

**MEMORANDUM OF UNDERSTANDING, PROTOCOLS AND AGREEMENT ON
OPERATIONAL MATTERS**

BETWEEN

THE GARDA SÍOCHÁNA OMBUDSMAN COMMISSION

and

THE GARDA SÍOCHÁNA

Memorandum

Noting the provisions of the Garda Síochána Act 2005, the establishment under that Act of the Garda Síochána Ombudsman Commission and the powers and duties of the Commission in regard to the investigation of complaints against members of the Garda Síochána.

Conscious of the obligations placed upon the Garda in respect of the Commission and of the requirement that the two bodies agree on and make certain written protocols.

Desiring to provide efficient and effective mechanisms to enable the Commission to achieve the two objectives set for it in the Garda Síochána Act 2005, which are:

- (1) To ensure operation of an efficient and effective complaints system with full fairness to all persons involved.
- (2) To promote public confidence in the process for resolving those complaints.

Both the Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána (AGS) are charged with duties that are complex and onerous in relation to each other, as set out in the Garda Síochána Act 2005.

It is recognised by both organisations that their obligations will be best discharged in a spirit of mutual co-operation. Both organisations commit themselves to the attainment of the two objectives set out in the Garda Síochána Act 2005

At all times, both Garda Síochána and GSOC personnel will be aware of and fully respectful of each others powers, duties, responsibilities and privileges as provided for by law.

Both Garda Síochána and GSOC personnel will recognise that their shared priority is to find truth, using only methods that are lawful and that are fully respectful of the human rights of each individual.

The highest ethical standards will be maintained at all times by personnel of both GSOC and the Garda Síochána in dealing with the public, with members of both organisations and with all other agencies with which they may have operational contact.

Written protocols between GSOC and the Garda Síochána are required under Section 108 of the Garda Síochána Act 2005 which state that GSOC and the Garda Commissioner shall “make arrangements...by written protocols” for:

- (a) Use of detention facilities at Garda Stations by Designated Officers of GSOC
- (b) Application of Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Stations Regulations 1987)
- (c) Handling of any investigations by GSOC that coincide with investigations by the Garda Síochána into the same matters
- (d) The sharing with each other of information including evidence of offences obtained by either GSOC or the Garda Commissioner.

These protocols are attached to this memorandum of understanding at Part 1. Further matters dealing with operational and administrative issues of joint interest are set out in Part 2.

It is recognised by both organisations that this MOU, protocols and matters outlined are not static, immutable documents. They may be reviewed and revised at any time by agreement by GSOC and AGS (levels 2 and 3 as set out in Chapter 18).

Agreed this _____ day of August 2007

Signed:

**The Honourable Mr. Justice Kevin Haugh
Chairperson
Garda Síochána Ombudsman Commission**

**Noel Conroy
Commissioner
The Garda Síochána**

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GLOSSARY OF ABBREVIATIONS

AGS or GS	- The Garda Síochána
GSOC	- Garda Síochána Ombudsman Commission
CO	- Case Officer (of GSOC)
DO	- Designated Officer (of GSOC)
IO	- Investigating Officer (may be AGS or GSOC officer)
SIO	- Senior Investigations Officer (GSOC)
SLO	- Scene Liaison Officer (Garda)
GSA	- Garda Síochána Act 2005

References throughout this document to the GSOC's Director of Investigations and Director of Administration shall be taken to refer, in the absence of either, to their nominated deputies.

And similarly

References throughout this document to the AGS's Assistant Commissioner Crime & Security and Assistant Commissioner HRM shall be taken to refer, in the absence of either, to their nominated deputies.

Part 1

Chapter 1

Protocol on the use of detention facilities (Section 108 Garda Síochána Act 2005)

1.1 Use of detention facilities at Garda Síochána stations by GSOC

The Garda Síochána will identify and agree with GSOC at least one station with video and audio recording facilities in each GS division in which GSOC will, on request, be provided with a secure detention facility and working facilities to include a suitable office space, power, heat, water and sanitation and basic working furniture where available.

In large rural divisions more than one such station shall be required. In such instances a second station will be nominated in reserve

Facilities such as parking of GSOC official vehicles and vehicles in use by GSOC personnel will be provided for where possible.

GSOC undertakes, insofar as may be practicable, that if members of the Garda Síochána are detained, their detention will be in a district other than that in which they serve. If a member in such circumstances is of the rank of chief superintendent or above, detention, insofar as may be practicable, will be in a division other than that in which he/she serves.

1.2 Interviewing of witnesses who are members of the Garda Síochána by GSOC

Where possible and expedient witness interviews will take place by prior arrangement at an agreed venue. This may be at GSOC offices where facilities are provided. Where appropriate, audio/visual recording of interviews will be arranged.

1.3 Interviewing of persons who are witnesses by An Garda Síochána in GSOC premises

In the event that the Garda Síochána requires the use of GSOC facilities in regard to the interviewing of witnesses in connection with matters under Garda Síochána jurisdiction, such facilities may be extended on the authority of the Director of Investigations.

1.4 Interview of Persons detained by An Garda Síochána

In the event that GSOC require to interview a person in detention by An Garda Síochána, AGS shall provide reasonable access that recognises GSOC's duty and functions while GSOC for its part will ensure that its requirements will not impede, obstruct or interfere with the ongoing Garda investigation.

1.5 Arrest of Suspected Persons

Persons who are suspects in any inquiry by GSOC will normally be asked to present themselves voluntarily for interview under caution.

GSOC personnel will not be trained or equipped to apply force or restraint.

In the event of a request from GSOC to the Garda Síochána for support then it will be provided as appropriate.

Requests for support will be routed from the Director of Investigations to the Assistant Commissioner Crime and Security or from a GSOC Designated Officer to the relevant Garda District Officer or

Acting District Officer

1.6 Use of Recording Equipment and Copies of Recorded Material

Garda Síochána recording equipment will ordinarily be used by GSOC personnel at interviews of persons in Garda Stations.

GSOC officers may use their own equipment either in place of Garda Síochána equipment or to supplement it.

Copies of recorded material will be made available to the interviewee and the senior GSOC officer present.

GSOC undertakes to maintain and retain any written, audio or visual records made during the course of that detention according to the requirements of the various Persons in Custody regulations.

Chapter 2

Protocol on application of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987

2.1 Role of Member in Charge

Mindful of the provisions of Section 98(2) (b) of the Garda Síochána Act 2005 GSOC and AGS recognise that a reference in Section 4 of the Criminal Justice Act 1984 to member in charge of a Garda station is to be read as a reference to a designated officer of GSOC.

Criminal Justice Act (Treatment of Persons in Custody) 1984 will operate in this context of investigations by GSOC under Section 98. An appropriately Designated Officer of GSOC (D/O) will act as Member-in- Charge.

The GSOC officer, acting as Member-in-Charge, will not discharge functions in respect of any other person or persons in custody, other than a person or persons under investigation by GSOC.

GSOC undertakes that interviews will be conducted with the fullest recognition of persons' human rights and of their rights at law.

GSOC will, where it appoints a Designated Officer to act as a Member-in-Charge, ensure that the appointee is not an officer who has been involved in the investigation.

GSOC will operate a panel of Designated Officers whom it considers suitable and qualified to act as Member-in-Charge.

Where these arrangements are invoked, it will be the responsibility of the Garda Síochána District Officer, or acting District Officer, to make necessary arrangements for facilitation and compliance.

The Gardaí present will comply with all lawful requests from a GSOC officer while he/she is acting as Member-in-Charge.

Chapter 3 Protocol on handling of investigations that coincide

3.1 Scenes Management/Shared Incidents Scenes

In any live incident where issues of safety, containment or other emergency continue, control of the scene will remain with the Garda Síochána.

The treatment of scenes of mutual interest is dealt with in Appendix 1 at the rear of this document.

A suitable document of record will be provided and will be completed by Garda Síochána scene commander and senior GSOC D/O, setting out details of such handover and other relevant details such as timing etc.

In cases where Garda Síochána and GSOC both have requirements relating to the collection or preservation of evidence, every reasonable effort will be made to ensure that both interests are met.

In order to ensure that a smooth and appropriate transfer or responsibility of command and control is achieved, Garda Síochána and GSOC operational personnel will, on arrival, fully brief their counterparts on the circumstances of the incident and any legal requirements involved. Liaison arrangements will be agreed on site.

In scenes where the primary control has passed to the GSOC, the senior Designated Officer of the GSOC (D/O) will, following briefing, take overall responsibility for the scene.

It may be necessary for Garda members to remain at the scene and to operate under the direction of the D/O. The D/O will ordinarily pass instructions to Gardaí at the scene through the most senior Garda member present who will ensure compliance with such instructions.

The Garda Síochána recognises that it may also be necessary for GSOC D/O to pass instructions directly to members of the Garda Síochána, in accordance with the powers and duties conferred on the D/O under Section 98.

Where two investigations run in parallel into events of equal seriousness primacy at the scene shall rest with the senior GSOC D/O. However both GSOC and Garda Síochána officers will at all times be cognisant of each others' rights and responsibilities and will give full co-operation in recognising those rights and responsibilities.

At outdoor scenes GSOC D/Os and other personnel will generally wear high-visibility outerwear, clearly identifying them as GSOC personnel.

At indoor scenes GSOC D/Os and other personnel will generally wear an identification tag/ warrant that will be visible at all times.

A more detailed set of agreed arrangements in regard to scenes of mutual interests has been developed and can be found at Appendix 1 This document will be regularly reviewed by appropriate personnel from GSOC and the Garda Síochána.

3.2 Section 102 (1) and the duty to refer:

Section 102(1) requires that the Garda Commissioner *shall* refer to GSOC 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 provides, at Section 82, that “conduct” includes both acts and omissions.

The death or serious harm must be the result of the conduct of a member of the Garda Síochána. Therefore:

- a) There is no obligation to refer a case of death or serious harm that occurs prior to Garda contact;
- b) Nor is there a duty to refer in a case of death or serious harm that occurs after the dead or injured person has had contact with a Garda but where such a death or injury is in no way related to the conduct of a member of the Garda Síochána.

The provision speaks of the conduct having resulted in, rather than caused, death or serious harm;

The person killed or seriously harmed may be a civilian or a Garda;

The Garda, whose conduct forms the basis of the Section 102(1) referral may be on or off duty;

The definitive interpretation of any legal provision is, ultimately, a matter solely for the courts - however, the following is the agreed position of both organisations as to the state of the law:

“Serious harm” is defined in Section 82 as follows:

- a) creates a substantial risk of death;
- b) causes serious disfigurement; or
- c) causes substantial loss or impairment of mobility of the body as a whole or of the function of any particular bodily member or organ;

This definition reflects the content of “serious harm” for the purposes of the Non Fatal Offences Against the Person Act, 1997 (the “1997 Act”).

There is established case law on the definition of serious harm for the purposes of the 1997 Act, including the Judgment of Kearns J in the *People (DPP)-v-Kirwan, Court of Criminal Appeal, 28th October 2005*.

“loss or impairment of mobility” encompasses effects of long and short duration;

“disfigurement” is defined as meaning “to spoil the appearance of” and includes scarring. The age, gender etc of the person disfigured is inconsequential. One may be disfigured on a location of the body that is usually covered by clothing;

“disfigurement” connotes an outcome rather than encompassing a consequence of short duration.

For the purposes of a prosecution under Section 4 of the Non Fatal Offences Against the Person Act, 1997 it must be established that serious harm has been caused. Therefore for the purposes of seeking a direction from the Director of Public Prosecutions and conducting a trial for a Section 4 assault, it is usual practice to wait to assess the outcome of the harm (having regard to any medical treatment given or received), rather than take a decision on the basis of the immediate effect of the injuries sustained.

However, for the purposes of Section 102(1) of the 2005 Act all that is required, to activate the Garda Commissioner’s duty to refer, is that he forms the view that the conduct of a member “may” have resulted in serious harm. Therefore the threshold of knowledge that is required to activate the duty

to refer is lower than in the context of the 1997 Act. The Garda, who is delegated by the Commissioner and who has to consider a referral under Section 102(1), makes the assessment of whether serious harm may have occurred at the time that the circumstances of the matter comes to his/her attention. One does not await the outcome of the medical assessment or intervention or to assess the quality of recovery.

The decision to refer a matter rests solely with the Garda Commissioner - GSOC does not, and cannot in law, have an involvement in that decision.

The Act requires that the Garda Commissioner must refer any matter when he forms a certain view - namely that the matter appears to him to indicate that the conduct of a member of the Garda Síochána may have resulted in death or serious harm - in other words, the duty to refer exists from the time that this view is formed.

Likewise, the decision not to refer a matter is solely for Garda Commissioner.

The duty to refer and any subsequent action of GSOC staff are, in law, two separate and distinct (though not unrelated) issues. By this we mean:

- The decision to refer is one for the Garda Commissioner;
- The Act makes no provision for a “provisional” or “courtesy” referral - either the matter is referred or it is not;
- GSOC receives Section 102(1) referrals - there is no question of the Garda Commissioner “calling in” GSOC staff. The actions of GSOC on foot of a Section 102(1) referral is prescribed by the provisions of the Act; and
- The reaction of GSOC to a Section 102(1) referral is a matter for GSOC and its investigation staff, having regard to the provisions of the Act.

Section 102(2)(a) provided that GSOC shall ensure that any matters referred to it by the Garda Commissioner under Section 102(1) are investigated - pursuant to Section 102(3) this will take the form of:

- A Section 91 examination by a GSOC Designated Officer (D/O) in the first instance;
- Followed by an investigation under Section 95 or 98 as appropriate;
- Section 93(1) empowers GSOC to discontinue such an investigation if, having regard to all the circumstances, GSOC considers that further investigation is not necessary or reasonably practicable.

Decisions by GSOC regarding:

- The duration of a Section 91 examination;
- The choice of Section 95 or 98 investigation; and
- The appropriateness / timing of a Section 93 discontinuance;

will be taken on foot of advice from the GSOC Senior D/O on the ground and having regard to the views of his/her line management.

Section 102(2) envisages the scenario where a Section 102(1) referral has not been made but matters come to the attention of GSOC (through any other source) that appear to GSOC 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. Given the mandatory nature of the duty to refer in Section 102(1), subsection (2) is a sweep up” provision for matters that have not been the basis of a Section 102(1) referral, rather than a substitute.

3.3 Procedures for Emergency/Out of Hours Response from GSOC

GSOC shall at all times provide a round-the-clock response service. GSOC undertakes to have Designated Officers (D/Os) on site within the State as soon as practicable where appropriate.

When an incident occurs that requires immediate and/or ‘out of hours’ response from the GSOC, the following procedures will operate.

The Commissioner of the Garda Síochána will put in place arrangements whereby the senior Garda Síochána member who is present at, or who is notified of, an incident that requires GSOC response shall have the duty of notifying the District Officer or acting District Officer. He/she will cause the Duty Officer of GSOC to be notified.

GSOC undertakes to keep Garda Command and Control DMR notified at all times of names of the GSOC Duty Officer (in accordance with the procedures set out in Appendix 4).

The senior GSOC D/O responding to the incident will, as soon as practicable, establish contact by telephone with the senior Garda member on the scene. He/she will make whatever arrangements may appear necessary with the senior Garda member, pending the arrival of GSOC at the scene. The senior Garda member will become the GS/GSOC Scene Liaison Officer unless another officer is so designated and notified to GSOC by Garda management.

These arrangements shall include: -

- Preservation of the scene
- Preservation of potential exhibits or evidence, including vehicles, firearms, uniforms etc
- Arranging for initial interviews/Reports under Section 39 Garda Síochána Act 2005 with Garda members involved.

The following may be requested: -

- Arranging contact with the appropriate technical/forensic services

3.4 Technical and Forensic Services

In circumstances in which the GSOC requires the assistance of Garda technical, forensic or scenes-of-crime services, the following arrangements (in line with the details set out in Appendix 2) shall apply.

The Garda Síochána recognises and is conscious of its obligation under the Garda Síochána Act 2005, when requested, to furnish assistance to GSOC.

Requests for such assistance shall be made by the GSOC D/O through the Garda District Officer, Acting District Officer or senior member at the relevant, Garda Command and Control.

At the location of an incident under GSOC scene control, Garda technical and forensic staff, where deployed, will work subject to the requirements of the senior GSOC D/O.

GSOC undertakes that instructions on the scene will ordinarily be communicated through the senior Garda member present who will be the GS/GSOC Scene Liaison Officer. However, if necessary, instructions will be given directly by the GSOC officer.

Garda forensic and technical staff will be responsible for maintaining the chain of evidence and for the preservation of exhibits up to such point as these may be taken over by GSOC officers.

Please see Appendix 4 for further details.

In circumstances where GSOC employs the services of forensic and/or technical personnel who have been designated, under Section 74 to investigate a matter under Section 98 of the Garda Síochána Act 2005, (i.e. specialists who are not members of the Garda Síochána) the Garda Síochána will extend similar co-operation to such personnel.

3.5 Obtaining and Preserving Evidence in relation to complaints

Section 89 refers: Responsibility for the taking of such measures as are necessary or expedient for the purpose of obtaining and preserving evidence relating to the conduct that is the subject of the complaint shall rest with the Garda District Officer, acting District Officer or Garda member nominated by him/her. GSOC shall subsequently take possession of exhibits as required.

The GSOC Designated Officer (D/O) shall specify (by telephone or verbally and confirm in writing) any records, equipment, vehicles, etc., that he/she believes may constitute such evidence. However a failure to so specify shall not release the Garda in question from his/her responsibility to obtain and preserve evidence, in accordance with Section 89.

Transfer of physical evidence and exhibits to GSOC D/Os, where this occurs, shall be recorded and timed and signed for by both GSOC and Garda, in accordance with the rules relating to continuity of evidence and based on the processes set out in Appendix 2 on the Handling and Submission of Exhibits of Potential Mutual Interest.

3.6 Evidence/Exhibits required in common between GSOC and AGS

In the event of an exhibit or any form of evidence being required in parallel cases under investigation by AGS and GSOC, the following arrangements shall apply.

Exhibits relating to GSOC investigations shall be so labeled and suitable labels will be supplied to the Garda Síochána, if necessary, by GSOC at incident scene.

However, in cases where GSOC has jurisdiction, a D/O may require the Garda Síochána to give possession of evidence/ exhibits to GSOC.

In such event, suitable arrangements will be made to record and verify the transfer.

A service level agreement has been drawn up and put in place between GSOC and the Forensic Science Laboratory.

Chapter 4

Protocol on the sharing of information including evidence.

4.1 Sharing Information /Access to Garda Records.

The Garda Síochána recognises the requirement of GSOC to access the personal records of Gardai who may be part of an investigation or inquiry under the provisions of the 2005 Garda Síochána Act.

Requests for access to Garda HR records from GSOC Designated Officers (D/Os) or Case Officers (C/Os) shall be made through the office of the Assistant Commissioner HRM.

Requests from GSOC for access to policies, action plans or operational orders that may be relevant to an inquiry by GSOC shall be made through Assistant Commissioner Crime and Security (ACCS) and notified to the office of the nominated Assistant Commissioner.

Requests from GSOC for access to criminal records or crime files that may be relevant to an inquiry shall be made through Assistant Commissioner Crime and Security (ACCS).

GSOC D/Os and C/Os shall be responsible for the safe custody, confidentiality and return of any such material within agreed time-frames.

GSOC may make requests for access to Garda HR records or criminal records or crime files that are considered necessary in the investigation of an alleged crime and that may be required urgently. In such cases requests for criminal records or crime files shall be made to the office of the Assistant Commissioner Crime And Security (ACCS) and request for Garda HR records shall be made to the Assistant Commissioner HRM (ACHRM).

The extent of access to high-level criminal intelligence and/or data relating to State security will be determined, on a case-by-case basis by agreement between the Garda Commissioner or his deputy and the Chairman or a member of the Garda Síochána Ombudsman Commission or between the GSOC's Director of Investigations and the Assistant Commissioner Crime and Security. All documentation that is reasonably necessary for the exercise by GSOC of its functions will be provided and having regard to the provision of Sections 126.

The processes have been set down in Appendix 3, the "Information Sharing Protocol".

4.2 Access to PULSE and other AGS information systems

The processes agreeing access to PULSE and other Garda information systems are set down in Appendix 3 to these protocols, the "Information Sharing Protocol".

4.3 Sensitive or Security-related Information

Where access to any part of PULSE or any other GS information system may be considered to be sensitive or security related, arrangements will be made to have it viewed or accessed under joint Garda/GSOC presence at Garda HQ or such other agreed location as circumstances may require. Such arrangements will be agreed at Levels 2 or 3 (see Chapter 18 of this document).

4.4 Garda Síochána access to GSOC information

In circumstances in which An Garda Síochána has reason to believe that GSOC has information in relation to criminal or security matters that fall within the remit of the Garda Síochána, requests for access to such information shall be made, in the first instance, from the Assistant Commissioner Crime and Security to the Director of Investigations at GSOC.

Part Two
Chapter 5
Administrative /Operational Matters

Referral of Complaints

5.1 Referral of Complaints from the Garda Síochána to GSOC

Sections 85 AGS Act 2005 refers: Complaints received by the Garda Síochána against a member that do not require emergency response shall be forwarded to the Director of Administration at GSOC.

Complaints made at a Garda station shall be forwarded by the Sergeant in Charge or other member by registered post, by fax or by e-mail as appropriate. Copies will go to District and Divisional offices and to HRM, unless otherwise restricted on the direction of the Garda Commissioner.

Complaints that require an emergency response shall be notified immediately by telephone, from the District Officer or acting inspector to the Duty Officer GSOC (details to be provided). Full details of the complaint will be forwarded in writing to the Director of Administration at GSOC as soon as practicable.

5.2 Notification of Complaints from the GSOC to Commissioner of the Garda Síochána.

Section 86 GS Act refers: Notification from GSOC to the Commissioner Garda Síochána, of complaints that it has received and which do not require an emergency response, shall be made through the Assistant Commissioner HRM. Notification of complaints received directly by GSOC and that do require an emergency response from GSOC shall be DMR Garda Command and Control and to the relevant District Officer or Acting District Officer and copied to nominated Assistant Commissioner in writing as soon as practicable.

5.3 Ongoing notification on progress of complaints

Sections 87/88 refer: Notification by GSOC to the Commissioner Garda Síochána, of admission, non-admission or general progress of complaints shall be through Assistant Commissioner HRM and will be furnished in writing by the Director of Administration.

5.4 Discontinuation of investigation by GSOC/Referral of complaint to Commissioner GS.

Sections 92/94 refer: Communications from GSOC to the Commissioner Garda Síochána here shall be through Assistant Commissioner HRM:

Communications from Garda Commissioner to GSOC shall be through Director of Administration GSOC.

* *'In writing' here may be taken to mean hard-copy paper, fax or e-mail.*

5.5 Procedures for investigation of complaints that do not involve allegations of an offence

Sections 95/96/97 refer: Deals with GSOC reporting to the Garda Commissioner and making recommendations to him after it has inquired into a complaint. It also entitles GSOC to know the outcome of any such recommendation. Communications in this context will be between Director of Administration GSOC on the one hand and Assistant Commissioner HRM.

5.6 Procedures and Arrangements for 'Supervised Investigations'

The procedures to deal with the agreements made hereunder are set out at Appendix 5 to these protocols.

Sections 92 and 94 refer: Under section 92, GSOC may refer complaints to the Commissioner Garda Síochána and he shall appoint a member of An Garda Síochána to investigate the complaint under

Section 94.

GSOC's prior approval for the appointment of the investigating officer may be required. (Section 94(2) Garda Síochána Act 2005)

GSOC may supervise any such investigation. Such supervision is defined in Section 94 (5) and may involve the presence of a Commission D/C or C/C in the course of the investigation. GSOC may specify the time within which the appointed Garda furnishes his/her interim report and final report to the Commission.

Referrals of complaints from GSOC to the Garda Commissioner under these sections will be from the office of the Director of Administration to the office of the nominated Assistant Commissioner.

The Commissioner of An Garda Síochána will identify a number of Garda members (not less than two in relation to each complaint referred under this Section) from amongst whom investigating officers will be drawn. The suitability of such officers in relation to the complaint in hand will be determined by the provisions of Section 94. 1 (b) which requires that they have not been involved in any capacity in relation to the case in question.

5.7 Complaints against Members of AGS due to retire/discontinuation of complaints

The fact that a Garda who is the subject of a complaint may no longer be a member or who retires or resigns, is not a bar to GSOC taking action. In the case of members of the Garda Síochána who have retired or are due to retire imminently and who are the subject of a complaint against discipline or of a criminal offence, the relevant provisions of The Garda Síochána Act 2005 i.e. Section 87 shall apply. The provision to discontinue an investigation, as provided for in Section 93 1 (c) of the Act may also be applicable here.

Chapter 6

Reporting of Corruption and Malpractice

Regulations/Drawing attention to suspected criminal activity

6.1 Members of AGS reporting corruption or malpractice ('Whistleblower provisions)

Section 124 GS Act 2005 refers In the regulations promulgated under this Section, it is provided that the Commissioner of the Garda Síochána will as soon as practicable notify GSOC of each report received.

The Commissioner will advise GSOC of his proposed response and any further information it may request in relation to the matter.

If the Garda Commissioner believes a report to be false, frivolous or vexatious or not made in good faith, he shall explain in his notification the basis for such belief. GSOC is not authorised to investigate complaints from members of the Garda Síochána.

Note: Minister is still considering the Charter to be published in regard to these matters. At this writing, the above is the position of GSOC.

6.2 Drawing Attention of Commissioner AGS to suspected criminal activity.

If the GSOC forms the view *prima facie* that a Garda may be guilty of a criminal offence, it may draw this to the attention of the Garda Commissioner before it has advanced its investigation to the point at which any criminal charges are preferred.

Any such communication will be made at Commissioner level within GSOC and will be communicated to the Commissioner of the Garda Síochána.

The decision whether to act on such information is that of the Commissioner AGS and the Commissioner will notify GSOC of any action taken.

Chapter 7

Investigations by GSOC 'in the public interest' without receipt of a complaint

7.1 Section 102 (4) refers;

This enables the Commission to investigate any matter, "in the public interest" without receiving a complaint, that may seem to indicate that a GS member may have committed an offence or behaved in a manner that would justify disciplinary proceedings.

This Section (Subsection 5) also enables the Minister to request a GSOC investigation "in the public interest."

GSOC undertakes to notify the Commissioner of the Garda Síochána, as soon as practicable, of any such investigation, the lead GSOC personnel assigned and the initial outline of how the investigation is being undertaken.

Such notification will issue in writing from the Chairman or a Commissioner of the GSOC and will be sent to the Commissioner or the Deputy Commissioner acting as Commissioner of the Garda Síochána.

7.2 Section 103

Requires GSOC to keep relevant parties informed of the progress and results of any investigation under this section. Responsibility for this will rest with the Chairman or a Commissioner of the GSOC and, in relation to the Garda Síochána, information will be sent to the Commissioner or the Deputy Commissioner acting as Commissioner of the Garda Síochána.

Chapter 8

Investigations by GSOC into ‘practices, policy or procedure of the Garda Síochána’

8.1 Section 106 of the Act refers:

Notification to the Garda Commissioner of a request by the Minister for any such investigation by GSOC is the responsibility of the Minister for Justice, Equality and Law Reform.

GSOC undertakes to advise the Garda Commissioner, as soon as practicable, of any such investigation, the lead GSOC personnel to be assigned and the initial outline of how the investigation is being undertaken.

Such notification will issue in writing from the Chairman or a Commissioner of the GSOC and will be sent to the Commissioner or the Deputy Commissioner acting as Commissioner of the Garda Síochána

8.2 Section 107 refers:

States the Garda Commissioner shall supply GSOC with “such information and documents” as GSOC may require for this purpose.

With the Minister’s consent, the Commissioner’s duty to supply these things will not apply where disclosure would prejudice a criminal investigation or the security of the State or jeopardise the safety of a person.

GSOC undertakes that any personnel involved with the examination or use or having access to sensitive material in such investigation shall be advanced security vetted on a basis to be agreed between GSOC and the Garda Commissioner

A copy of any report by GSOC completed under this Section will be provided to the Commissioner of Garda Síochána or Deputy by the Chairman or a member of the GSOC.

Chapter 9

Search of Garda Stations

9.1

It is accepted by the Garda Síochána and GSOC that in the event of it being necessary to search a Garda station or premises in which Gardaí are stationed or any part thereof, giving advance notice of such search to Gardaí at that station could be to defeat the purpose of the exercise.

Notification of any such search will be communicated to the Commissioner of the Garda Síochána at the earliest practicable time.

The required authorisation for a search of a Garda station or premises must be signed by a Commissioner of GSOC.

9.2

When the GSOC wishes to search a station, or part of a station, that has been designated as restricted for reasons of State security (Section 126 refers) such intention shall be communicated to the Garda Commissioner by a member of the Commission and confirmed subsequently in writing.

If the Garda Commissioner objects to the proposed search he will so inform a member of the Commission and will confirm this subsequently in writing.

In the ordinary course, GSOC will work in liaison with the relevant District Officer in a station search. However in some cases this may not be appropriate. GSOC undertakes to advise the District Officer as soon as may be practicable that such search is planned or is in progress.

Chapter 10

Media and Communications

10.1

GSOC and Garda Síochána recognise the need for close liaison and co-ordination between their respective media/communications departments.

Contact on matters of mutual interest will ordinarily be effected through the GSOC's Head of Communications or the GSOC Communications Officer, on the one hand, and the Superintendent, Garda Press Office, or his/her acting deputy, on the other.

GSOC and Garda Síochána undertake to furnish each other in advance, where possible, with any material, statements, press-releases or other items that impinge upon each other's area of jurisdiction.

GSOC and Garda Síochána undertake to respect, in their media and communications policy, the division of jurisdiction that applies in shared scene and incident management (above).

The priorities in determining the release of information to news media and/or the general public will be as follows:

- safety and health of individuals
- integrity of legal processes
- operational needs
- public reassurance

10.2

It is recognised that GSOC has a duty to promote public confidence and that this must guide its approach to communications with the media. GSOC and the Garda Síochána will devise and set out agreed guidelines regarding timing and content of material released to the media and the general public.

Chapter 11 Identification and Recognition

11. 1 Section 73 of GS Act refers:

The Garda Síochána will be conscious of and will recognise the warrant cards, seal and other legal documents issued by the GSOC. The GSOC will ensure that these do not resemble Garda documents or issue. GSOC working clothes, vehicles etc. will be distinctively different from AGS equipment/clothing. AGS and GSOC officers will mutually respect preserved locations etc.

The GSOC will at all times keep the GS supplied with a full list of its designated officers D/Os, C/Os and their grades/authority levels within GSOC and with relevant contact telephone numbers. The GSOC will at all times keep The Garda Síochána (Commissioner's Office) informed of membership of the Commission (Commissioners) with relevant contact details.

The Garda Síochána will keep GSOC apprised of regional, divisional and district officers and acting district officers, as well as senior officers of specialised investigation units, with relevant contact details.

Chapter 12 Authority for GSOC officers

12. 1 Section 98 refers:

The Garda Síochána will be conscious of the lawful authority of GSOC Designated Officers, involved in the investigation into an alleged offence to:

1. Seize and be in possession of firearms, ammunition.
2. Seize and be in possession of controlled substances (drugs).
3. Seize and be in possession of Garda vehicles, uniforms and any other material or equipment that may constitute evidence or be required for other lawful purposes by GSOC (e.g. identification parades)

Any items taken into possession from Gardai by GSOC D/Os shall be receipted in writing to the senior GS/GSOC Liaison Garda member present.

GSOC undertakes that identified D/Os shall be trained in the safe and proper handling of firearms, ammunition and controlled substances.

GSOC undertakes that items such as firearms, ammunition and controlled substances taken into the possession of its D/Os shall be securely stored in a location designated by the Commission for the purpose as soon as is practicable.

Suitable, safe arrangements for the disposal of controlled drugs, firearms or ammunition, where required, will be made by GSOC, under the supervision of the Director of Investigations, at the conclusion of any relevant investigation. The Director of Investigations will make such arrangements in agreement with the nominated Assistant Commissioner AGS.

The Garda Síochána will be mindful of the entitlement of official GSOC vehicles and of officers and members of GSOC, designated under Section 98, while on duty, to exemptions and privileges under Section 27 and any other provisions of the Road Traffic Acts.

GSOC undertakes that any such exemptions or privileges will not be applied by officers or members other than in the course of GSOC business and under the general direction of the Director of Investigations or a Commissioner.

The Garda Síochána will be mindful of the duty and the authority of GSOC, in certain circumstances, to take scene command at incidents under investigation.

GSOC undertakes that as soon as practicable, the drivers of the official vehicles will be appropriately trained, qualified and licensed for relevant purposes.

Chapter 13

Members of Garda Síochána Serving with GSOC

13.1 Section 74 of Garda Síochána Act 2005 refers:

The Commissioner of the Garda Síochána will arrange for a circular to be issued annually advising members of the force of the opportunity of applying to be considered for service with GSOC.

The Commissioner of the Garda Síochána will put in place arrangements for a panel to be drawn up, listing members who have applied to be considered for service with GSOC. This panel will be updated at regular intervals and notified to GSOC, Director of Administration.

The Commissioner of the Garda Síochána will remain responsible for pay, pension, promotion and compensation issues in respect of these personnel. GSOC may however provide special allowances or other incentives in certain cases.

Any requirement of written assessment of a member's performance whilst on secondment will be provided by the Director of Investigations or The Director of Administration on the basis of a process agreed with the Garda Commissioner.

Secondments will normally be for a minimum period of one month. No single period of secondment will normally exceed 3 years.

Chapter 14

Role and Functions of Ombudsman Commissioners

14.1 Section 98 refers:

The conferring on GSOC designated officers (D/Os) of 'powers, immunities, privileges and duties' of a Garda is reserved to GSOC.

Officers may be so designated by GSOC on an ongoing basis or for a specified period of time or for the discharge of a specific function.

The Commission may also delegate any or all of its powers to any of its officers, with the exceptions of those powers held under Sections 99 and 108.

The Commission's authority in these matters may be exercised by any one of its three members.

Where Commissioners may be present at the scenes of investigations or other incidents they will show or carry suitable identification at all times.

Chapter 15

Resolution by Mediation or other informal means.

15. 1 Section 90 of the Garda Síochána Act 2005 refers.

This section provides that the GSOC may issue guidelines for the resolution by mediation or other informal means of certain admissible complaints.

The GSOC and the Garda Síochána agree on the desirability, wherever possible, of resolving complaints through these means and each organisation commits itself to pursuing all reasonable measures to make this effective.

The GSOC and Garda Síochána will put in place procedures to communicate fully the nature and purpose of the resolution scheme.

The issuing of relevant guidelines is a matter for GSOC. However GSOC undertakes to ensure that such guidelines meet the reasonable requirements of the Garda Commissioner, having regard to his responsibilities to maintain discipline and standards within the Garda Síochána.

The GSOC undertakes to co-operate and assist in the operation of effective systems for the resolution of concerns and grievances by members of the public that may fall short of the formal complaints process.

The Garda Síochána also undertakes to co-operate and assist in the creation and operation of such systems for the resolution of concerns and grievances by members of the public that may fall short of the formal complaints process.

The Garda Síochána undertakes to put in place effective measures to ensure that details of complaints resolved under these headings are expunged, as required, from the records.

15. 2

Section 90 of the Act provides for the review of guidelines by the GSOC as required. GSOC undertakes to engage in consultation with the Garda Síochána in any such review.

Chapter 16 False Complaints

16. 1 Section 110 refers:

When a Designated Officer or a Case Officer of GSOC forms the view that a person has provided information that he/she knows to be false or misleading, in relation to a complaint, the D/O or C/O will provide all relevant information to the Director of Investigations.

If the Director of Investigations is satisfied *prima facie* that an offence has been committed, he/she will so advise the Commissioners as soon as practicable.

The investigators' report will be considered at Commissioner level at GSOC where a decision will be taken whether to refer the file to the Director of Public Prosecutions. Section 110 (2) states that the DPP's consent is necessary to institute a prosecution in such a case.

16. 2

If information comes into the possession of a member of the Garda Síochána, leading them to form the view that an offence has been committed under this section, such information will be communicated through the office of the nominated Assistant Commissioner to the office of the Director of Investigations at GSOC.

16. 3

If a member of the Garda Síochána forms the view that a complainant is committing or may have committed an offence under this section, he/she shall not warn, advise or otherwise intimate to the complainant that he/she has formed this view.

Chapter 17 Complaints and Allegations against GSOC

17. 1 Section 109, Garda Síochána Act 2005 refers:

The mechanism for investigating the conduct of a Designated Officer in regard to the performance of his/her functions is set out in Section 109.

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, after consultation with the Commission.

GSOC undertakes to draw up a code of conduct and ethics for its staff and this will be made available to Garda Headquarters (through the office of the nominated Assistant Commissioner.)

Alleged breaches of this code by GSOC staff should be notified to the Director of Administration at GSOC by Assistant Commissioner for appropriate action.

In the case of any employee of GSOC becoming a suspect in any Garda investigation into a criminal matter, or being the subject of any criminal charge, the fact will be notified as soon as practicable to the GSOC at the level of Commissioner or Director of Administration.

Chapter 18 Review/Resolution/Appeal

18.1

In the event of disagreement between GSOC and GS over any aspect of these protocols or appendices, three levels of appeal/resolution will operate:

1. Level One: Deputy Director of Investigations/Senior Investigations Officer (SIO) and Chief Superintendent/Superintendent at operational level.
2. Level Two: Director of Investigations or Acting Deputy/Director of Administration and Assistant Commissioner or acting deputy.
3. Level Three: Garda Síochána Ombudsman Commissioner and Commissioner Garda Síochána or Deputy.

-ends-

Appendix 1

Protocol for the Handling of Shared Scenes by the Garda Síochána (AGS) and the Garda Síochána Ombudsman Commission (GSOC)

General Principles of Intent: -

The primary overriding principle in the management and examination of scenes of interest to both AGS and GSOC is to ensure that a professional and thorough examination of the scene takes place allowing for the forensic priorities of both organisations to be addressed.

Process:

Primary Control of the Scene

1. Where, following an incident, GSOC have functional interest in a scene, the Garda Síochána SIO will ensure that primary control of the scene, in whole or in part as required (and in accordance with the principles set out in this document), is passed to the GSOC SIO as soon as is practicable.
2. Where, following an incident, there is a scene of interest to both AGS and GSOC, the SIO from GSOC and the SIO from AGS will, as soon as is reasonably practicable, discuss the incident and agree primary control of the scene.
3. As a general rule primary control of the scene will lie with the organisation which is investigating the more serious potential offence.
4. Due to the obligations arising out of Articles 2 and 3 of the Human Rights Act and from Section 67 of the Garda Síochána Act 2005 where both organisations are investigating offences of equal seriousness, the primary control will rest with the GSOC SIO.
5. In some exceptional circumstances other unforeseen factors will influence the decision as to where primary control of the scene lies. On such occasions these circumstances will be taken into account, and documented, by the SIOs of both organisations. For example, in any 'live' incident where issues of safety, containment, or other emergency continue, control of the scene will remain with the Garda Síochána.
6. In the unlikely event that primary control of the scene cannot be agreed by the SIOs from both organisations, they will brief their senior officers and agreement will be sought at a senior level.
7. All decisions regarding primary control of the scene will be fully documented by both SIOs.

Forensic Management Team

1. As soon as possible a Forensic Management Team for the incident will convene.
2. This meeting will include the GSOC SIO, the AGS SIO, the Crime Scene Manager (if appointed), the Primary Forensic Scientist (if present) and any other expert assistance that

may be required.

3. The purpose of this meeting will be to identify and document a forensic strategy that outlines the requirements of both GSOC and AGS and ensures that the scene is examined in such a way that fully reflects both interests.
4. Every effort will be made by both organisations to ensure that the collection and preservation of evidence of interest takes place in a professional and thorough manner and that no organisation acts to the exclusion of the other or to the detriment of that organisation's investigative strategies.
5. Any conflict between the interests of GSOC and AGS should be negotiated by the SIOs with the full expert advice of the Crime Scene Manager and any other experts available. If agreement cannot be reached the matter should be referred to senior officers.
6. The Forensic Strategy will be documented and all decisions made in relation to the examination of the scene will be recorded.
7. Once the examination of the scene has been completed the Forensic Management Team should meet as soon as is practicable and agree a strategy for the submission and examination of the exhibits.
8. The Forensic Management Team should ensure effective liaison, on any issues arising out of exhibit handling and examination, continues throughout the length of the investigation.

Appendix 2

Protocol for the Handling and Submission of Exhibits of Potential Mutual Interest by the Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána (AGS)

General Principles of Intent:

Both GSOC and AGS recognise the overriding principle requiring the lawful preservation of all available evidence in a manner which promotes the integrity of exhibits and works toward the professional presentation of evidence admissible in a court of law.

Exhibits:

1. Following an incident where there are scenes of interest to both GSOC and AGS the respective SIOs will meet and agree an Exhibits Strategy. This will reflect the principles outlined in the Protocol for the Handling of Shared Scenes.
2. Both organisations will appoint an Exhibits Officer for the incident.
3. The Exhibits Officer with the primary control of the scene will take responsibility for the control of all the exhibits seized from the scene and will be responsible for the proper transit and secure storage of the exhibits prior to submission and following examination at the Technical Bureau, the Forensic Science Laboratory or other appropriate forensic agency.
4. The Exhibits Officers will identify and document exhibits of common interest to both GSOC and AGS or of sole interest to either one of the organizations.
5. If an exhibit is required, for example for use in an interview, by the organisation which does not have primary organisation control of the scene, the Exhibits Officers for both organisations will facilitate access to the exhibits.
6. Both organisations will provide documentation in the form of receipts and continuity statements where required by the other organisation.
7. Both organisations will store exhibits in such a manner that will create an effective chain of continuity for the exhibits.
8. The organisation with primary control of the exhibit will be responsible for the safe custody, destruction, disposal or return of the exhibit following conclusion of all court proceedings or the conclusion of the investigation. No item of identified common interest will be disposed of without consultation between the organisations.

Appendix 3

Information Sharing Protocol

Purpose of the Protocol

The purpose of this agreement is to facilitate the disclosure of 'information' between the Garda Síochána and the Garda Síochána Ombudsman Commission.

'Information' is defined as 'all information', including sensitive information, belonging to, held by or in the possession of either the Garda Síochána Ombudsman Commission or the Garda Síochána.

Any reference to the Garda Síochána Assistant Commissioner or GSOC Commissioner, GSOC Director of Investigation or GSOC Intelligence Manager will also refer to the delegated authority.

Supply of Information

Requirements for 'information' will be made in writing to the Assistant Commissioner Crime and Security or the Assistant Commissioner Human Resources, depending on the information sought. The written request will be accompanied by an indication of the circumstances giving rise to the investigation leading to the application.

Requirements for 'information' will relate to the primary record and not to an edited redacted version. Should the Garda Síochána seek to withhold any information sought on the grounds of State security, the Garda Síochána will advise the Intelligence Manager of the Garda Síochána Ombudsman Commission of that concern and detail the premise upon which the Garda Síochána intend to rely for such suppression.

The Garda Síochána will establish a 'Central Point of Contact' for members of the Garda Síochána Ombudsman Commission Intelligence Unit.

The Garda Síochána 'Central Point of Contact' will receive requests for information made by the Garda Síochána Ombudsman Commission, via the relevant Assistant Commissioner. The Garda Síochána 'Central Point of Contact' will process the request and ensure the information supplied is accurate and, as far as possible, meets the requirements of the Garda Síochána Ombudsman Commission.

The 'information' requested by the Garda Síochána Ombudsman Commission will be made available as soon as practicable and in any event the information will be provided within 30 days. If in exceptional circumstances the information cannot be supplied within 30 days the Garda Síochána Ombudsman Commission Intelligence Manager will be advised, in writing, of the reasons for the delay and the expected time frame for the availability of the information.

In urgent cases where there is an operational necessity for information, the Garda Síochána Ombudsman Commission Intelligence Manager will make direct contact with the Garda Síochána 'Central Point of Contact'. The Garda Síochána 'Central Point of Contact' will provide a 24/7 emergency contact number to facilitate the access to information out of office hours.

The Garda Síochána Ombudsman Commission recognises that any information or documentation received from the Garda Síochána has been provided on a confidential basis and for the purpose of the exercise of its functions pursuant to Parts 3 and 4 of the Garda Síochána Act, 2005.

The Garda Síochána Ombudsman Commission undertakes not to use or release any information or documentation so received for any other purpose unless it is required to do so on foot of a court order. In circumstances where information is to be released in accordance with a court order, the Garda Síochána Ombudsman Commission will advise the Garda Síochána of the circumstances and, as far as reasonably practical, give the Garda Síochána sufficient time to prepare objections to the release of such information.

In the event that access to such information or documentation is sought by means of a court application the Garda Síochána Ombudsman Commission will endeavour to explain to the court why it is resisting the release of that information or documentation. The Garda Síochána Ombudsman Commission will also notify the Garda Assistant Commissioner Crime and Security of the court application.

In circumstances in which the Garda Síochána has reason to believe that the Garda Síochána Ombudsman Commission has information in relation to criminal or security matters that fall within the remit of the Garda Síochána, requests for access to such information shall be made, in the first instance, from the Assistant Commissioner Crime and Security to the Director of Investigations at GSOC.

Information Exchange

The Garda Síochána and the Garda Síochána Ombudsman Commission agree;
Ethical standards will be maintained

- A mechanism will exist within both organisations whereby the exchange and disclosure of information can be controlled
- Appropriate guidance is provided for employees involved in the agreed process of the requesting and handling of 'information'.

Requirements by the Garda Síochána Ombudsman Commission to access information relating to the Garda Síochána Human Resource (HR) records will be made in writing to the Assistant Commissioner Human Resource Management (HRM).

Requirements by the Garda Síochána Ombudsman Commission to access information relating to policies, action plans or operational orders will be made in writing to the Assistant Commissioner Crime and Security.

Requirements by the Garda Síochána Ombudsman Commission to access criminal records, crime files or sensitive information will be made in writing to the Assistant Commissioner Crime and Security.

PULSE: -

Members of the Garda Síochána Ombudsman Commission may require direct access to PULSE system operated by the Garda Síochána. Such access will be afforded to the Garda Superintendents attached to the Garda Síochána Ombudsman Commission. In circumstances of urgency where direct access to PULSE is required out of hours, members of the Garda Síochána Ombudsman Commission will make direct contact with the Superintendent of the District in which they are operating to facilitate such supervised access.

Normally access to PULSE refers to the highest level of access and not to a lower level of access where relevant information may not be immediately identified.

Members of the Garda Síochána Ombudsman Commission may require access to high level criminal intelligence, sensitive information or intelligence relating to State Security. In such circumstances the extent of access will be determined on a case by case basis, in the first instance, by agreement between the Assistant Commissioner Crime and Security and the Director of Investigations at GSOC. If agreement cannot be reached the determination will be made by recourse to the agreed appeals mechanism described at Chapter 18 of the Protocols.

The Garda Síochána will provide suitable accommodation to facilitate the viewing of information required by the Garda Síochána Ombudsman Commission.

It may be necessary for the Garda Síochána Ombudsman Commission to remove 'information' if viewing onsite is impractical or where the Garda Síochána Ombudsman Commission requires physical possession of the information. In such cases the Garda Síochána Ombudsman Commission will take the 'information' against a receipt with an agreed return date, unless GSOC considers that the 'information' or part of the 'information' should be retained as evidence.

Where issues of relevance arise, the 'determination of relevance' will be made by the requesting agency following discussion between the Garda Síochána Ombudsman Commission Intelligence Manager and the Garda Síochána appointed contact person.

Data Protection and Freedom of Information

If one party to this agreement receives a Data Protection or Freedom of Information request regarding 'information' that has originated from the other party, the receiving party will contact the originator to determine if the originator wishes to claim an exemption under the provisions of either Act.

Security

Members of the Garda Síochána Ombudsman Commission are mindful of their responsibilities under sections 81, 98, 103 and 108 of the Garda Síochána Act, 2005.

The Garda Síochána Ombudsman Commission will be responsible for the safe transportation and handling of 'information' taken from the Garda Síochána.

The Garda Síochána Ombudsman Commission will ensure that there are auditable policies and procedures in place to regulate the dissemination of 'information', ensuring it is correctly managed. A record will be kept as to who has had access to the 'information' and the reason.

The Garda Síochána Ombudsman Commission will ensure the appropriate processes are in place to prevent;

- Accidental or deliberate destruction of the information
- Accidental or deliberate modification of the information
- Unauthorised access to the information or any computer system containing the information
- Misuse of the content of the information

Members of the Garda Síochána Ombudsman Commission Intelligence Unit will be security cleared.

Communication

There shall be regular meetings between the nominated the Garda Síochána intelligence personnel and GSOC Intelligence Managers to ensure the working relationship as described in this protocol is being conducted in an effective and efficient manner.

This protocol should be reviewed regularly.

Appendix 4

Garda Síochána Ombudsman Commission (GSOC) & the Garda Síochána (AGS) Call Out Policy for Urgent Incidents - MOU Point 3.3

General Principles of Intent: -

In accordance with the principles set out in paragraph 3.3 of the MoU between GSOC and the Garda Síochána, both parties agree the following operational procedures will apply to the arrangements for the attendance of GSOC personnel at urgent incidents.

GSOC commits that: -

1. It will maintain a call out team of investigators to respond to urgent incidents.
2. The team will be directed by, at a minimum, a GSOC SIO.
3. There will be a designated SIO, called the "Duty Officer" on-call on a weekly basis.
4. Details of the on-call Duty Officers, their on-call rota and their contact details will be supplied to the Garda Síochána, Command & Control, and updated as required.
5. There will be a dedicated, single use, mobile telephone held by the Duty Officer. The number will be supplied to An Garda Síochána.
6. Dublin Metropolitan Regional Command & Control will be the single point of contact for GSOC notification of incidents.
7. The Duty Officer, based on the information supplied further to Point 3 below, will make the initial assessment as to GSOC involvement in, and response to, the reported incident and will so inform the contacting member of AGS.
8. The Duty Officer will request that AGS undertake certain actions pending the arrival of the GSOC team (including the call out of specialist and/or forensic assistance where that is deemed to be necessary) and will advise the AGS contact further to point 5 below.
9. The Duty Officer will deploy GSOC personnel in accordance with this initial assessment.
10. GSOC Designated Officer may travel in GSOC marked vehicles, unmarked vehicles, private vehicles or a combination of all three.

The Garda Síochána commits that: -

1. It will supply GSOC with direct contact details for AGS Command & Control.
2. It will supply GSOC with a list of District Officers together with their contact details and updated as required.
3. The contacting member of AGS will, to the extent possible, provide the GSOC Duty Officer with:
 - 3.1. A concise account of the incident
 - 3.2. The location of the incident
 - 3.3. Time occurred and time elapsed
 - 3.4. The principal parties identified
 - 3.5. Any actions taken by AGS to preserve the scene or to collect evidence
 - 3.6. Any actions necessary in the view of the contacting member.

4. In the event the contacting member is not also the AGS Incident SIO, s/he will provide the contact details of the AGS SIO (or other relevant contact person until such time as an AGS SIO is appointed).
5. The District Officer (or the AGS SIO) will undertake to perform the actions requested by the GSOC Duty Officer further to Point 8 above.
6. An Garda Síochána, noting that, under Section 98 of the Garda Síochána Act 2005, Designated Officers of GSOC have all the powers, immunities and privileges conferred and all the duties imposed on any member of the Garda Síochána, the Garda Síochána will, where possible and in accordance with law, facilitate the passage of GSOC Designated Officers travelling on duty.

Appendix 5

Protocol agreed between Commissioner of the Garda Síochána and the Garda Síochána Ombudsman Commission Section 94 Garda Síochána Act, 2005 Unsupervised and Supervised Investigations

Section 92 of the Garda Síochána Act, 2005 provides that if an admissible complaint is not resolved by mediation or other informal means as set out in the guidelines under Section 90, the matter can be referred to the Garda Commissioner to be dealt with in accordance with Section 94.

It is envisaged that two forms of investigation will be undertaken under Section 94 namely:

- Unsupervised investigation by a Garda Síochána Investigation Officer (GSIO) nominated by the Garda Commissioner, and/or
- A supervised investigation undertaken by a Garda Síochána Investigation Officer (GSIO) under the terms agreed under Section 94(5).

Section 94 also provides that the GSOC may at any time in the course of the investigations as outlined above take over full control and management of the investigation of any case referred under Section 92(a).

In order to meet the requirements of Section 94 the following will form the basis for the management of cases deemed suitable for investigation under this section.

1. It is agreed in principle that GSOC will keep a watching brief over Section 92(a) referrals to the Garda Commissioner for either unsupervised or supervised investigation under Section 94.

While Section 94 investigations are under the direction of the Garda Commissioner it is agreed that GSOC must be kept apprised of the detail of ongoing enquiries, investigations and developments in the management of the case. It is agreed that the Garda Commissioner will ensure that all GSIOs are aware of the requirement to provide such detail in relation to the progress of the investigation upon request by GSOC on a case-by-case basis. Such information shall be provided as soon as practicable.

2. It is accepted that GSOC can, in accordance with Section 94 (12), decide to take over the investigation of a complaint previously referred to

the Garda Commissioner, should GSOC feel it is necessary. GSOC may, upon request, inform the Commissioner of the reasons for taking over the case where there are good reasons for doing so.

Arrangements for the smooth hand over of all documents, evidence and other relevant materials will be agreed and put in place between the Garda Commissioner and GSOC. Such arrangements will include provision for the holding of face-to-face briefings between the GSIO and the appointed Designated Officer (DO), the handover by the GSIO to the DO of all original documents and materials at hand or in the possession of Gardaí at the time of the return of the case to GSOC. The documents and materials will be listed and receipted. The completion of any necessary notifications to the relevant parties involved in the case as to the change of circumstances will be undertaken by GSOC. These documents and materials are then deemed to be the property of GSOC.

3. It is accepted that GSOC can, in accordance with Section 94(3), decide to supervise the investigation of a complaint, previously referred to the Garda Commissioner, should GSOC consider it desirable in the public interest to do so. As per the terms of Section 94(5) and in the interest of assuring the appropriate level of supervision in each case it is acknowledged that GSOC may do one or more of the following:

(a) require the appointed member to keep it informed of the progress of the investigation;

(b) require the appointed member to submit to it such interim reports at such times and in relation to such matters as the Commission may direct;

(c) arrange for a designated officer of the Commission to be present during any interview conducted by the appointed member in the course of the investigation;

(d) direct the appointed member to investigate further any aspect of the complaint.

The Garda Commissioner shall be notified by GSOC under Section 94(4) that it intends to undertake a supervised investigation in accordance with the provisions of 94(5) and will notify and agree with the Garda Commissioner the manner in which the investigation will be advanced.

4. It is agreed that the Appointing Officer will notify GSOC of the appointment of Garda Síochána Investigating Officer (GSIO) within ten days of receipt by the Garda Commissioner of a complaint under Section 92(a).

The appointment of an investigating officer will take account of the **“General Principles of Appointment”** as set out below. The Appointing Officer shall, on notification of the GSIO to GSOC, confirm that the appointment complies with the said General Principles. However, if GSOC indicates in regard to any specific case and in accordance with Sec. 94(2) that it wishes that no appointment be made without its prior approval no such appointment will be made without that approval. GSOC undertakes to consider the Garda Commissioner’s nomination

and to advise him of their decision within five working days of receipt of nomination.

5. It is agreed that when an Appointing Officer receives a notification from GSOC objecting to the first, or a subsequently nominated GSIO he will notify GSOC of the appointment of an alternative GSIO within five working days. It is agreed that GSOC may inform the Commissioner of the reasons for the objection where, in its view, it is desirable.
6. It is agreed that the GSIO will complete the investigation without delay and, as a general rule, s/he will present his/her final report on the investigation within twelve weeks of his/her appointment.

If the GSIO becomes aware that this timeframe for the final report on the investigation will not be met s/he will notify GSOC in writing of this fact at the earliest opportunity. In such cases the GSIO will provide a report at the expiration of the tenth week. (and such other reports thereafter as required by GSOC). The report will outline the progress of the investigation, the reasons for the delay, together with the matters outstanding to be addressed by the GSIO in order to finalise the investigation. In such cases, GSOC will inform the Commissioner at the earliest opportunity of the difficulties being encountered.

The Commissioner acknowledges that the timely completion of investigations is key to the objectives of the Ombudsman Commission as set out in Section 67 of the Garda Síochána Act, 2005. To that end he will ensure, insofar as is possible, that this goal is achieved.

7. It is agreed that Garda Commissioner will, in accordance with subsection 94(9) inform the Garda Ombudsman, the complainant and the member involved of the:
 - Details of the results of the unsupervised investigation
 - Details of any action proposed as a result of the findings of the Garda Commissioner as soon as possible following completion of the unsupervised investigation.
 - Results of any Disciplinary Proceedings arising from an unsupervised investigation under this section.

At the time of notification of the results of the unsupervised investigation to the Garda Ombudsman by the Garda Commissioner, GSOC will advise the complainant of their right to a review of the case by GSOC in accordance with the Act.

In cases where a review is requested arrangements for the smooth hand over of all documents, evidence and other relevant materials will be agreed and put in place between the Garda Commissioner and GSOC in order to facilitate the review by the Garda Ombudsman.

8. It is accepted that following a review carried out by GSOC the Garda Commissioner may be requested by GSOC to conduct

his own review of the investigation and to report to GOSC outlining:

- the result of that review and
- any further action proposed.

Such reviews by the Garda Commissioner will be undertaken in as timely a manner as possible and generally they should not exceed one month in duration. The Commissioner will report the findings to GSOC one week after conclusion of the review.

General Principles

1. A complaint against a member(s) that includes an allegation of misconduct must be investigated by an Investigating Officer not below the rank of Inspector rank who may, if the circumstances so warrant, be assisted by another member not below the Sergeant rank (hereafter “the assisting member”).
2. A complaint that includes an allegation of misconduct against a member(s) of Sergeant rank or higher must be investigated by an Officer of not lower than Superintendent rank.
3. No member shall be appointed Investigating Officer if s/he:
 - a. is directly involved in the incident complained of;
 - b. is involved in a related prosecution;
 - c. is/has previously been involved in a criminal investigation that led to the prosecution of the complainant;
 - d. has, by reason of personal, professional or other connection, a link to the member under investigation that would give rise to a situation of a potential conflict of interest, while at all times recognising that such an action is purely precautionary and in the interest of fair practice being seen to be followed.

In cases where the nominee for Investigating Officer has declared a potential conflict of interest, which the Appointing Officer has determined not to be of a nature that would require the nominee’s withdrawal, the details of the declaration will be made to the Garda Ombudsman, who will give its opinion before the nomination is endorsed for approval.

4. An Investigating Officer shall not be from the same District as the member(s) complained of.
5. The Investigating Officer shall not be in the direct operational chain of command of the member(s) complained of — e.g. a Chief Superintendent shall not investigate a complaint against an Inspector in his/her own Division.
6. The Investigating Officer shall not be the same specialist unit as the member complained of — e.g. a Superintendent in the Fraud Squad shall not investigate a complaint involving any member(s) of the Fraud Squad.
7. Points 3 to 6 apply equally to the assisting member.