

Opening remarks to the Oireachtas Joint Committee on Justice and Equality on the 8th of May 2019 by the Chair of the Garda Síochána Ombudsman Commission Ms. Justice Mary Ellen Ring.

Good morning Chairperson and Committee members and thank you again for the opportunity to meet with you today.

I am here today with my fellow Commissioners Mr. Kieran FitzGerald and Mr. Patrick Sullivan. Mr. Sullivan joined GSOC in July 2018 after a Public Appointments Service open competition.

The Commission was last before this Committee on the 28th of February 2018. On that date the Commission updated the Committee on the fact that there had been no statutory changes since we had been with this Committee in September 2016 but were then aware of the work being undertaken by the Commission on the Future of Policing in Ireland which had been established in the interim period in May 2017.

In February 2018 we also provided to this Committee the Business Case we had submitted to the Minister for Justice and Equality for an increase in staff numbers to assist with the development of our usual caseload and the provision of a separate Protected Disclosures Unit.

As you will have seen from our Submission which we have provided for today's meeting that Business case was met in full and to date we have taken on 21 of the 42 sanctioned staff with the remaining staff to be with us in the next number of months. For the first time in its history the Commission has a staffing number in excess of 100 – 115 people are working in GSOC as of the 30th of April 2019.

The Commission on the Future of Policing in Ireland (CoFPI) Report was published on the 18th of September 2018 and the recommendations for complaints oversight were in keeping with the submissions made by GSOC to CoFPI. GSOC welcomed the proposals and in particular the recommendation at page 49 of the Report that ***all complaints about the police should be routed through IOPO to determine what action needs to be taken ...***

At a briefing meeting that morning with Ms. Kathleen O'Toole, the Commission chair, confirmed that all complaints meant from whatever source and that the gardaí should not be investigating themselves.

It is important to note at this juncture that in our fuller submission we see "complaints" as being any allegation, from whatever source, internal or external to the gardaí, including from confidential human informants or other police agencies, indicating criminal activity or serious misconduct by a member or members of the Garda Síochána,

In “Police Oversight Principles” adopted in November 2011 EPAC¹ – European Partners Against Corruption – notes as key principles that

The police oversight body should be sufficiently separated from the hierarchy of the police that are subject to its remit.

The police oversight body should be governed and controlled by persons who are not current serving police officers.

These principles are in keeping with the proposals in the CoFPI report which have now been endorsed by the Government.

GSOC has also recently made a submission to the Review Group on Anti-Fraud and Anti-Corruption Measures chaired by the former Director of Public Prosecutions Mr. James Hamilton as part of the Group’s public consultation process. GSOC reiterated the importance of independent oversight where allegations of corruption by garda members are concerned.

We have had one meeting with the Department about the proposed new legislation and have made further written submissions to the Department. However we have not seen any form of draft in relation to the new complaints oversight body as of yet.

GSOC, along with the other oversight bodies the Garda Inspectorate and the Policing Authority, did raise concerns when we became aware that there was no oversight involvement in the Implementation Body that has been set up to steer through the various recommendations in the CoFPI Report. Of particular concern to GSOC is the issue of matching a new remit with resources. Under the current legislative provisions in excess of 500 cases went back to the gardaí from GSOC for investigation in 2018. There will have to be some increase in resources to deal with this caseload for GSOC into the future. It must also be noted that the Garda Superintendents and Inspectors who deal with these cases currently are spread throughout the country and consideration will have to be given to the geographic challenges as well.

It must be remembered that there is currently a cost to the State under the present legislation, the Garda Síochána Act 2005. Gardaí are diverted from their usual policing duties to do these GSOC investigations and thus this has an effect on their time and the resulting garda costs.

GSOC is conscious that if a new complaints oversight body is to succeed, these are issues which should be dealt with in advance of the new organisation being set up. The concern would be that, without proper

¹ The **European Partners against Corruption** (EPAC) is an independent, informal network bringing together more than 70 anti-corruption authorities and police oversight bodies from Council of Europe Member Countries. Of diverse origin, they have different kinds of competences and varied legal forms. The European Anti-Fraud Office (OLAF) is also a member.

planning, delay and a resulting erosion in public trust in a new body will set in at an early stage.

GSOC is itself preparing a new business plan drawing from its experience and information to assist in predicting the type of organisation that will be required to meet the demands of a new legislative framework. We hope to have that completed by the middle of 2019 particularly having regard to the proposed date of the 1st of January 2021 when a new legislative structure will commence.

An area of significance in the work of GSOC, and any new body, is the issue of access to information. A key principle in the EPAC Police Oversight Principles is that

The police oversight body's investigators must be provided with the full range of police powers to enable them to conduct fair, independent and effective investigations, in particular the power to obtain all the information necessary to conduct an effective investigation.

This is in keeping with the recently adopted "Venice Principles" which are the Principles on the Protection and Promotion of the Ombudsman Institution adopted in Strasbourg on the 15th and 16th of March 2019 by the Venice Commission.²

We have noted in our Submission to this Committee that under the Principles adopted in March 2019 and in particular at paragraph 16 of the Principles 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.***

These are Principles we have submitted to the Department of Justice and Equality that new legislation should have regard to in dealing with the necessary powers required for fair and proportionate independent investigations into the future.

The issue of access to information in the gardaí is a matter which we raised on our first meeting with this Committee in September 2016 and where we highlighted the provisions of s. 66 of the Police (Northern Ireland) Act 2000 which includes a statutory requirement on the Chief Constable, Police Service Northern Ireland and the Policing Board to provide documentation and information to the Police Ombudsman in Northern Ireland.

² The European Commission for Democracy through Law which is the Council of Europe's advisory body on constitutional matters.

GSOC has noted in its submission to this Committee that we have become aware – along with the public – of allegations of garda wrongdoing through the media. We are aware that the gardaí continue to conduct criminal investigations of its own members without the knowledge or participation of GSOC and we find that troubling. This practice runs the risk of allegations of cover up or bias or corruption when it becomes known that such investigations have been carried out internally. It runs the risk that fair and independent investigations are not seen as such by the public because they were not notified outside the organisation. Most importantly they run the risk of undermining public trust significantly if such internal investigations go wrong. This practice also flies in the face of the CoFPI recommendation that all such matters should be routed through GSOC or the new oversight organisation.

In our submission in 2016 we also highlighted as a priority the need to establish more efficient processes to deal with service issues. We have included in our submission today the work that commenced in February 2018 between GSOC and the gardaí on the Local Intervention Initiative. You will see the spread now of the Initiative throughout the country with certain exceptions. GSOC has also paid tribute to the work done by our former staff member, Ms. Pam Howard, and Inspector Greg Mekitarian of Pearse Street Garda Station in Dublin in promoting and developing the pilot scheme. This is an example where the two organisations can cooperatively and collaboratively use our joint experiences to provide the public a better police service. This meets the need of the people concerned – both public and gardaí – to sort out issues without resorting to formal discipline investigations. GSOC and the gardaí see this as an important process into the future and to that end we will continue to review numbers and the satisfaction levels in this area.

Finally an area of great concern to all has been the issue over the last number of years in relation to the handling of protected disclosures within the garda organisation. GSOC sought, and obtained, an increase in our numbers for these very important investigations. We have set up a separate unit with separate facilities and the last of the sanctioned investigators joined the unit in the past week. As we have reported GSOC received 24 new protected disclosures from gardaí in 2018 and they have continued into 2019. GSOC would be of the view that the continued growth in protected disclosures made to GSOC indicates one of two things – a growing confidence in GSOC to treat these disclosures respectfully or a lack of confidence in the Garda Síochána to investigate such disclosures. We have noted in our submission the contrast as far back as 2017 in the numbers officially reported by the gardaí for that year as being 11 protected disclosures made to the gardaí during that year while in 2017 the number of protected disclosures made to GSOC were 22, double the garda numbers. It would seem that as new legislation for both organisations is being planned the issue of how protected disclosures are dealt with over the two organisations could be usefully reviewed to ultimately

provide to garda staff the best and most efficient way of dealing with the issues that have arisen through the disclosures made over the years.