

Opening remarks to the Oireachtas Joint Committee on Justice and Equality on the 28th of February 2018 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 Commissioner Kieran FitzGerald. We are to be joined in the future by a third Commissioner as the recruiting process has recently finished.

The Commission was last before this Committee on the 21st of September 2016. At that stage a number of the issues raised by GSOC were discussed and we were glad to see that the Justice and Equality Committee included many of those matters in with other recommendations when the Report on Garda Oversight and Accountability was published in December 2016.

The Commission can confirm that since late 2016 the statutory landscape has not changed for GSOC. However there have been intervening events that have occurred, some of which are external and some internal to the Garda Ombudsman.

Externally the then Tánaiste and Minister for Justice and Equality Ms. Frances Fitzgerald T.D. on the 16th of May 2017 announced the establishment of the Commission on the Future of Policing in Ireland. This Commission has been tasked in its Terms of Reference with addressing, along with other areas, *“the appropriate structures for governance, oversight and accountability, to ensure: ... that there are open, accessible and independent means of investigating and adjudicating fairly upon complaints against the police...”*

By May 2017 the Garda Ombudsman Commission had embarked on its own review of its structures internally as an organisation while commencing a review of the current legislative framework. In doing that all staff within the organisation participated in a business improvement process leading to proposals for adoption by the Ombudsman Commission. This was done having regard to the expertise that had grown up within the staff, in some instances over the ten years plus of GSOC's existence. GSOC has a staff which has operated the Garda Síochána Act 2005 with all its challenges and failings and in doing that has had constant contact with the public. The Commission felt it was extremely important to take all views into consideration when looking at how, as an organisation, we could serve the public better and also how we could move forward, with or without legislative change.

As a result of the internal work done in 2017 the organisation has revised its working process, although the current statutory requirements dictate how that work is ultimately done.

The Commission was also conscious, as was staff, that in working better, should there be statutory change, the organisation did not want to have to restructure all over again. Therefore internal changes in working were undertaken with a view to being able to adapt to any future legislative developments.

Alongside the internal work the Commission undertook a Submission to the Department of Justice and Equality for Legislative Change. This was done in

conjunction with the internal work so that proposals not only made good governance and accountability sense but also made sense operationally within the organisation.

Finally consideration was given to the process of taking back more work from the Gardaí under the current legislation which would add to the necessary experience and skills for legislative change confirming such a change. Again, as part of the Business Improvement Team work and the legislative change proposals, consideration was given to strengthening the trained team of investigators which would be available and able to take on legislative developments, existing and into the future. To that end GSOC provided a Business Case Proposal to the Minister for Justice and Equality earlier this month. This Business Case envisages both short term and medium term staffing demands, with a longer term business case dependent on legislative change. This Business Case has been provided to members of this Committee.

One of the main concerns of the Commission is the issue of building up an operational team of investigators that is adaptable enough to allow GSOC to deal with the unexpected. Ten years of experience has shown a relatively constant level of complaints at in or around two thousand per year. What can't be planned is incidents that occur unexpectedly – the road traffic incident involving a garda/gardaí, a serious criminal allegation against a garda or gardaí, the decision to refer matters to the Garda Ombudsman by the Minister or the Policing Authority. In June 2017 the then Garda Commissioner unexpectedly sent the Commission correspondence including an Audit Report on EU Funded Training Programmes/Projects in the Garda College in Templemore. There was a clear public interest in an independent investigation into this matter but the Garda Ombudsman was not in a position on its own to carry out such an investigation.

For the first time in its history the Commission had to make use of the provisions of s. 74 of the Garda Síochána Act 2005 and seek the “special assistance” of the Garda Síochána to move forward this investigation. Otherwise the Commission would have had to discontinue its involvement.

The Commission can confirm that five members of the gardaí have joined the GSOC investigation team, with the final member only joining in December 2017. The services of an accountant from Revenue has been also engaged to assist the investigation team but that secondment is coming to an end shortly.

While the involvement of gardaí is not the most desirable way forward, in this instance the Commission has been impressed by the professionalism of the garda members who volunteered to come to work on this investigation and the skills they have brought cannot be underestimated.

The absence of Ombudsman investigators in this instance directly illustrates the importance of building up a resilient workforce. GSOC was not aware that the Garda Commissioner was sending the Audit Report for investigation or the scope of such an investigation when considering the demands on the organisation at the start of 2017. This is a prime example of the “unexpected” that can arise in garda oversight.

The Business Case Proposal seeks a total of 37 extra staff in the short to medium term. 24 of that additional staff would be for the Investigations/Operations side of the organisation with the remaining 13 being the necessary additional administrative staff

to support the investigations side. It will be necessary for one of the Administrative complement to take on the increasing data protection responsibilities that every organisation has to have regard to, particularly having regard to the implementation in May next of the General Data Protection Regulation (GDPR) through the Data Protection Bill.

The cost of employing the additional 37 people is estimated at €1,707,855 per year. In our Business Case Proposal we point to the amount of money spent on tribunals looking at the actions of the gardaí over the years as an indication that GSOC's proposals represent good financial value for the proposed investment of public monies.

As part of the Garda Ombudsman legislative proposals we have sought to be independent from the Department of Justice. The current legislation provides that the Secretary General of the Department is the Accounting Officer for the organisation. The undoubted benefit of the current position is that the Secretary General oversees the organisation's financial health allowing GSOC to deal with other issues. The organisation is still accountable to the Public Accounts Committee but in effect that Secretary General of the Department "minds our money".

After 10 years however the organisation feels it is time to cut the umbilical cord. We no longer need the parent to decide our funding and our financial planning. GSOC is ready to take on the responsibility of seeking its own budgetary needs and planning and being accountable for its expenditure. It is ready to fight its own corner with other Departments and can answer to PAC if so required. We look to the fact that two recent statutory bodies – the Irish Human Rights and Equality Commission and the Policing Authority – have had encompassed in their legislation their own Accounting Officers as part of their corporate structure. GSOC has built up the experience over ten years of accounting for public expenditure and we are ready to take on this role wholly separate from the Department.

Since our last appearance before this Committee the Garda Ombudsman has seen significant development in its role under the Protected Disclosures Act 2014. During the year 2017 the organisation received 22 protected disclosures from garda members across the country. We currently have 25 protected disclosures undergoing examination or investigation. Contact has continued in 2018. The Commission decided that the kind of protections required for such cases and the other work being undertaken within the organisation meant that we needed a dedicated unit for this work. At this stage it is public knowledge that our proposals for the requirements of such a unit were not met in full and the inability to put our case to the Department of Public Expenditure and Reform directly is an example of the organisation's desire for independence. GSOC became aware only through the freedom of information request made by RTE recently that a departmental view had been offered that our proposals were "excessive". If we had been in the position of having our own accounting officer GSOC would have been directly dealing with DPER and perhaps in a position to argue why the proposal was not excessive and merited consideration in full by that Department.

The protected disclosure legislation is a new area. Across private and public workplaces people are finding their way. Is a complaint a grievance or a protected disclosure? GSOC has taken legal advice to guide us and as we go some of the

people who come to us may find, as will GSOC, that what troubles them is not in law a protected disclosure. At this stage we have a low bar. GSOC feels it is important to build trust and time will tell how this area of work develops. However the feedback we have received from the protected disclosers has been positive. Contrary to the view that gardaí would not turn to the body which deals with complaints about gardaí we have found members have come looking for help and support and when it has been provided it has been embraced. This very important work has been done by a full time Senior Investigating Officer and two part time investigators who have other organisational responsibilities to date. Two full time protected disclosures investigators will finally commence working with GSOC on Monday next the 5th of March 2018 with two more in the pipe line.

On the 12th of October 2017 we provided GSOC's Submission to the Review of the Protected Disclosures Act to the Reform Unit in the Department of Public Expenditure and Reform as part of its public consultation. It is clear from the Department's website a number of submissions were received but to date there has been no further contact about the review.

On the 17th of January 2018 the Garda Ombudsman Commission provided its submission to the Commission on the Future of Policing in Ireland. This is available on the GSOC website and included our Proposals for Legislative Change. Included in that proposal is reference to a new initiative undertaken in consultation with Pearse Street Garda Station. Quoting directly from the submission -

GSOC has commenced, in conjunction with the Chief Superintendent from Pearse Street Garda Station, a local intervention initiative from the 1st of January 2018. The objectives of this pilot programme are to reinstate the ability of local garda management to deal with inappropriate behaviour, encourage positive behaviour in gardaí, build and keep public confidence in the Garda Síochána in dealing with complaints, deal with appropriate "service delivery" complaints effectively and efficiently, provide immediate intervention at a local level which will not result in unnecessary, lengthy investigation, and strengthen relationships with GSOC. As part of the pilot, where practicable, all persons that attend at the Garda Stations in the DMR South Central wishing to make a complaint will be dealt with by a member of sergeant rank. The complainant will be given the opportunity to have their complaint dealt with by "local intervention". Similarly a complainant from the DMR South Central division who contacts GSOC directly will be asked, if appropriate, whether they wish to have their complaint dealt with by way of "local intervention". In each case if a complainant is willing to deal with their complaint in this fashion, the written complaint is forwarded to a nominated inspector who, having appraised himself/herself of the matter, will meet with the complainant. Contact is then made with the member concerned who is given an opportunity to provide an explanation and/or offer a solution to the complaint. A timeframe of six weeks is envisaged for the process to resolve matters with all parties' agreement. Failure to resolve the matter still allows the complainant to continue with the process through GSOC. The business owner of the pilot programme is the Chief Superintendent. This initiative was agreed between GSOC and the DMR South Central as an effort to meet all the goals of the project and in particular to build confidence in both organisations in the process. There is clear leadership and management envisaged throughout the proposed structure.

There is to be an evaluation in June 2018 to see how this pilot is working. Currently it is a project outside the legislative framework but one that leaves open to the member of the public all his/her rights under the legislation. GSOC sees this as a valuable and worthwhile project to undertake. It is a way forward for both organisations and would be part of a legislative change as proposed by GSOC. It is also a programme that should instil “ownership” of poor performance and response to the public’s needs where it belongs, and will also instil “ownership” in changing that performance and response.”

The Commission will be reviewing this project over the next few months to see whether this provides a way forward for the public, the gardaí and GSOC.

2017 saw our ten year anniversary. While there has been little government action in that time the organisation has used its time to build up its own staff, review its own practices and put forward credible proposals for both statutory improvements and the necessary financial consequences in a responsible fashion. A new website went live in 2017 and will be able to provide us with a more user-friendly platform of information for the general public. We have met the Commission on the Future of Policing in Ireland and forwarded to them our proposals for change. GSOC feels, that building on ten years’ experience, it is in a good position to ensure, whatever changes come to policing into the future, independent oversight will continue to be an integral part of policing and that GSOC will play an important role in providing that oversight.

Thank you.