### **WHAT IS THE ROLE OF GSOC IN THE CORRUPTION AND MALPRACTICE REGULATIONS 2007?**

#### ANSWER

Under these regulations, sometimes called the 'Whistleblowers' Charter', the Garda Commissioner must notify GSOC of every report received. The Garda

Commissioner must provide GSOC with any relevant information it may require except for the identity of the person who makes the report.

In the event that the Garda Commissioner decides that the report is without foundation or is misleading or vexatious he/she must set out the reasons for forming this view to GSOC.

## QUESTION 28

### **WHAT POWERS HAS GSOC TO DEAL WITH COMPLAINTS THAT ARE FALSE OR MISLEADING?**

#### ANSWER

Section 110 of the Garda Síochána Act provides for penalties by way of fine and/or imprisonment for any person who knowingly gives information that is false or misleading in relation to a complaint against a member of the Garda Síochána.

Where GSOC is of the view that such an offence may have been committed it will prepare a file for the Director of Public Prosecutions.

## QUESTION 29

### **WHAT DO I DO IF I WISH TO WORK FOR A TIME WITH GSOC?**

#### ANSWER

Section 74 of the Act provides for GSOC to enter into arrangements to engage gardaí and members of other services, whether in Ireland or elsewhere. In the case of serving gardaí, the consent of the Garda Commissioner is required.

Gardaí who serve with GSOC continue to be paid as members of the Garda Síochána. Their service is considered to be service with the Garda Síochána for purposes of pay, promotion, pension, seniority and compensation.

## QUESTION 30

### **IF I HAVE A COMPLAINT AGAINST GSOC OR ANY OF ITS STAFF WHAT RECOURSE DO I HAVE ?**

#### ANSWER

A mechanism for investigating the conduct of Designated Officers of GSOC is set out in Section 109 of the Act.

This provides for the appointment by the Chief Justice of a judge of the Supreme Court or the High Court to undertake an inquiry. A request to the Chief Justice to initiate any such inquiry is a matter for the Minister, following consultation with GSOC.

Any allegation against a GSOC member or officer in relation to their conduct in the performance of their functions should be notified through Garda channels to the nominated Assistant Commissioner of the Garda Síochána who may, in turn, notify the allegation to the GSOC Director of Administration.

Employees of GSOC will identify themselves as such to the Garda Síochána should they become the subject of any Garda investigation or become the subject of any criminal charge.



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**Garda**  
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[www.gardaombudsman.ie](http://www.gardaombudsman.ie)