



Garda
Ombudsman
INQUIRY INDEPENDENCE IMPARTIALITY

Submission to Joint Committee on Justice and Equality

Submission by the Garda Síochána Ombudsman
Commission

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1. Developments

1.1 Growth in GSOC in 2018 and 2019

The Garda Síochána Ombudsman Commission (GSOC) last appeared before the Joint Oireachtas Committee on Justice and Equality on 28 February 2018. At that time we provided the Committee with copies of the business case we had recently submitted to the Minister for Justice and Equality seeking further personnel for the organisation and setting out the reasons for this expansion and the roles envisaged for new colleagues.

On 2 November 2018 GSOC was notified that the necessary sanction had been granted for the requested personnel. The request had been met in full by the Department of Justice and Equality and the department of Public Expenditure and Reform. We also noted that while an adjustment had been made for an increase in our pay budget, it was clear that the non-pay expenditure would remain the same for 2019.

As soon as this confirmation came through GSOC began the task of filling the new positions, along with the usual vacancies that occur from time to time in any organisation. As of 30 April 2019, 21 of the sanctioned 42 new personnel have commenced work in GSOC with the remaining either in the process of vetting and clearance or others for whom panels need to be built or the recruiting process needs to begin.

For the first time in GSOC's history, the number of personnel exceeds 100 - 115 to be precise.

It should be noted, however, that this increase in staffing is based upon the current workload of GSOC as authorised under the Garda Síochána Act 2005. The future staffing requirements for GSOC, or its successor organisation, is not known at this stage.

1.2 The Commission on the Future of Policing in Ireland

The sanction for increased personnel came approximately two months after the publication of the report of the Commission on the Future of Policing in Ireland (CoFPI). The Report's recommendations, with some reservations, were subsequently endorsed by the Cabinet on 18 December 2018 with full support being given to the setting up of a new oversight complaints body, tentatively identified as the Independent Office of the Police Ombudsman (IOPO) in the CoFPI Report.

GSOC welcomed the proposals in the CoFPI Report and in particular the recommendation that all complaints would be investigated by this new body into the future. A press release by GSOC on the release of the CoFPI Report on 18 September 2018 recognised, in particular, *'the importance of independence when dealing with complaints regarding police conduct. It set out changes which GSOC believes are necessary to improve public confidence in police oversight, many of which echo GSOC's proposals for legislative change'*.

GSOC, along with the other oversight bodies, subsequently became aware of plans being developed for the implementation of the various recommendations in the CoFPI Report. On 23 November 2018 GSOC wrote to the Department of Justice and Equality noting that we had become aware of an Implementation Body which had been set up. GSOC sought involvement in that process, noting in our letter that:

'It is the experience of GSOC that it has taken considerable time and effort to bring members of the Garda Síochána – at all levels – to a point where they understand the value of fair and transparent oversight of their organisation and personnel. The Commission feel it is important into the future that gardaí understand the role played by the oversight bodies in new structures and new practices. If isolated at this crucial stage in the implementation process, the oversight bodies may have to join a fully formed organisational and legislative structure that will cause difficulties for all parties into the future.'

In reply by letter dated 3 December 2018 it was confirmed to GSOC that the Implementation Group membership *'includes the Departments of the Taoiseach, Public Expenditure and Reform, and Justice and Equality, as well as An Garda Síochána. These are the bodies most closely involved in driving the reform programme and in the case of An Garda Síochána is directly responsible for implementing the majority of the recommendations'*.

The letter closed by confirming that GSOC would be consulted by the Department.

The Commission can confirm that there has been an introductory meeting with a Department of Justice and Equality official and a formal meeting about the proposed legislation. The Commission continues to be concerned about significant changes proposed under the CoFPI Report to policing and the absence of the voice of oversight at this stage in the change process.

The Commission looks forward to seeing the initial draft of the legislation and being involved in moving forward in further consultations.

1.3 The Remit of a New Organisation

Of concern throughout this process has been the extent of the remit for the new organisation. The CoFPI report states at page 49 the following:

'All complaints about the police should be routed through the IOPO to determine what action needs to be taken, regardless of whether the complaints are addressed directly to the police in the first instance.'

The CoFPI Chair, Kathleen O'Toole, informed the GSOC Commissioners that *"all complaints"* means any allegations, from whatever source, internal or external, including from confidential human informants or other police agencies, indicating criminal activity or serious misconduct by a member of the Garda Síochána. She also made it clear that the Garda Síochána should not investigate itself.

As recently as 3 April 2019 the Commission wrote to the Department of Justice and Equality enclosing a copy of the recently published *"The Venice Principles"* which we have also included in this submission (see Appendix A). On 15 March 2019, the *'Principles on the Protection and Promotion of the Ombudsman Institution'* (*"The Venice Principles"*) were adopted by the Venice Commission. The Venice Commission is the Council of Europe's Commission for Democracy through Law providing legal advice to its Member States. It should be noted that the current president of the International Ombudsman Institute is Mr. Peter Tyndall, the Irish Ombudsman. He stated¹:

¹ See the News section of the website of the Ombudsman, www.ombudsman.ie, 25 March 2019

'The 'Venice Principles' provide comprehensive and internationally accepted standards for the proper functioning and independence of ombudsman institutions around the globe.'

The Commission (GSOC) noted in writing to the Department of Justice and Equality the following

*'...in particular the importance of independence as set out in paragraphs 12 and 14. This is reinforced in paragraph 16 where it is noted that The Ombudsman shall be entitled to request the co-operation of any individuals or organisations who may be able to assist in his or her investigations. **The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential.** This includes the right of unhindered access to buildings, institutions and persons, including those deprived of their liberty.*

The section in bold is in line with our submission that all documentation should be made available to GSOC in our investigations.

The Commission also notes the final paragraph in 16 which highlights the need to have protection of whistleblowers which is clearly being safeguarded under the current legal jurisdiction of GSOC.

At paragraph 18 the power to amend or adopt new legislation is set out. This reinforces in the view of the Commission the importance of the submissions being made by GSOC to the new legislation.

At paragraph 21 the issue of sufficient and independent budgetary resources shall be secured to the Ombudsman institution is covered. This would be in line with a separate vote to the new GSOC/IOPO, not an allocation via the Department.'

The Venice Principles underpin serious issues that arise for Ombudsman organisations internationally and particularly re-enforce for GSOC the absolute importance of independence, in work and structures, and access to information.

GSOC raised in its submission to this Committee in September 2016 the following:

'We note that, in the legislation governing the working of our sister organization in Northern Ireland -the Police (Northern Ireland) Act 2000- the following provision is included (section 66):

The Chief Constable and the Board shall supply the Ombudsman with such information and documents as the Ombudsman may require for the purposes of, or in connection with, the exercise of any of its functions.

GSOC feel that such a statutory power would strengthen the hand of the organization in getting all the necessary information to fully investigate complaints. It would allow an avenue of enforcement through the courts if necessary, should materials required for an investigation not be forthcoming. Currently, when a request for information or documentation is required, GSOC has no way to enforce it, causing hurdles to investigations.'

The Commission notes that in its Report on Garda Oversight and Accountability published in December 2016 this Committee did not expressly deal with that issue in its recommendations. We return to that issue as it is important for any oversight body to have access to the relevant documentation to allow it to carry out a proper and fair investigation and review of work done by the organisation which it oversees.

In so far as the exchange of information between the garda organisation and GSOC is concerned, the formal process known as “Gearáin”² continues to operate within the agreed timeframe of 30 days in 98% of cases.³

Concerns arise from time to time on the issue of the provision of documentation and the dependence GSOC has on the assertions made by the gardaí about what has been provided. Recently GSOC was investigating a complaint that went back to the early 1980s. GSOC was informed that no documentation could be found due to the passage of time.

As it was a complaint that involved a file having been provided by the gardaí to the Director of Public Prosecutions (DPP), enquiries were made with that office. A file was located and provided to the GSOC investigation team by the office of the DPP. Subsequently in consultation with the complainant GSOC was informed of the making of a data access request in the last five years by the complainant which had yielded some documents. A further request by GSOC to the data office of the Garda Síochána confirmed that it had some documentation which was then supplied to GSOC. It is not clear why the original Gearáin request had not discovered the documents provided by the data personnel, and there is no suggestion of any attempt to withhold these documents as they were provided promptly when sought. However it raises a general question of what efforts are made in cases to see if any and all documentation required by GSOC are in fact located.

Of more pressing concern to GSOC in moving forward to an agency tasked with the investigation of complaints as set out in the CoFPI recommendations is obtaining the information of alleged misconduct from the Garda Síochána itself.

While members of the public who wish to complain increasingly know of the work of GSOC there are other allegations of misconduct which are not made known to GSOC by gardaí. GSOC has had cause to open investigations in 2018, as a result of media coverage, into the temporary loss of a firearm and ammunition in Dublin City Centre in July 2018, and into media reports that a member of the public had gained access to Áras an Uachtaráin. GSOC also became aware, through media reports, of the arrest of a member of the Garda Síochána outside Dublin. There have been previous instances where the first GSOC became aware of misconduct alleged against a garda is when we, and the public, read of the court proceedings.

The fact that the Garda Síochána continue to conduct criminal investigations of its own members without the knowledge or participation of GSOC is troubling.

When this happens, oversight is not possible, and it flies in the face of the CoFPI recommendation that all complaints against the Garda Síochána should be routed through the garda Ombudsman organisation to determine what action needs to be taken, regardless of whether the complaints are addressed directly to the police in the first instance.

Steps have been taken in the last number of months to open better lines of communication. A new draft protocol about information sharing between gardaí and GSOC is with the Garda Commissioner for his consideration. This new protocol calls for the Garda Síochána to agree not to

² “Gearáin” is the agreed process between the Garda Síochána and GSOC to manage requests for information

³ It is noted that 55% of the requests are completed in the 21-30 day period. These are the figures for the year ending 2018.

conduct a criminal investigation of any of its members without first informing GSOC and allowing for GSOC to fully participate in the investigation.

Furthermore, the draft protocol also calls for the Garda Síochána to immediately inform GSOC of any serious allegation of misconduct.

GSOC would hope that this prepares the way forward to better and more complete information sharing and reporting of misconduct that comes to the attention of the Garda Síochána. To date we have not heard back from the Garda Commissioner concerning this new draft proposal.

1.4 Number of Complaints of Garda Misconduct

Related to this issue is the fact that, while criminal allegations against gardaí may come to light for the public—and GSOC—where formal court proceedings are commenced, what is less visible is the number of complaints that are investigated internally which do not lead to a prosecution.

As part of every GSOC Annual Report the Commission sets out the number of complaints admitted and how they are investigated. We differentiate the number of complaints investigated that appear to involve offences⁴ and the number of cases investigated under the Discipline Regulations.⁵

A review of the Garda Síochána Annual Report does not provide a similar breakdown of cases of alleged misconduct by gardaí either investigated under the Discipline Regulations or as a criminal case. The Garda Síochána Annual Report for 2017 states that:

'During 2017, 145 members were found in breach of discipline following internal discipline investigations under the Garda Síochána (Discipline) Regulations 2007.

These members received a combination of monetary sanctions, cautions, warnings and reprimands. The total monetary penalties imposed on members was €59,880.

There was one member of An Garda Síochána dismissed during 2017 under Section 14 of the Garda Síochána Act 2005. This figure does not relate to members of the Garda Reserve and Probationer Gardaí, who are dealt with under the Garda Síochána (Admission and Appointments) (Amendment) Regulations 2001/2006.

*A total of 28 members were on suspension at the end of the year.'*⁶

Further on in the (Garda Síochána) Annual Report when dealing with crime statistics no mention is made of gardaí in any distinct fashion. Therefore, while GSOC can give an indication of the work it does into allegations of garda misconduct the Commission cannot confirm to this Committee the

⁴ Of 1,268 complaints admitted for investigation in 2018, 415 criminal investigations were opened.

⁵ In 2018, 598 cases were sent for investigation by Garda Síochána Investigating Officers, that is, by Garda Superintendents; 135 were sent for investigation by Garda Síochána Investigating Officers but supervised by GSOC designated officers; and 100 were investigated by GSOC designated officers alone. The remaining 20 cases had not been designated by 31st December 2018.

⁶ An Garda Síochána Annual Report 2017, p. 59

full extent of allegations, investigations and proceedings against members of the Garda Síochána, whether of a criminal nature or of a discipline nature, in any given year.

In 2018 GSOC sent 17 files to the DPP following criminal investigation by GSOC investigators.

Arising from these there were:

- 4 directions for prosecutions
- 9 directions for no prosecution
- 4 decisions pending at the end of 2018.

As a public interest oversight body, GSOC may submit files to the DPP to ensure full review of the investigation even where the Commission has little expectation of a prosecution.

It would therefore be expected under a new legislative remit that a new oversight body to supersede GSOC will be in a position to give to future Oireachtas committees more comprehensive figures for allegations, both of a disciplinary nature and a criminal nature, than is currently possible.

2. Local Intervention Initiative

One of the matters addressed in our submission to this Committee in 2016 was the need to deal with what we categorised as “service issues” and the complaints that arose in this area. We submitted that there was a need to involve Garda management in the resolution of many of the complaints that GSOC is required to investigate under the Discipline Regulations but where it is in the interest of all parties to have the matters resolved early and where discipline may or may not arise.

We set out below the section from the Annual Report of the Garda Síochána Ombudsman Commission 2018 which is to be laid before the Houses of the Oireachtas on today’s date, 8 May 2019, which deals with the Local Intervention Initiative.

‘For many years GSOC has been very conscious of the lack of satisfaction felt by people who make complaints of failure in service provision by gardaí. There was also an awareness that the length of time taken to investigate this type of complaint under the Garda Síochána (Discipline) Regulations could cause considerable stress to a garda subject of complaint. Discussions had taken place with the Garda authorities some years ago with a view to identifying a more satisfactory method of complaint resolution so, when GSOC was approached by the Garda Síochána at the end of 2017 with a proposal for Local Intervention, it was viewed as a very positive step towards working collaboratively to achieve GSOC’s section 67 objectives⁷ and the initiative was, and is, strongly supported by GSOC.

A pilot scheme for resolving service level complaints was begun in the Dublin Metropolitan (SC) Region at the beginning of 2018.

Table 1: Outlines the activity over the pilot period to the end of 2018

District	No. Referred	No. Resolved	Other outcome
A (Kevin Street)	12	10	2 investigations
B (Pearse Street)	29	14	7 investigations 6 closed 2 outstanding
E (Donnybrook)	6	5	1 closed

62% of complaints were resolved to the satisfaction of the complainant. Nine cases merited further investigation and were referred to the Garda Commissioner for unsupervised investigation. Three cases were closed because complainants failed to pursue their complaint by engaging with GSOC

⁷ Section 67 (1) of the Garda Síochána Act 2005 sets out the objectives of GSOC as follows:

To ensure that its functions are performed in an efficient and effective manner with full fairness to all persons involved in complaints and investigations under Part 4 (of the Act) concerning the conduct of members of the Garda Síochána, and to promote public confidence in the process for resolving those complaints.

and a further three were closed because the complainant achieved satisfaction before the process could begin. Two cases remained on hand at the end of the year.

The pilot scheme was extended to the South Eastern Region—comprising Carlow/Kilkenny, Tipperary, Waterford and Wexford—in the latter part of 2018.

Discussions also took place with the DMR (West) Region at the end of 2018 and arrangements were put in place for the introduction of Local Intervention from early 2019.

In the absence of the scheme, the majority of these matters would most likely have been dealt with in the formal complaints process under the Garda Discipline Regulation. This entails a Garda superintendent or Garda inspector investigating complaints and a GSOC staff member managing the process.

Statistical data over the past ten years shows that the member of the public making the complaint, and the garda or gardaí against whom a complaint was made, could expect to wait nine months (or more) for the investigation to be completed and outcome to be notified. The investigation could only address whether or not there had been misbehaviour on the part of the garda or gardaí, and could not ‘resolve’ the issue which caused the complainant to contact GSOC in the first instance.

Several hundred investigations into allegations of discourtesy and ‘low-level’ neglect of duty (such as failure to return phone calls) are opened by GSOC every year with the concomitant deployment of GSOC and garda resources.

It was against this background that the Garda Síochána and GSOC agreed to initiate this new process and develop what we described as the local intervention initiative.

It was introduced with the aim of achieving satisfaction for complainants who were dissatisfied with the level of service received from the Garda Síochána and, equally importantly, providing senior Garda management the opportunity to monitor and improve customer service. The key to the entire process however was the agreement of the complainant to engage in the new process, without which local intervention could not be attempted. The assignment of a designated Garda inspector to intervene was also essential and proved to be beneficial. Complainants appreciated the fact that a garda with authority contacted them and was working on their behalf to establish the facts and resolve the matter for them.

Significantly, the timescale for the new process was set at a maximum of six weeks. If the matter could not be resolved within that timeframe, it would then revert to the standard process applied to all other complaints. There were however a small number of matters referred for intervention which took longer than the six weeks intended because the inspector wanted to ensure a process was being undertaken and would progress.

The alternative to local intervention is to initiate a lengthy disciplinary process which does not address the core issue complained of.

Discussions are already underway to expand the programme incrementally until it is in place nationwide by the end of 2019.

2.1 The Pilot Scheme

This section describes the features of the pilot scheme of the local intervention initiative which will be replicated as the initiative is extended to other garda divisions.

When a complaint is received by GSOC, GSOC decides whether or not the matter is suitable for local intervention.

Only service level issues, such as discourtesy or low level neglect-of-duty type complaints, are considered for local intervention. The types of issues which are considered include:

- *Poor quality or standard of service provided*
- *Inefficient or no service*
- *Incivility/impoliteness/rudeness*
- *Lack of response to communications*

If the issue is suitable for this process, GSOC contacts the person making the complaint, explains the local intervention process and asks if they will consent to having the matter dealt with in this way. If the complainant consents, GSOC refers the matter to a nominated Garda inspector who manages the process on behalf of the Garda Síochána.

The process involves the nominated Garda inspector contacting the complainant by phone to identify what actions or outcomes he/she is seeking to achieve. It also entails the Garda inspector having a discussion with the member concerned to explore what may have led to the issue. This process is not about apportioning blame—it is about addressing the issue raised and learning from what has happened to prevent a reoccurrence.

If a complaint is resolved to the satisfaction of the complainant, the Garda inspector notifies GSOC. GSOC contacts the complainant to confirm satisfaction and obtain feedback on the process. Once the complainant is satisfied the file is closed.

Should attempts to resolve the complaint through local intervention be unsuccessful, the complaint is referred back to GSOC which decides if the complaint should be admitted for further investigation.

2.2 The Process

All cases received by GSOC are recorded initially on the Case Management System (CMS) as 'queries'. These cases are not upgraded to complaints until such time as there is sufficient information available to allow GSOC to make an admissibility determination.

Cases which are identified as suitable for Local Intervention remain as 'queries' rather than 'complaints'. This is significant as the Garda Síochána Act, 2005 under which GSOC operates is quite prescriptive in the actions GSOC must take once a query has been categorised as a complaint.

For example, the Garda Commissioner must be notified of the receipt of all complaints, whether or not they are deemed admissible; garda members must also be notified; and, once a complaint is admissible, Garda Síochána Investigations Officers must be appointed or GSOC's own investigators tasked to carry out the investigations.

Stage 1

After a 'query' is assessed by GSOC as being suitable for Local Intervention, the member of the public who has raised the issue is contacted by GSOC and asked if he or she will agree to local intervention.

When the person gives consent, GSOC sends the matter to the nominated inspector.

Stage 2

The nominated Garda inspector contacts the complainant and establishes what actions or outcomes the complainant hopes to achieve. This is done within seven days of receipt of the matter from GSOC.

Stage 3

The nominated Garda inspector contacts the person (that is, the garda member) complained of in relation to the issues raised with a view to discussing the complainant's expressed dissatisfaction and seeking to establish a possible resolution.

Stage 4

The inspector contacts the complainant to advise on the action taken to address the matter. If the matter is resolved to the complainants' satisfaction, the outcome is notified to GSOC. The garda member is also be advised by the inspector that the matter is concluded. If the matter is not resolved, the inspector informs GSOC which then decide on what further action, if any, is to be taken. GSOC determines the admissibility or otherwise of the complaint at that point.

Stage 5

GSOC contacts the complainant to confirm resolution or, if the matter is not resolved, GSOC decides if the complaint should be admitted for further investigation.

Anonymity

It is important to note that unlike complaints, GSOC does not associate members of the Garda Síochána with these cases on our Case Management System (CMS). The rationale for this is to encourage members of the Garda Síochána to engage with the process, knowing in advance that there will be no negative impact on them as a result.

Statistics

Statistics in relation to the number and type of service-level complaints made and resolved will be maintained by GSOC and the nominated inspectors.

The statistics will be compiled jointly with GSOC and furnished on a quarterly basis to the local Regional and Divisional Garda Officers and to GSOC's Communications and Research Unit. A copy of same will also be furnished to Garda Síochána Internal Affairs. These statistics reflect the number of issues referred, resolved, returned to GSOC unresolved and the type of resolution required/achieved. In addition, the nominated inspector will be required to identify trends and, through the provision of anonymous data, communicate the findings locally to improve the service provided in their local area and afford GSOC the opportunity to consider the appropriate referral of future complaints for local intervention.

2.3 Conclusion

Trends emerging

GSOC has already identified four trends which have caused members of the public to contact the office expressing dissatisfaction. These have been highlighted to the Garda authorities with a view to bringing about change.

Supervision

Pulse provides an opportunity for Garda supervisors to view the workloads of their staff and take action in cases where there has been none. It appears that the flags which signify delay in progress have not been acted upon by supervisors (there may be mitigating factors at play) and investigations can be and have been delayed. In addition, members of the public remain in the dark as to progress.

Sick Leave

There have been cases where members of the Garda Síochána were on sick leave for varying lengths of time. Members of the public are not aware that the Garda has no access to email out of the workplace and there is no automated response. They are unaware and are not directed towards supervisors for assistance in these cases.

Communication

The majority of complaints related to allegations of failure – local intervention has established that in the main there has been no failure in duty but a failure to communicate. It is important that gardaí communicate more with members of the public whether relaying good or bad news. Communication of any kind is likely to reduce the number of contacts with GSOC by the public.

Discourtesy

Members of the public allege gardaí display their annoyance/frustration inappropriately and spontaneously. Gardaí who react in this way lose the moral high ground if they lower their standards and speak in a discourteous manner to an individual.

Cost Implications

This initiative predates the report of the Commission on the Future of Policing in Ireland (published in September) but is very much in line with the report's recommendations. The Commission on the Future of Policing strongly recommended that what it called 'service' complaints should be dealt with as a management matter by the Garda Síochána rather than immediately going into a formal disciplinary process.

The local initiative displays collaborative working relations between GSOC and the Garda Síochána in a manner which can only be of benefit to all stakeholders including the public.

The resource implications of a large number of complaints being resolved locally and quickly are significant—and positive—for both GSOC and the Garda Síochána. Each complaint that goes into the formal investigation process (under section 94 of the Garda Síochána Act, 2005) requires many hours work over months, and sometimes years, on the part of a Garda superintendent and Garda

inspector who investigate on behalf of GSOC. It also places demands on GSOC staff who have responsibility for managing the complaints process and/or supervising the investigation.

The diversion of service complainants which might otherwise become subject of lengthy investigations into local intervention would free up the time of many senior Garda officers and GSOC staff for their other duties.'

2.4 Local Intervention 2019

As of 30 April 2019 all garda regions and districts with the exception of Dublin North, Wicklow, Meath, Westmeath, Kildare and Laois/Offaly have adopted the Initiative. The figures as of 30 April 2019 for investigations stand as follows:

- 156 cases in Local Intervention (LI)
- 86% of complainants we contacted have agreed to enter local intervention
- 14% did not progress under LI because the complaint was withdrawn or the complainant did not want to avail of LI
- 28 cases are awaiting response from the complainant
- 11 case closed without intervention (non-cooperation/withdrawn)
- 17 on hand, GSOC is in the process of initiating contact with the complainant
- 19 cases returned to the admissibility process in GSOC (e.g. failed LI, declined LI, not suitable following LI, various reasons)
- 39 cases currently with nominated Inspectors
- 42 cases resolved.

It is important to note the headline figure that only 12% of cases identified as suitable for LI head back to the admissibility process within GSOC.

The Commission is satisfied that this Initiative represents a way forward for both the local communities and the gardaí in that, where successful, faith in the local garda personnel should be restored and the service itself is building its own robust management practices in resolving issues which all large organisations have to manage.

The Commission sees a continuing need for a supervisory role for GSOC so that members of the public who are dissatisfied with the Initiative or the service provided under that Initiative can come back to GSOC to progress their complaint in a more formal manner.

The Commission would like to mark the important work done by a former GSOC staff member, Ms. Pamela Howard, and Inspector Greg Mekitarian of Pearse Street Garda Station. They worked together as the driving forces in the establishment of the Initiative. These two senior people within the two organisations used their joint experiences to move forward in a way that could better local communities throughout the country.

3. Timeliness in Investigations

The Commission is acutely aware that delays in investigations add to the distress of both members of the public who have made complaints and also to the gardaí who are under investigation. The 2018 GSOC Annual Report shows that for 2018 the following figures apply:

Median time taken to close

- | | |
|--|----------|
| • Criminal cases (investigated by GSOC alone) | 147 days |
| • Unsupervised disciplinary investigations (undertaken by Garda Síochána Investigating Officers) | 268 days |
| • Supervised disciplinary investigations | 281 days |
| • Non-criminal (disciplinary) investigations by GSOC | 253 days |

It is clear from these figures that disciplinary investigations whether done by the gardaí alone, done by gardaí with supervision by GSOC, or done by GSOC investigators alone take the longest period to carry out. The procedures laid down under the current Garda Síochána (Discipline) Regulations 2007 cause problems for the garda authorities and GSOC alike. Mr. Justice Peter Charleton's comments about the discipline procedures in the Garda Síochána deserve to be repeated⁸:

'Those gardaí accused of ill-discipline should be subject to correction by senior officers without the need to resort to the elaborate structures which constitute what is in effect a private trial using procedures akin to our criminal courts. A simplified structure is called for.'

As part of a new legislative framework, statutory regulations are likely to be required and, in particular, a more streamlined discipline process is long overdue.

Now that GSOC has filled a number of the vacancies on the investigation side of its work, timeliness and quality will be centre stage over the next years as the organisation and our staff move into new structures.

⁸ Third interim report of the tribunal of inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters. 11 October 2018, page 298.

4. Protected Disclosures

The Garda Síochána Ombudsman Commission (GSOC) received 24 protected disclosures from gardaí in 2018.

The disclosures brought to 49 the number being dealt with by GSOC's Protected Disclosures Unit in 2018, adding to 25 that were still being examined or investigated at the end of the previous year (2017).

The figures are contained in GSOC's 2018 Annual Report on Protected Disclosures which has now been published.

The first full-time GSOC investigators were allocated to the new Protected Disclosures Unit in March 2018. The Ombudsman Commission had previously identified the need for a separate unit within GSOC which would deal solely with protected disclosures and had made a business case for additional staff. Sanction for five staff for the unit was granted in late 2017, and in November 2018 sanction was given for another five staff to deal with the growing number of protected disclosures being received by GSOC.

Four investigating officers were working in the unit by the end of 2018 and another five investigating officers have joined the unit in 2019. An analyst will be added later in the year.

The figures contained in the GSOC Annual Report on Protected Disclosures published on the Garda Ombudsman website refer to protected disclosures made by gardaí to the three Ombudsman Commissioners

Figures for protected disclosures made by gardaí and staff of the Garda Síochána to their employers are a matter for the Garda Síochána. There is no 2018 Report. However the most recent annual report of the Garda Síochána as required under the Protected Disclosures Act 2014 covers the period from 1 January 2017 to 31 of December 2017. There were eleven (11) Protected Disclosures made to the Garda Síochána in the period covered by this report.

By way of contrast the GSOC Annual Report on Protected Disclosures for the same period of 1 January 2017 to 31 December 2017 noted that there have been twenty two (22) disclosures made to GSOC in the period covered by that report.

The continued growth in protected disclosures made to GSOC indicates one of two things – confidence in GSOC to treat these disclosures respectfully or a lack of confidence in the Garda Síochána to investigate such disclosures independently. The Commission will be watching the work of this separate section within GSOC closely to see what the best way is forward for such members of the Garda Síochána who feel aggrieved in a number of ways. It is important to note that under the current provisions of the Protected Disclosures Act 2014 and the obligation to protect the whistle-blower's identity as far as possible⁹ the sharing of appropriate information between the Garda Síochána and GSOC can be difficult to navigate.

⁹ Under section 16 (2) of the Protected Disclosures Act 2014 exemptions are set out which include where there is no objection to the disclosure of information that identifies the discloser, where it may be necessary for the effective investigation of the relevant wrongdoing, or where there is the prosecution of a criminal offence.

Appendix A - The Venice Principles



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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

PRINCIPLES

ON THE PROTECTION AND PROMOTION OF THE OMBUDSMAN INSTITUTION (“THE VENICE PRINCIPLES”)

**Adopted by the Venice Commission at its 118th Plenary Session
(Venice, 15-16 March 2019) on the basis of comments by**

**Ms Lydie ERR (Member, Luxembourg) Mr
Jan HELGESEN (Member, Norway)**

**Mr Johan HIRSCHFELDT (Substitute Member, Sweden) Mr
Jørgen Steen SØRENSEN (Member, Denmark)**

Mr Igli TOTOZANI (Expert, Albania)

PRINCIPLES
ON THE PROTECTION AND PROMOTION OF
THE OMBUDSMAN INSTITUTION
(The Venice Principles)

The European Commission for Democracy through Law (“the Venice Commission”)

Noting that there are presently Ombudsman Institutions in more than 140 States, at the national, regional or local level, with different competences;

Recognising that these Institutions have adapted into the legal and political system of the respective States;

Noting that the core principles of the Ombudsman Institution, including independence, objectivity, transparency, fairness and impartiality, may be achieved through a variety of different models;

Emphasising that the Ombudsman is an important element in a State based on democracy, the rule of law, the respect for human rights and fundamental freedoms and good administration;

Emphasising that long-standing constitutional traditions and a mature constitutional and democratic political culture constitute an enabling element to the democratic and legal functioning of the Ombudsman Institution;

Emphasising that the Ombudsman plays an important role in protecting Human Rights Defenders;

Emphasising the importance of national and international co-operation of Ombudsman Institutions and similar institutions;

Recalling that the Ombudsman is an institution taking action independently against maladministration and alleged violations of human rights and fundamental freedoms affecting individuals or legal persons;

Stressing that the right to complain to the Ombudsman is an addition to the right of access to justice through the courts;

Stating that governments and parliaments must accept criticism in a transparent system accountable to the people;

Focusing on the commitment of the Ombudsman to call upon parliaments and governments to respect and promote human rights and fundamental freedoms, such a role being of utmost importance especially during periods of hardship and conflicts in society;

Expressing serious concern with the fact that the Ombudsman Institution is at times under different forms of attacks and threats, such as physical or mental coercion, legal actions threatening immunity, suppression reprisal, budgetary cuts and a limitation of its mandate;

Recalling that the Venice Commission, on different occasions, has worked extensively on the role of the Ombudsman;

Referring to the Recommendations of the Committee of Ministers of the Council of Europe R (85) 13 on the institution of the Ombudsman, R (97)14 on the establishment of independent national institutions for the promotion and protection of human rights, R (2000)10 on codes of conduct for public officials, CM/Rec(2007)7 on good administration, CM/Rec(2014)7 on the protection of whistle-blowers and CM/Rec(2016)3 on human rights and business; to the Recommendations of the Parliamentary Assembly of the Council of Europe 757 (1975) and 1615 (2003) and in particular its Resolution 1959 (2013); as well as to Recommendations 61(1999), 159 (2004), 309(2011) and Resolution 327 (2011) of the Congress of Local and Regional Authorities of the Council of Europe; to ECRI General Policy Recommendation No. 2: Equality bodies to combat racism and intolerance at national level, adopted on 7 December 2017;

Referring to United Nations General Assembly Resolution 48/134 on the principles relating to the status of national institutions for the promotion and protection of human rights (“the Paris Principles”) of 20 December 1993, Resolution 69/168 of 18 December 2014 and Resolution 72/186 of 19 December 2017 on the role of the Ombudsman, mediator and other national human rights

institutions in the promotion and protection of human rights, Resolution 72/181 of 19 December 2017 on National institutions for the promotion and protection of human rights, the Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 18 December 2002, the Convention on the Rights of Persons with Disabilities adopted by the General Assembly on 13 December 2006;

After having consulted the United Nations Human Rights Office of the High Commissioner, the UN Special Rapporteur on the situation of human rights defenders, the Council of Europe Commissioner for Human Rights and the Steering Committee for Human Rights of the Council of Europe (CDDH), the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the European Union Agency for Fundamental Rights, the European Ombudsman of the European Union, the International Ombudsman Institute (IOI), the Association of Mediterranean Ombudsmen (AOM), the Association of Ombudsman and Mediators of the Francophonie (AOMF), the Federation of Ibero-American Ombudsman (FIO), the European Network of National Human Rights Institutions (ENNHRI);

has, at its 118th Plenary Session (15-16 March 2019), adopted these Principles on the Protection and Promotion of the Ombudsman Institution (“the Venice Principles”)

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.
2. The Ombudsman Institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level.
3. The Ombudsman Institution shall be given an appropriately high rank, also reflected in the remuneration of the Ombudsman and in the retirement compensation.
4. The choice of a single or plural Ombudsman model depends on the State organisation, its particularities and needs. The Ombudsman Institution may be organised at different levels and with different competences.
5. States shall adopt models that fully comply with these Principles, strengthen the institution and enhance the level of protection and promotion of human rights and fundamental freedoms in the country.
6. The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution.

The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.

7. The procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law.

8. The criteria for being appointed Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates. The essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms.

9. The Ombudsman shall not, during his or her term of office, engage in political, administrative or professional activities incompatible with his or her independence or impartiality. The Ombudsman and his or her staff shall be bound by self-regulatory codes of ethics.

10. The term of office of the Ombudsman shall be longer than the mandate of the appointing body. The term of office shall preferably be limited to a single term, with no option for re- election; at any rate, the Ombudsman's mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.

11. The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of "incapacity" or "inability to perform the functions of office", "misbehaviour" or "misconduct", which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament- shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law.

12. The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms.

13. The institutional competence of the Ombudsman shall cover public administration at all levels.

The mandate of the Ombudsman shall cover all general interest and public services provided to the public, whether delivered by the State, by the municipalities, by State bodies or by private entities.

The competence of the Ombudsman relating to the judiciary shall be confined to ensuring procedural efficiency and administrative functioning of that system.

14. The Ombudsman shall not be given nor follow any instruction from any authorities.

15. Any individual or legal person, including NGOs, shall have the right to free, unhindered and free of charge access to the Ombudsman, and to file a complaint.

16. The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies. The Ombudsman shall be entitled to request the co-operation of any individuals or organisations who may be able to assist in his or her investigations. The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential. This includes the right to unhindered access to buildings, institutions and persons, including those deprived of their liberty.

The Ombudsman shall have the power to interview or demand written explanations of officials and authorities and shall, furthermore, give particular attention and protection to whistle-blowers within the public sector.

17. The Ombudsman shall have the power to address individual recommendations to any bodies or institutions within the competence of the Institution. The Ombudsman shall have the legally enforceable right to demand that officials and authorities respond within a reasonable time set by the Ombudsman.

18. In the framework of the monitoring of the implementation at the national level of ratified international instruments relating to human rights and fundamental freedoms and of the harmonization of national legislation with these instruments, the Ombudsman shall have the power to present, in public, recommendations to Parliament or the Executive, including to amend legislation or to adopt new legislation.

19. Following an investigation, the Ombudsman shall preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts.

The Ombudsman shall preferably be entitled to intervene before relevant adjudicatory bodies and courts.

The official filing of a request to the Ombudsman may have suspensive effect on time-limits to apply to the court, according to the law.

20. The Ombudsman shall report to Parliament on the activities of the Institution at least once a year. In this report, the Ombudsman may inform Parliament on lack of compliance by the public administration. The Ombudsman shall also report on specific issues, as the Ombudsman sees

appropriate. The Ombudsman's reports shall be made public. They shall be duly taken into account by the authorities.

This applies also to reports to be given by the Ombudsman appointed by the Executive.

21. Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate.

22. The Ombudsman Institution shall have sufficient staff and appropriate structural flexibility. The Institution may include one or more deputies, appointed by the Ombudsman. The Ombudsman shall be able to recruit his or her staff.

23. The Ombudsman, the deputies and the decision-making staff shall be immune from legal process in respect of activities and words, spoken or written, carried out in their official capacity for the Institution (functional immunity). Such functional immunity shall apply also after the Ombudsman, the deputies or the decision-making staff-member leave the Institution.

24. States shall refrain from taking any action aiming at or resulting in the suppression of the Ombudsman Institution or in any hurdles to its effective functioning, and shall effectively protect it from any such threats.

25. These principles shall be read, interpreted and used in order to consolidate and strengthen the Institution of the Ombudsman. Taking into consideration the various types, systems and legal status of Ombudsman Institutions and their staff members, states are encouraged to undertake all necessary actions including constitutional and legislative adjustments so as to provide proper conditions that strengthen and develop the Ombudsman Institutions and their capacity, independence and impartiality in the spirit and in line with the Venice Principles and thus ensure their proper, timely and effective implementation.