



Garda
Ombudsman
INQUIRY INDEPENDENCE IMPARTIALITY

GSOC Observations on the Policing, Security and Community Safety Bill 2023

February 2023

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1. Executive Summary

The Garda Síochána Ombudsman Commission (GSOC) welcomes the opportunity to provide views on the Policing, Security and Community Safety Bill 2023.¹

When the bill was first published in November 2022, GSOC broadly marked it as representing a “significant step forward in addressing a clearly-defined, and long-signalled, gap in Ireland’s policing accountability infrastructure”, and welcomed provisions in the Bill that strengthen the Ombudsman’s independence and widen powers as a civilian police oversight body.

The draft Bill provides some welcome detail on the Government’s proposed approach to the reform of policing and policing oversight following the conclusion of the work of the Commission on the Future of Policing (COPFI) in 2018, the acceptance by Government of all COPFI’s recommendations, and the launch of the ‘Policing Service for the Future’ high-level plan for implementation.

The observations outlined in this document have been part of broader active discussion and engagement between GSOC and the Department of Justice over the course of 2022 as part of our preparation for transition to a reformed policing oversight body in the near future. This engagement is ongoing, and includes detailed consideration of the practical structural, process and inter-agency arrangements that will be required to ensure the effective implementation of the new legislation once enacted.

This submission details GSOC’s primary ongoing concerns and recommendations in relation to the draft Bill, which we hope will provide insight to members of the Oireachtas during its deliberations. Our observations are broad-ranging, but place a particular focus on Parts 5 and 6 of the Bill, which contain most of the provisions for the establishment and operation of a new Office of the Police Ombudsman. Many of the observations in this document will be familiar, as they build on some of GSOC’s long-standing concerns and recommendations, most recently outlined in its submission on the General Scheme of the Bill in December 2021.²

GSOC’s primary concern remains now, as then, that the draft legislation has not fully embraced **the principle of institutional independence** that should underpin an Ombudsman institution. GSOC is concerned that while institutional independence has been enhanced in the Bill, it still imposes a degree of Ministerial, and occasionally Garda, involvement in the governance and operations of the Police Ombudsman that is not consistent with the independence envisioned in the report of the Commission on the Future of Policing³ or with the Council of Europe’s Venice Principles.⁴

¹ The Bill and related Explanatory Memorandum can be downloaded on the Oireachtas website at:

<https://www.oireachtas.ie/en/bills/bill/2023/3/>

² GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#)

³ Commission on the Future of Policing in Ireland (2018), [The Future of Policing in Ireland](#). See Paragraph 10 of the *New Framework for Policing, Security and Community Safety*, pXI.

⁴ Council of Europe (2019), [Principles on the Protection and Promotion of the Ombudsman Institution \(“The Venice Principles”\)](#). See Principle 1: “Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms. While there is no standardised model across Council of Europe Member States, the

Across the draft legislation, particularly in sections of Parts 5 and 6, provision is made requiring ministerial consent for fundamental institutional, administrative and operational matters. Such instances are detailed in the commentary that follows. Taken overall, they represent a significant restriction on the autonomy of the Police Ombudsman, unduly constraining its ability to conduct its work independently and effectively. This is out of keeping with the recommendations of COPFI, falls well below the standards outlined in the Venice Principles, and is out of alignment with the approach taken to like institutions in the state, such as the Ombudsman, the Office of the Children's Ombudsman, and the Office of the Ombudsman for the Defence Forces.

GSOC is further concerned about provisions within the draft Bill handing significant powers to the Garda Commissioner to block or overrule the operations and decision-making of the Police Ombudsman. Such provisions are also highlighted in the commentary that follows. Of particular concern are the provisions in the draft Bill for the search of Garda premises, which represent a significant regression from the powers enjoyed by GSOC under the current Act. In addition to presenting unworkable practical difficulties, these provisions seriously undermine the principle of independent civilian oversight of policing.

GSOC is of the firm view that if these fundamental issues of institutional independence are not addressed, the Bill will fall well short of the recommendations of the Commission on the Future of Policing, to which Government has committed, undermining the vision of independent civilian oversight which is core to the policing reform process and to promoting trust and confidence in policing and its oversight in the State.

A further broad concern of GSOC reflected in this submission is the Bill's complexity, and the significant layer of additional bureaucracy it appears the new legislation will generate. This relates to the provisions for ministerial consent outlined above, in addition to other operational provisions such as notification. Taken together, GSOC is concerned that the Bill may complicate, rather than simplify, processes, introducing a layer of additional bureaucracy not conducive to the timely, efficient or effective delivery of the body's new remit.

Related to these concerns is the question of **resourcing and staffing**. GSOC has made clear that the expansion of the reformed body's functions and competencies needs to be accompanied by a commensurate expansion of capacity in the form of resources, personnel and expertise that guarantee the ability to deliver them. The complexity of process envisaged in this draft Bill places further emphasis on this need. GSOC notes that the matter of resourcing and staffing is the subject of ongoing discussion and engagement with the Department of Justice.

It is notable that in this draft legislation, the objective to 'ensure that his or her functions are performed in a **timely, efficient and effective** manner and in accordance with fair procedures" features as a named objective of the new Police Ombudsman under part 5. As GSOC has already stated in its previous observations on the General Scheme, timely and efficient performance of functions relies heavily not only on resources, but on cooperation by other key actors.⁵ GSOC remains concerned that in the absence in this bill of an explicit obligation placed on such actors – not

State shall support and protect the Ombudsman Institution and refrain from any action undermining its independence."

⁵ GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#)

least An Garda Síochána – for timely and full cooperation with the Police Ombudsman, the new body’s ability to meet the objective of timeliness and efficiency may be compromised. GSOC is concerned that in this legislation, the Police Ombudsman is being held to a standard of ‘timeliness’ to which An Garda Síochána is not being held.

This submission further highlights a number of areas where it would appear there has been significant departure from some of the core recommendations of the Commission on the Future of Policing. GSOC remains concerned that the provisions under section 192 for ministerial review of that part undermine what should be a fundamental and permanent reform: a statutory obligation on the Garda Commissioner to refer all complaints to the Police Ombudsman in the first instance.

Finally, GSOC notes that the new approach to policing oversight in this Bill will represent a significant and far-reaching restructuring of GSOC to facilitate its transition to a new reformed body. In addition to requiring a commitment of resources and staffing, this will entail root-and-branch review of the body’s operations and institutional structure to ensure people, processes and procedures are put in place to meet the body’s expanded remit. Areas of particular complexity include the proposed expansion of the new body’s remit to non-sworn Garda Personnel, the increased volume and complexity of investigations, the development of new casework and admissibility processes to facilitate receipt of all complaints by the new office, the design and launch of a fit-for-purpose case management system, and the development of broad research, policy and data analytics capacity. Work on all this is currently underway through GSOC’s Transition project, through the ongoing conduct of an organisational review, and through ongoing engagement with the Department, An Garda Síochána, and other bodies. GSOC remains committed to this, and hopes that improvements to the draft legislation recommended in this submission may assist in the process of transition as it continues in the period ahead.

2. Part 5: Police Ombudsman

Section 167 – Continuation of Garda Síochána Ombudsman Commission as Office of Police Ombudsman

Name of reformed Ombudsman body [167(1)]

The Commission on the Future of Policing in Ireland report highlighted that:

‘a complaints mechanism should be independent and be perceived to be so. The name ‘Garda Síochána Ombudsman Commission’ currently presents a problem as some people assume that the office is part of An Garda Síochána.’

COPFI recommended that GSOC should ‘have a new name, making it clear that it is not part of An Garda Síochána’,⁶ and recommended that the reformed body be renamed the ‘Independent Office of the Police Ombudsman’.

GSOC has expressed the view that the independence of a reformed police oversight body should be grounded, first and foremost, in the degree to which it can, in practice, exercise its mandate efficiently, effectively, and independently, and that this will depend primarily on the broader provisions of this Bill, and appropriate resourcing of the reformed body, rather than on the institution’s name.⁷

However, it is undeniable that the inclusion of the name ‘Garda Síochána’ in GSOC’s title has proven to be a barrier to the public perception of GSOC as an independent civilian oversight body. A public attitudes survey carried out by GSOC in 2020 revealed that more than a third of respondents believed — wrongly — that GSOC is part of the Garda Síochána.⁸ This perception has created significant difficulties in engendering public trust in and understanding of the organisation’s work.

GSOC therefore welcomes the provision under section 167(1) of the Bill that the reformed institution will be named the Office of the Police Ombudsman.

While we acknowledge that independence is inherent in the concept of and the name of an Ombudsman, nevertheless, we would submit that the term ‘ombudsman’ may not universally be understood to represent independence.

GSOC recommends explicitly including the word ‘Independent’ in the body’s name in order to better promote trust and confidence in the reformed institution, changing it to ‘Independent Office of the Police Ombudsman’.

⁶ Commission on the Future of Policing in Ireland (2018), [The Future of Policing in Ireland](#) p48, 49.

⁷ GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#), p.5.

⁸ GSOC (2020), [Public Attitudes Survey](#)

Section 169 – Objectives, functions and powers of Police Ombudsman

This section outlines in detail the objectives, function and powers of the reformed Ombudsman body. This includes the significant expansion of its remit beyond sworn Garda members, to include Garda Personnel.

The objectives of the Police Ombudsman [169(1)]

This Bill places a greater focus on the importance of timeliness, efficiency and effectiveness in the performance of the new Ombudsman’s functions, as well as doing so in accordance with fair procedures.

The objective to ‘ensure that his or her functions are performed in a timely, efficient and effective manner and in accordance with fair procedures’ is listed as a named objective of the Police Ombudsman at 169(1)(c).⁹

GSOC has no objection to the principle of this objective. Adherence to fair procedures and respect for human rights lie at the heart of effective policing oversight, while timeliness and efficiency are important, both to the administration of justice and to effective oversight.

GSOC is concerned, however, that to name timeliness and efficiency as a primary objective of the new Police Ombudsman will be meaningless unless a corresponding statutory obligation attaches to other key actors on whose cooperation the timely completion of investigations depends.¹⁰

We note that there is no statutory requirement for timeliness in comparable legislation for other oversight bodies, such as the Ombudsman Act 1980, or the Ombudsman for Children Act 2002.

GSOC has in the past made it very clear that a significant obstacle to the timeliness of its current investigations is the difficulty in obtaining information from An Garda Síochána. In addition to relying on Garda cooperation, the timeliness of GSOC investigations relies on other factors, including the degree of engagement by the complainant; the complexity of the matter under investigation; interactions with other organisations including the Office of the Director of Public Prosecutions, the Coroner’s Court and, in the future, the Independent Examiner.¹¹ GSOC has little or no control over the actions of these stakeholders, but its ability to progress and conclude an investigation can depend substantially on these outside factors.

⁹ Reference to timeliness, efficiency, effectiveness and fair procedures is also made at 169(5) in the context of the Ombudsman’s establishment and maintenance of systems and procedures. Here, the provision states that the Police Ombudsman “shall have regard to the need for him or her to perform his or her functions in a timely, efficient and effective manner and in accordance with fair procedures.”

¹⁰ As highlighted in GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#), p.6.

¹¹ We note that section 231(1)(d) lists as an objective of the Independent Examiner “ensure that his or her functions are performed in a timely, efficient and effective manner”.

GSOC is concerned that in this context, and in particular without an explicit obligation placed on An Garda Síochána for timely and full cooperation, the Police Ombudsman's ability to meet the objective of timeliness and efficiency may be compromised.

Not all investigations are the same. What constitutes 'timely' or 'efficient' will vary significantly depending on a case's complexity. GSOC is concerned that it will be held to a standard of 'timeliness' to which investigators in other agencies, including An Garda Síochána, are not held in the conduct of their work.

Timely and efficient performance of functions also relies heavily on resources, funding and expertise. This has been highlighted¹² to the Department in detail, and is subject of ongoing discussion and engagement.

GSOC believes that the placing of a statutory obligation of timeliness on the reformed Police Ombudsman, in the absence of clarity on how this is to be interpreted, without corresponding statutory obligations on other key actors, and without adequate resourcing, will risk seriously undermining the ability of the reformed body to deliver its objectives, and negatively affect public confidence in police oversight.

GSOC recommends that *if* the objective of timeliness, efficiency and effectiveness is to be retained under this section, the bill should be amended to:

- **place an explicit statutory obligation on An Garda Síochána for timely and full cooperation with the Police Ombudsman**
- **Provide for a time limit on the Independent Examiner for reviews of requests for information or warrant applications, from the time of notification.**

Sections 173, 175 and 204 – Designation and appointment of officers and senior designated officers; Delegation of functions of Police Ombudsman

Given the powers granted to the Police Ombudsman under this bill, GSOC acknowledges the importance of provision for clear certification and procedural proof of delegation of powers, and of the appointment and designation of officers to carry out investigative functions.

It is GSOC's firm view that the approach taken to this must be clear, straightforward, proportionate, and of such a general nature to facilitate the efficient running of the Office, and to meet objective of operating in a timely, efficient and effective manner as required under section 169.

Section 173 governs the appointment of designated officers and senior designated officers. At 173(5) the Bill provides that:

¹² GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#), p.6.

In any legal proceedings, a certificate signed by the Police Ombudsman or the Deputy Police Ombudsman and stating that the person named in the certificate was a designated officer or senior designated officer of the Police Ombudsman for the purposes of any of the provisions of Part 6 on the date or dates specified in the certificate shall, unless the contrary is shown, be evidence of the matters stated therein, without further proof, including proof of the signature of the Police Ombudsman or the Deputy Police Ombudsman, as the case may be.

GSOC welcomes the broad reference in this section to ‘any of the provisions of Part 6’. This, in principle, ensures that the Police Ombudsman enjoys a degree of operational flexibility in the conduct of investigations, without an undue bureaucratic burden.

Section 175 governs the delegation of functions of the Police Ombudsman, providing the delegation in writing of his or her functions to the Deputy, the CEO or to other staff “by grade, position, name or otherwise.”¹³

Section 204 governs the appointment of designated officers to investigations. Subsection (1) states that the ‘Police Ombudsman shall appoint a designated officer to undertake an investigation’ in accordance with Part 6. Furthermore, 204 (3) specifies that such an appointment ‘*shall be recorded in writing*’.

It has been clarified to GSOC by the Department that the intention of this provision is to guarantee written procedural proof that the specific investigatory powers of the Ombudsman have been engaged at the outset of a given investigation.

GSOC welcomes the further clarification that the Bill’s provisions do not require this process to be repeated in the event that the designated officer first appointed to an investigation becomes unavailable. In such a scenario, simple reassignment of the case to another designated officer will be sufficient.

Section 178 – Power of Police Ombudsman to enter into agreements

GSOC notes that this section provides that the Police Ombudsman may, with the prior consent of Government, enter into an agreement with law enforcement or police oversight bodies outside the State for the purpose of facilitating the performance by each party to the agreement of their respective functions.

While GSOC accepts the need for Government consent, we would seek clarity regarding the practical arrangements to apply in these circumstances, particularly where the Police Ombudsman has an urgent need to require the cooperation of other police services or law enforcement agencies outside the State.

¹³ 175(1)(a)-(c)

Section 179– Governance Framework of Office of Police Ombudsman

This section requires that a governance framework for the Police Ombudsman is submitted to the Minister, and is subject to requests for review by the Minister.

GSOC is of the view that this section is an unnecessary addition to the draft legislation. The provisions are unusual for an Ombudsman Body, and risk undermining institutional independence enshrined in the Venice Principles.¹⁴

GSOC is confident that existing governance standards will ensure the proper governance of the reformed Police Ombudsman. Under this Bill the Police Ombudsman will have a Vote and the Chief Executive Officer, as Accounting Officer, will be accountable to the Oireachtas with regard to the use of resources and for ensuring compliance with the relevant governance standards. The reformed body will also be subject to independent audit by the Comptroller and Auditor General, to the 2016 Code of Practice for the Governance of State Bodies and to the Corporate Governance Code for the Civil Service, which incidentally already includes detailed requirements for a governance framework to be in place.

Codes of Practice allow for swift adaptation to meet the requirements of emerging good practice and are the appropriate context in which a governance framework can be shaped and adapted. The duplication of requirements already set out in Codes of Practice in primary legislation is unnecessarily prescriptive and restricts agility in face of evolving governance standards.

GSOC is of the view that the provisions of this section are unnecessary, given that a framework for governance is already comprehensively provided for by the Civil Service Corporate Governance Code, with which the body will be required to comply.

Section 180 – Strategy Statement for Office of Police Ombudsman

GSOC is concerned at the provision obliging the Police Ombudsman to submit the Strategy Statement to the Minister who will lay it before the Oireachtas, rather than the Ombudsman laying it directly before the Oireachtas.

This is inconsistent with the standard practice of Ombudsman institutions in this jurisdiction.¹⁵ Placing such a provision in this legislation sets the Police Ombudsman apart from like institutions in the state, and serves to undermine its institutional independence.

¹⁴ Council of Europe (2019), [Principles on the Protection and Promotion of the Ombudsman Institution \(“The Venice Principles”\)](#). See Principle 1: “Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms. While there is no standardised model across Council of Europe Member States, the State shall support and protect the Ombudsman Institution and refrain from any action undermining its independence.”

¹⁵ For example, the Office of the Ombudsman, the Ombudsman for Children all lay their strategies directly before the Oireachtas. So too does the Irish Human Rights and Equality Commission.

To maintain institutional independence, this section should be amended to provide that the Police Ombudsman, not the Minister, lay their Strategy Statement directly before the Oireachtas.

Section 181 – Annual reports and special reports by Police Ombudsman

Section 181(1) provides that the Police Ombudsman shall prepare and submit an annual report to the Minister. However, Section 181(4) provides that it is the Minister who lays the annual report before the Oireachtas.

As is the case with Strategy Statements, this practice is not consistent with other Ombudsman institutions, which lay their reports directly before the Oireachtas.¹⁶ Nor is it consistent with the provisions governing annual and special reporting by the Office of the Ombudsman for the Defence Forces, despite that body's exposure to issues relating to the security of the State.¹⁷

Placing such a provision in this legislation sets the Police Ombudsman apart from like institutions in the state, and serves to undermine its institutional independence.

To maintain institutional independence, this section should be amended to provide that the Police Ombudsman, not the Minister, lay their Annual Report directly before the Oireachtas.

Section 187 – Confidentiality of information obtained by Police Ombudsman; Section 260 – Sharing of information for performance of functions

Section 187 places restrictions on staff, contractors and management of GSOC and the new Police Ombudsman with regard to the disclosure of information obtained in the course of carrying out their duties where disclosure 'is likely to have a harmful effect'.

Subsections (2)(a) – (j) itemise instances where disclosure is likely to have a harmful effect.

Subsection (4) provides that it will be a defence under this section to show that disclosure was made to certain listed bodies listed at paragraphs (i) through (xiv). GSOC notes that it would be appropriate to add to this list the Prison Inspectorate, Irish Prison Service and the Health Service Executive.

GSOC suggests that section 187(4) is amended to include the Prison Inspector, the Irish Prison Service, and the HSE.

¹⁶ As is the case with their Strategy Statements, the Office of the Ombudsman and the Ombudsman for Children lay their Annual Reports directly before the Oireachtas. So does the Irish Human Rights and Equality Commission.

¹⁷ See section 7(7) of the Ombudsman (Defence Forces) Act 2004: "The Ombudsman shall, as soon as may be, but not later than 4 months after the end of each year, cause a report on the performance of his or her functions under the Act to be laid before each House of the Oireachtas and may from time to time cause to be laid before each such House such other reports with respect to those functions as he or she thinks fit."

GSOC further notes that the inclusion of named bodies in section 187(4) acts only as a defence against proceedings for an offence that information was disclosed by the Police Ombudsman. It does not provide the Ombudsman with statutory power to share information with the bodies listed.

A statutory power to share information is critical in order to enable the Police Ombudsman to perform his or her functions lawfully and without risk of breach of the Data Protection Act 2018.¹⁸

Such a limited power is provided for in the draft legislation under section 260(4), however, it is made subject to Ministerial prescription and approval.¹⁹

GSOC is concerned that this provision encroaches on the institutional independence of the Police Ombudsman, which should be empowered to independently enter into information sharing agreements with public bodies.

GSOC seeks the provision for an express statutory power for the Police Ombudsman to share information with public bodies, and to independently prescribe the bodies to which this provision applies.

GSOC recommends that the bodies listed under 187(4) should automatically fall under such a provision, and be explicitly included in the information sharing provisions of section 260.

¹⁸ By way of example, see statutory information sharing gateways provided for at Section 956 and 957 of the Companies Act 2014.

¹⁹ Section 260(4): “Subject to subsections (5) and (6), where the Minister considers it appropriate, he or she may, in relation to each relevant body, prescribe—(a) a public body, or (b) the Inspector of Prisons, as a prescribed body in relation to the relevant body for the purposes of this section.”

3. Part 6 – Complaints, incidents of concern, investigations and other matters

Section 189 – Interpretation

Incident of concern

The term ‘incident of concern’ is defined at page 163-164, and retains reference to behaviour “that constitutes notifiable misconduct”.

GSOC has already highlighted its concern that this definition limits applicable misconduct incidents/allegations to those that are ‘notifiable’.²⁰

In addition, GSOC observes that certain incidents may fall below the threshold of ‘misconduct’, but may nonetheless represent matters of concern with respect to public confidence in policing. An example of such incidents would include instances of the discharge or loss of a Garda firearm or less-than-lethal weapon.

It is GSOC’s view that incidents of concern should in all cases be notifiable to the Police Ombudsman, regardless of whether or not the incident constitutes ‘notifiable misconduct’.

The definition of incident of concern further provides that it “is not and has not been the subject of a complaint or a referral under section 199(1)”. GSOC is concerned that this element of the definition would act to exclude matters newly come to light that are connected to existing or previous complaints and which should be made known to the Police Ombudsman.

GSOC is of the view that with respect to ‘incidents of concern’, the Police Ombudsman should be notified of all allegations of misconduct which may amount to a breach of discipline rather than limiting these to incidents where there is identifiable ‘notifiable misconduct’. It should be for the Police Ombudsman to determine how to assess and address such allegations. GSOC recommends the amendment of the definition of incident of concern/ of ‘notifiable misconduct’ to reflect this.

GSOC suggests that the definition of ‘incident of concern’ is amended to ensure that information that comes to light that is connected to an existing or previous complaint or referral is not automatically excluded from notification under this section.

GSOC seeks further that provision be made to agree with An Garda Síochána further items, falling outside the potential category of ‘misconduct’ that will, for reasons of public confidence nonetheless be notified as incidents of concern.

Section 191 – Complaints by members of public

²⁰ GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#), p.9.

Complaint by a child between 16 and 18

Section 191(3)) provides that where a complaint is made by a child between the ages of 16 and 18 “the complaint may be treated as a complaint made by a person of full age, and the consent of the parent or guardian of the child shall not be required.”

GSOC welcomes this provision, which better aligns the legislation with obligations under the UN Convention on the Rights of the Child, as well as providing a degree of consistency with the approach taken in other legislation, including the the Non-Fatal Offences against the Person Act 1997.

The draft legislation is, however, silent on what obligations the Police Ombudsman may have when treating a complaint by a child between the ages of 16 and 18 as a complaint made by a person of full age. While the provision indicates that “the complaint may be treated as a complaint made by a person of full age”, it is not clear the degree to which this exempts the Police Ombudsman from broader obligations to seek parental or guardian consent for activity arising from the complaint, such as the taking of statements, access to medical notes or the collection of evidence. If parental consent is required in such activity, this may pose a significant obstacle to the timely progression of such complaints.

GSOC emphasises the need for clarity regarding any enduring obligations – such as the obligations to notify or obtain consent – arising from a decision to treat a complaint by a child between the ages of 16 and 18 as a complaint made by a person of full age.

Section 192 – Making, recording of complaints etc.

Requirement for referral of complaints to the Police Ombudsman by the Garda Síochána and review of the operation of these arrangements.

Section 192(3) provides that a complaint initially made to a member of An Garda Síochána concerning any act or omission of a member of Garda personnel “shall be referred to the Police Ombudsman without delay”.

Section 192(6) provides that:

The Minister shall, not later than 3 years after the coming into operation of this section and at such further intervals as he or she considers appropriate, review the operation of this section in so far as it requires the referral to the Police Ombudsman under subsection (3) of complaints received by An Garda Síochána under subsection (1).

Section 192(8) provides that:

Where arising from a review under subsection (6) the Minister considers that the efficiency and effectiveness of the procedures for resolving complaints and public confidence in those procedures do not require complaints received by An Garda Síochána to be referred to the Police Ombudsman in all instances, the Minister may by order specify a category or categories of complaints that are contained in the approved list to be a category or categories of complaint to which subsection (3) shall not apply.

A core recommendation of the Commission on the Future of Policing was that “all complaints about the police should be routed through the IOPO” and that “IOPO should investigate all such complaints itself, without recourse to Garda investigators”.²¹

As already communicated in its commentary on the Heads of Bill in 2021,²² GSOC is concerned that there is a risk that the review provision, as drafted, could result in significant categories of complaints being removed from the Police Ombudsman’s oversight as well as undermining the principle that Gardaí should not be investigating Gardaí. It is extremely concerned that these provisions place a three-year lifespan on what should be a fundamental and permanent reform - a statutory obligation on the Garda Commissioner to refer all complaints to the Police Ombudsman.

GSOC is of the view that the purpose and objective of such a review provision should be to evaluate the operation of the arrangements, and to identify and address any issues arising, including, if appropriate, to add categories of complaints to the approved list, without undermining the principle that Gardaí should not be investigating Gardaí.

While the new Police Ombudsman must be prepared to be held publicly accountable to the Oireachtas for its functions, GSOC is concerned that these provisions allow for considerable interference with the institution’s independence.

GSOC believes that this provision will fundamentally undermine the enhancement of independent police oversight and limit the body’s oversight of complaints from members of the public.

Section 194 – Determination of admissibility of complaints

Criteria for admissibility [194(3)]

Noting its observations below on section 201 regarding the exclusion of certain matters from the scope of ‘public interest investigations’,

GSOC seeks the inclusion of a provision that permits a finding of admissibility in circumstances where a complaint raises matters of public interest, even where the criteria outlined in this subsection are not met.

Complaints that shall not be admissible [194(4)-(5)]

Section 194(4)(a) provides that a complaint that is “frivolous, vexatious or made in bad faith” shall not be admissible. GSOC notes the addition of the concept of ‘bad faith’ to these criteria, in addition to frivolous and vexatious.

GSOC suggests the inclusion of a definition of the term ‘bad faith’ in the interpretive section to provide clarity.

²¹ Commission on the Future of Policing in Ireland (2018), [The Future of Policing in Ireland](#). p49

²² GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#), p.10.

Section 194(4)(e) provides that a complaint that relates to “the act or omission of a member of garda staff while the member of garda staff was not on duty”, shall not be admissible. A similar exception applies under Sections 199(2) and 204(2) in the context of referral to the Ombudsman on matters concerning death or serious harm.

GSOC notes that while exclusion of off-duty civil servants from the Police Ombudsman’s legislative purview is generally appropriate, there may be circumstances where off-duty staff’s conduct relates directly to an otherwise admissible complaint, or to conduct already under investigation. For example, there may be situations where an off duty unsworn member of staff uses knowledge, information, resources or their position as an employee to commit a disciplinary or criminal offence, using information legitimately gained as part of their work outside work for personal advantage. At present GSOC can investigate a non-Garda where their conduct relates to the Garda conduct under investigation. The same principle should apply in the case of off-duty Garda staff.

GSOC asks that section 194(4)(e) be amended further to address these concerns; to clarify that complaints can be admissible where an off-duty staff member’s conduct relates significantly to misconduct alleged against a Garda member or on-duty staff member; and that analogous consideration should be given to sections 199(2) and 204(2) to permit an off-duty staff member to be brought under the purview of a Police Ombudsman investigation into death or serious harm where their conduct relates substantially to the incident under investigation.

Inquiries to assist in making an admissibility determination [194(9) and 195(3)]

GSOC suggests that express linking provisions are included in this part to ensure that pre-admissibility inquiry activity is appropriately covered by the information-sharing protocols and provisions outlined elsewhere in the Bill.

Section 197 – Arrangements for handling complaints suitable for resolution by An Garda Síochána

GSOC welcomes the provision in subsection (3) that the arrangements under this part for complaints to be “dealt with in a transparent, timely, fair, objective and proportionate manner”, which is analogous to similar obligations placed on the Police Ombudsman in dealing with its complaints.

GSOC notes that this provision does not, however, obviate the need, outlined above, to place in the legislation an obligation on An Garda Síochána of timely and full cooperation with Police Ombudsman investigations.

Subsection (3) more generally outlines what specific matters arrangements under this part shall provide for, including reference in paragraph (f) to “the circumstances in which a complainant may

request An Garda Síochána to review the manner in which a complaint made by or on behalf of him or her has been dealt with under the arrangements”.

GSOC is of the view that this indirect reference to the possibility of review is insufficient, and suggests that this subsection include a more explicit provision for review/ appeal of the manner in which a complaint has been dealt with by An Garda Síochána.

The subsection should also include an explicit obligation on the Garda Commissioner to notify the Police Ombudsman of any review undertaken and the outcome of same.

Subsection (6) provides for a degree of engagement by the Garda Commissioner with the Police Ombudsman on Garda handling of complaints. It provides that “at such intervals and in such form as may be required by the Police Ombudsman, provide a report to the Polce Ombudsman on any matters connected with the operation of the relevant arrangements.”

GSOC is of the view that this provision is not broad enough in its scope as it places no obligation on the Garda Commissioner to keep the Police Ombudsman informed of the outcome of all complaints handled by An Garda Síochána under the relevant arrangements. In the absence of such an obligation, the ability of the Police Ombudsman to independently assess the ways in which resolution of complaints is being achieved in practice will be severely restricted.

The Commission on the Future of Policing was clear in its recommendations that while ‘performance management’ issues can and should be dealt with by Garda Management, “it should be logged on a shared database so that IOPO can track trends and patterns and ensure appropriate cases are being referred to them”.²³

GSOC asks that subsection (6) is amended to place an explicit obligation on the Garda Commissioner to notify the Police Ombudsman of the outcome of all complaints handled by An Garda Síochána under the relevant arrangements, including providing the Police Ombudsman access to a database documenting the remedial actions taken.²⁴

Continuation of non-statutory GSOC/Garda Síochána “Local Intervention” initiative in the context of the new Bill

Since 2018, GSOC has operated a non-statutory ‘Local Intervention’ initiative in cooperation with An Garda Síochána. The focus of the local intervention initiative is on service-level complaints, and their swift resolution without the need for the commencement of the statutory admissibility determination or formal disciplinary investigation.²⁵

Where a complainant is amenable to this approach, the matter is raised with a Garda Síochána Local Intervention inspector, and an attempt is made to address and resolve the issue. At the conclusion

²³ Commission on the Future of Policing in Ireland (2018), [The Future of Policing in Ireland](#). p49

²⁴ Per the recommendation of the Commission on the future of Policing in Ireland (2018), [The Future of Policing in Ireland](#). P52, Para. 22

²⁵ The initiative is considered suitable for the resolution of certain service-level complaints, such as poor service, inefficient service, incivility/impoliteness and lack of communication/response. For more information on local intervention, see GSOC (2022), [Annual Report 2021](#), pp63-65

of the local intervention process, the complaint is forwarded to GSOC who will confirm the outcome with the complainant and establish if any further steps are required. This can include, in the event that the intervention was unsuccessful, the resumption of statutory admissibility and complaint procedures.

Since its launch in 2018, the initiative has proven extremely effective in encouraging local Garda organisational responsibility, and facilitating faster and more effective resolution of service-level complaints. Working with GSOC, An Garda Síochána now has a Local Intervention inspector appointed in every division in the country.

The draft Policing, Security and Community Safety Bill has the potential to impact this initiative. Section 192(3) of the PSCS Bill requires that complaints made directly to An Garda Síochána be referred to the Police Ombudsman without delay. Section 194 of the Bill states that the Police Ombudsman will then determine the admissibility of complaints received and, if admissible, determine whether the complaint is suitable for resolution by An Garda Síochána.

As indicated above, GSOC broadly welcomes these proposals. However, GSOC notes that the requirement under sections 192 and 194 to engage in an admissibility determination at the outset may impact on the ability of the Police Ombudsman to forward certain complaints to An Garda Síochána under those provisions. For example, allegations of low-level discourtesy which might not meet the admissibility threshold are routinely forwarded by GSOC to An Garda Síochána for resolution via Local Intervention, and have met with positive outcomes for both complainant and Garda member.

GSOC is in ongoing dialogue with An Garda Síochána on developing processes and procedures to facilitate the operation of the new legislation. Whilst acknowledging that the Bill does not specifically accommodate the Local Intervention process as it currently operates, both GSOC and An Garda Síochána have stated their commitment to the continued operation of Local Intervention. We will continue to explore through our discussions how best to accommodate the continuation of the Local Intervention initiative in the context of the new legislation.

Section 200 – Notification to Police Ombudsman of incident of concern

Actions open to Police Ombudsman on notification of an incident of concern [200(2)]

Subsection (2) outlines the actions open to the Police Ombudsman on receipt of notification of an incident of concern, indicating that the choice of action must be made ‘having consulted with the Garda Commissioner’.

GSOC is concerned that this provision encroaches on the institutional independence of the Police Ombudsman. While consultation with the Garda Commissioner may be necessary during this process, whether or not to do so should be entirely a matter for the Police Ombudsman to decide.

GSOC recommends the amendment of subsection (2) to delete the obligation on the Police Ombudsman to consult with the Garda Commissioner in deciding what action should be taken following notification of an incident of concern.

Limitation on extent of notification for state security and other reasons [200(6)]

GSOC notes that the provision for notifying the Police Ombudsman of incidents of concern is subject to subsection (6), which permits the Garda Commissioner to limit the extent of notification so as that it:

- (a) would not be prejudicial to the security of the State, or
- (b) would not endanger the life or safety of any person who has given information in confidence to a public body in relation to the enforcement or administration of the law.

GSOC welcomes the clarity provided in these provisions as regards matters that touch on the security of the state. GSOC notes that this provision brings state security matters potentially within the ambit of Police Ombudsman oversight to the extent that this would not be 'prejudicial'.

However, we believe that the section, as drafted, leaves extensive scope for An Garda Síochána to claim legitimate exclusion of matters which may not be security related, such as, for example, firearms operations or drug searches. This is potentially a significant gap in oversight, and in practice would require a referral to the Independent Examiner and consequent delays. Even where the Independent Examiner were to rule in the Ombudsman's favour, there is a risk that the delay could result in evidence not being independently collected.

GSOC also notes that any decision by the Garda Commissioner to limit notification under subsection (6) is subject under subsection (7) to notification 'as soon as practicable' to the Independent Examiner and the Police Ombudsman.

GSOC stresses the importance of ensuring that subsection (6) is applied only when appropriate and necessary, and does not become the default approach taken in matters that touch on state security.

GSOC therefore strongly urges that its use is subject to periodic review by the Independent Examiner.

Section 201 – Investigation of matters in the public interest

Scope of public interest investigation powers

Subsection (1) outlines the Police Ombudsman's power to undertake an investigation in the public interest.

Subject to section 202(1), the Police Ombudsman may, if it appears to him or her to be in the public interest and without receiving an admissible complaint or a notification under section 200(1) of an incident of concern, undertake an investigation into any matter that appears to him or her to be a relevant cause of concern.

GSOC notes and welcomes that this provision indicates that such an investigation can take place "without receiving an admissible complaint or a notification".

However, the provision does not explicitly provide for a scenario where a matter previously subject of an admissible or inadmissible complaint, or notification, may raise the need for a public interest

investigation. Such a scenario could arise, for example, where facts emerge after the matter had been thought to have been settled.

GSOC is of the view that such a scenario should be explicitly provided for in the legislation for the avoidance of doubt, and to ensure that decision to undertake a public investigation is guided by the principle of public interest, and not potentially constrained by the manner in which the matter came to the Ombudsman's attention.

Explicit provision should be made to ensure that a matter does not fall outside the scope of the Police Ombudsman's public interest investigation powers on sole the basis that it had previously been raised via complaint or notification.

Legacy and historical cases

The Explanatory Memorandum of the heads of bill published in 2021 indicated, with respect to Head 166, that "the Garda Commissioner is empowered to refer a matter to the Ombudsman where he or she believes it in the public interest such as allegations of past wrongdoing."²⁶

In 2021, GSOC raised concerns about the possible expansion of the reformed body's remit beyond that of a contemporary police oversight body, into the investigation of historical cases.²⁷ Such an expansion in remit would be a significant step and will not work without separate detailed statutory provisions and a significant and dedicated allocation of resources and specialist expertise.

GSOC notes that following engagement with the Department, it has been indicated that the intention of this bill is not to effect any change to the Ombudsman's remit in this respect.

The public interest provisions under Section 201 of the draft legislation do not appear directly to envisage legacy cases, and do not mention 'allegations of past wrongdoing'.

It would appear that where a legacy or historical case arises, it would be a matter for the Police Ombudsman to address according to the applicable provisions in the bill governing complaints, notifications or public interest investigations.

Section 202 – Protected disclosures

This section requires amendment to reflect the provisions of the Protected Disclosures (Amendment) Act 2022, which came into effect from 01 January 2023, and the Protected Disclosures Act Interim Guidance for public bodies and prescribed persons published in November 2022.

²⁶ Department of Justice (2021), *General Scheme of the Policing Security and Community Safety Bill: Explanatory Memorandum*. P. 18.

²⁷ GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#).

GSOC is liaising with the Department on this and will provide input and assistance on the redrafting of this section in due course.

Section 203 – Investigation of matters relating to Garda Commissioner by Police Ombudsman

GSOC notes that the investigation of the Garda Commissioner remains in this draft subject to Ministerial approval.

GSOC has previously observed²⁸ that the requirement to seek ministerial approval for such an investigation is not in keeping with the reformed body's independence or the recommendations of the Commission on the Future of Policing.

There is no analogous requirement for Ministerial approval of investigations in to police leadership in neighbouring jurisdictions such as Northern Ireland or London, where the Chief Constable of the PSNI and the Commissioner of Police of the Metropolis, respectively, also exercise a significant state security brief.

GSOC asks that further consideration be given to the requirement for ministerial and government approval for the investigation of matters relating to the Garda Commissioner, in the context of the independence of the Police Ombudsman.

Section 207 – Search of Garda Síochána premises

GSOC has serious concerns regarding the provisions under this section for the search of Garda Síochána premises. They represent a significant dilution of the provisions for search of Garda premises under the 2005 Act. They also present significant practical difficulties, in addition to seriously undermining the principle of institutional independence for the Police Ombudsman envisaged by the Commission on the Future of Policing.

GSOC has no difficulty with the provision at subsection (1) which will see the search of a Garda Síochána premises subject to judicial authorisation at the District Court.²⁹ GSOC is concerned, however, at the obligation, at subsection (2), for the Police Ombudsman to consult with the Garda Commissioner 'before authorising the making of an application' for such a warrant.

GSOC has previously expressed its view that the requirement that the search of Garda premises be subject to the authorisation of the Garda Commissioner should be removed.³⁰ This is not compatible with the principle that the Ombudsman should be independent in the investigation of complaints. Neither is it compatible with the Ombudsman's obligation to seek out and preserve evidence that has a bearing, or potential bearing, on an investigation.

²⁸ GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#), p.16.

²⁹ GSOC signalled its openness to this in its 2021 observations on the heads of bill. GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#), p.15.

³⁰ GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#), p.15.

GSOC indicated that it is open to alternative approaches to the authorisation, oversight and operation of searches, including through judicial oversight. It would appear however, that in this draft legislation, judicial oversight has been introduced in addition to, rather than in place of, the requirement to consult with the Garda Commissioner.

In addition to being incompatible with the principle of institutional independence, this inordinately complicates the process for authorising searches of Garda premises, potentially bringing not only the Courts, but the Garda Commissioner, Independent Examiner and the Minister into play. This is not a workable process, and does not align with the obligation of timeliness placed on the Police Ombudsman elsewhere in the legislation, nor with the Police Ombudsman's obligation to secure evidence in the course of its investigations.

GSOC reiterates its strong opposition to the requirement that any application to search Garda premises be subject to consultation with the Garda Commissioner.

GSOC is of the view that any application for a warrant for the search of Garda premises should be made to the Courts entirely independently of the Garda Commissioner. It would be open to the Garda Commissioner to engage with the Courts as and when he or she sees fit.

GSOC notes that 207 (15)(b) provides that following referral to the Independent Examiner, the minister shall authorise the making of an application for a search where it is "necessary for the proper investigation of a matter concerning the death of, or serious harm to, a person as a result of Garda operations or while in the care or custody of An Garda Síochána".

Broadly, such a provision would place such an inordinate delay on securing a search warrant as to render the value of such a search, in terms of securing meaningful evidence, minimal. More specifically, GSOC is concerned at the limitation of this provision to investigation of death and serious harm, precluding other serious matters such as criminal activity on the part of Garda Personnel, including, for example, corruption.

GSOC recommends the expansion of the provisions of subsection 207 (15)(b) beyond death or serious harm to also include other serious criminal activity, including corruption.

Section 210 – Power to discontinue investigation

While this section outlines clearly the circumstances in which the Police Ombudsman can discontinue an investigation, it is silent on the matter of reopening a discontinued investigation.

GSOC notes that the provisions in section 221(8) provide that "Nothing in this section shall preclude the Police Ombudsman from reviewing a decision that he or she has made under this Part and taking any appropriate action to reconsider any decision found to be incorrect." While this review power likely applies to a decision to discontinue an investigation, GSOC is of the view that a more explicit provision for the review and reversal of a discontinuation would be preferable.

GSOC asks that an amendment is made to section 210 to explicitly provide for the ability of the Police Ombudsman to reopen a discontinued investigation.

Section 211 – Referral by Police Ombudsman to Director of Public Prosecutions

Section 211(4)(c) refers to a scenario in which proceedings for an offence are discontinued. There is a similar provision in Section 224(7)(c) as relates to the offence of providing false or misleading information. These provisions should also include the scenario that proceedings may be ‘struck out’.

GSOC suggests that sections 211(4)(c) and 224(7)(c) are amended to include the scenario that proceedings may be ‘struck out’.

Section 214 – Provision of information and documents to Police Ombudsman by Garda Commissioner

GSOC has welcomed this the approach taken in this provision, as it provides a firmer statutory basis for information sharing between the Ombudsman and An Garda Síochána.³¹

Provision of information ‘as soon as practicable’ [214(1)]

However, GSOC is concerned that the provision in subsection (1) that information be provided ‘as soon as practicable’ remains too weak, and falls far short of placing an explicit obligation on An Garda Síochána for prompt and timely cooperation with the Police Ombudsman. GSOC’s concerns about the lack of any direct obligation on An Garda Síochána to cooperate with the Police Ombudsman in a timely manner have already been outlined above.

In keeping with the recommendations outlined above, GSOC seeks the imposition of an explicit obligation on An Garda Síochána for timely sharing of information, as well as the development of clear timelines for provision of information by An Garda Síochána and for the review of materials by the Independent Examiner.

Provision of information relating to the security of the state [214(5)(b)]

GSOC notes that 214(5)(b) provides for release by the Minister of information relating to the security of the state where it is “is necessary for the proper investigation of a matter concerning the death of, or serious harm to, a person as a result of Garda operations or while in the care or custody of An Garda Síochána”. A similar provision is made with regard to accessing information relating to state security under section 208(8)(b).

GSOC is concerned that these provisions are limited to death and serious harm, preventing access by the Police Ombudsman to information concerning other serious matters such as criminal activity on the part of Garda Personnel, including, for example, corruption.

GSOC suggests the expansion of the provisions in paragraphs 214(5)(b) and 208(8)(b) to apply beyond death or serious harm, to also include other serious criminal activity, including corruption.

³¹ GSOC (2021), [Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill](#), p.17.

Section 218 – Extension of time limit for instituting summary proceedings for offences

Subsection (1) provides that “summary proceedings in respect of a matter relating to an offence reported to the Director of Public Prosecutions under this Part may be instituted within 18 months from the date of the offence.”

GSOC has noted that in its experience, the time limit of 18 months can cause difficulties.³² It is not uncommon for a complaint to be made to GSOC late in the 12-month window.

It is GSOC’s view that the expansion of this time limit to 24 months would assist both the Police Ombudsman and the DPP in processing the necessary files. This two-year timeline would be more in line with similar provisions made for other bodies.

Section 220 – Protocols

As was the case in the Heads of Bill, the focus of this section remains on the agreement of protocols between the Police Ombudsman and the Garda Commissioner.

GSOC benefits from cooperation and information sharing with other agencies in the carrying out of its functions, and sections 187 and 260 variously address issues of confidentiality and information sharing. Provision should also be made, therefore, for the agreement of protocols between the Police Ombudsman and other agencies.

GSOC recommends that appropriate amendments should be made to sections 187, 220 and 260, to provide for the agreement of protocols for information sharing between the Police Ombudsman and other agencies.

Section 221 – Review by Police Ombudsman

Alignment with victims’ rights

³² GSOC (2021), [*Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill*](#), p.17.

GSOC is in favour providing members of the public the opportunity to avail of a review of decisions by the Police Ombudsman.

GSOC is of the view, however, that such a review should be independent, in order to avoid the possibility of the integrity and independence of the Ombudsman being compromised by, in effect, reviewing itself. Such an approach would better align this legislation with international standards on victims' rights.

The current review provisions under section 221 do not align with the review obligations that attach, for example, to An Garda Síochána and the Director of Public Prosecutions under the Criminal Justice (Victims of Crime Act) 2017.

GSOC is of the view that more direct alignment of provisions for review under this section with those in Section 10 of the 2017 Act would better align the legislation with the State's human rights obligations with respect to victims of crime.

In particular, GSOC would welcome alignment in this section with the provisions in Section 10 of the 2017 Act with respect to applicable time limits, and to the assignment of review duties to a person independent of the decision that is the subject of the review.

GSOC suggests the amendment of this section to align it with the provisions of Section 10 of the Criminal Justice (Victims of Crime Act) 2017.

Decisions found to be incorrect [221(8)]

Subsection (8) provides for that "Nothing in this section shall preclude the Police Ombudsman from reviewing a decision that he or she has made under this Part and taking any appropriate action to reconsider any decision found to be incorrect".

This provision's sole focus on incorrect decisions risks leaving other scenarios out of the potential scope of review. Such scenarios include:

- Where the investigation had been discontinued by reason of a lapse in communications by the complainant which was subsequently re-established.
- Where it transpired that an investigation had been discontinued by reason of a factual error, a mistake or fraud.
- Where new information subsequently come to light which cast doubt on a decision, for example, where new information relating to a closed complaint is brought to the attention of the Ombudsman or the Garda Síochána.

GSOC recommends that subsection 221(8) be expanded to provide for a broader set of circumstances that may warrant the review of an inadmissibility or discontinuation decision.

GSOC recommends that provision be made to require the Garda Commissioner to bring to the Ombudsman's attention any new information relating to a closed complaint so that this can be assessed by the Ombudsman in the context of this section.

Process for notifying an inadmissibility or discontinuation decision [221(6)]

Subsection (6) outlines in detail the ways in which the Police Ombudsman may notify a complainant of a discontinuation or admissibility decision, whether by delivery, drop off, registered mail or

electronic mail (with express permission). GSOC considers the level of detail and prescription in this subsection unduly complicated, and risks contributing to delay. Clear lines of agreed communication with a complainant will have been established at this stage of the process, and should suffice for the purpose of notifications under this subsection.

Analogous notification obligations that attach to An Garda Síochána and the Director of Public Prosecutions in the Criminal Justice (Victims of Crime Act) 2017 are far simpler,³³ and should be reproduced in this section with respect to notifications made by the Police Ombudsman.

GSOC recommends replacing the provisions of subsection 221(6) with the simpler notification provisions outlined in section 10 of the Criminal Justice (Victims of Crime Act) 2017

³³ See Section 10(6): “The Garda Síochána or the Director of Public Prosecutions, as the case may be, shall notify the victim, or arrange for the victim to be notified, in writing of the outcome of the review as soon as practicable” and section 1(7): “A written notification referred to in subsection (6) may be provided to a victim by electronic means.”

4. Further miscellaneous observations

Section 2 – Interpretation: definition of ‘member’

‘Member’ is defined as a member “of any rank (including the Garda Commissioner)”, and excludes Garda staff (page 19).

The interpretive provision is silent on ‘probationers’, and on secondees.

It has been the experience of GSOC that complaints in relation to probationary personnel can be made. GSOC has also experienced issues with regard to the extent of its remit where Gardaí are seconded or appointed to other bodies, such as the Criminal Assets Bureau. Similar questions arise in relation to Garda trainees.

For the avoidance of doubt, and to ensure adequate oversight, GSOC recommends that further clarity is provided in the bill’s interpretive provisions regarding the different categories of Garda personnel that come under the Police Ombudsman’s remit.

Section 92 – International Service

GSOC notes the detailed provisions under this section for the assignment of members of An Garda Síochána for service outside the state.

The draft Bill appears to be silent on the degree to which the functions and powers of the new Police Ombudsman would apply to the conduct of members when assigned for duty outside the State under these provisions of the act.

GSOC would welcome clarity in the legislation as to the Police Ombudsman’s jurisdiction to conduct investigations in to the conduct of Garda personnel assigned to duties outside the State.

Section 106 – National strategy for improving community safety

This section provides for the preparation and submission to Government for approval of a national strategy for improving community safety.

Subsection (4) provides that the Minister shall consult in the preparation of the strategy with (a) the Authority and (b) such persons or groups representing community interests as he or she considers appropriate.

Given the proposed remit of the Police Ombudsman in the oversight of policing within this draft legislation, and the insights both it and its predecessor body will have into the conduct of policing in Ireland, and the nature of complaints made against An Garda Síochána, it would be beneficial to the process for the Police Ombudsman to be explicitly listed under this provision as a consultee.

GSOC recommends that subsection (4) is amended to include the Police Ombudsman as a consultee in the preparation by the Minister of a national strategy for improving community safety.

Chapters 2 and 3 – Independent Examiner

Section 228 provides that “The Government shall, by order, appoint a day to be the establishment day of the office of the Independent Examiner for the purposes of this Part.”

GSOC notes that given the central role the Independent Examiner will have in ensuring the progression of certain of the Police Ombudsman’s operations, it is crucially important that the office of the Independent Examiner is established and up and running on the commencement of the Parts of the Act relating to the functions of the Police Ombudsman.

Section 231 outlines the objectives, functions and powers of the Independent Examiner. GSOC notes that amongst the listed objectives under 231(1)(d) is “to ensure that his or her functions are performed in a timely, efficient and effective manner.”

GSOC welcomes the explicit inclusion of this objective, in parallel with a similar Police Ombudsman objective.

GSOC recommends that as part of the establishment of the Office of the Independent Examiner, protocols and agreed turnaround timelines are developed to ensure that there is clarity of process for An Garda Síochána and the Police Ombudsman in their engagement with the Independent Examiner. Provision for the development of such protocols could be added to Chapter 3.

Transitional Arrangements under this Bill

Section 225(4) sets out that any examination of a complaint for the purpose of recommending a section 95 or 98 investigation under section 91 of the 2005 Act (Investigation of complaints concerning death of, or serious harm to, a person) that has not commenced or been completed, shall be deemed to have been made under the new legislation. There may be some practical difficulties with this approach.

For example, if under the current 2005 Act a recommendation has been made regarding a complaint concerning death or serious harm to a person and a report (s91(1)(b)) is submitted to the Commission, it is not currently clear what happens to that report at the moment of repeal and who has the role of progressing the matter. If the intention is for the new Police Ombudsman to perform that function, there are no transfer provisions for this.

In GSOC’s experience following referrals under section 102 of the 2005 Act, complaints about the same subject matter are frequently made by family members of the person who died or was allegedly the subject of serious harm. This raises the prospect of similar subject matters being dealt with under two different legal regimes. Consideration needs to be given to how such a scenario would be dealt with in this legislation.

Further, investigations of complaints that fall within the definition of 225(4) could potentially be eligible for review under new Bill’s review provisions, as they are to be dealt with under the new legislation. Yet all other types of investigations that have begun but not yet been completed are to be continued under the 2005 Act and as such would not be eligible for any review. This appears to create an inequality in how different investigation types are dealt within the current transitional provisions.

GSOC would welcome clarity on the rationale as to why the transitional arrangements are different for matters under s91 which have not yet been completed, when compared to other types of investigation, which have not yet been completed. GSOC requests that this provision is amended in light of the difficulties envisaged.