



## **Submission to Joint Oireachtas Committee on Justice & Equality**

By the Garda Síochána Ombudsman Commission  
September 2016

## Contents

<b>1. INTRODUCTION</b> .....	<b>3</b>
<b>2. GSOC'S OPERATIONS</b> .....	<b>5</b>
2.1 WHAT GSOC DOES - AND DOESN'T DO .....	5
2.2 HOW COMPLAINTS ARE HANDLED, AND DIFFICULTIES ARISING WITH THE PROCESSES .....	6
2.3 CURRENT FOCUS IS ON RETRIBUTION RATHER THAN RESOLUTION .....	9
2.4 ONE DECADE OF INDEPENDENT OVERSIGHT DOWN – WHERE TO FOR THE NEXT DECADE? .....	11
<b>3. GSOC'S PRIORITIES</b> .....	<b>13</b>
3.1 TO ESTABLISH MORE EFFICIENT PROCESSES TO DEAL WITH SERVICE ISSUES .....	13
3.2 TO ENABLE INFORMAL RESOLUTION.....	14
3.3 TO ENSURE GREATER OVERSIGHT AND ACCOUNTABILITY IN DISCIPLINARY INVESTIGATIONS ARISING FROM COMPLAINTS TO THE GARDA OMBUDSMAN .....	15
3.4 TO ESTABLISH MORE EFFICIENT PROCESSES FOR GSOC TO INVESTIGATE NON-CRIMINAL MATTERS ITSELF .....	17
3.5 TO IMPROVE TIMELINESS .....	18
<b>4. CONCLUSION</b> .....	<b>20</b>

## 1. Introduction

The Garda Síochána Ombudsman Commission (GSOC, or the Garda Ombudsman) has been operational since 2007.

GSOC works side-by-side with other independent agencies, notably the Garda Síochána Inspectorate and the Policing Authority, to provide effective oversight of the policing system.

The Policing Authority, operational since January of this year, provides oversight of how the Garda Síochána performs its policing functions and uses its resources. It also deals with matters of strategy, planning, ethics and human resources.

The Garda Inspectorate, established in 2006, carries out inspections on the operation and administration of the Garda Síochána, to ensure that resources are used to achieve the highest levels of effectiveness and efficiency. It also provides advice to the Minister and to the Policing Authority with regard to best policing practice.

GSOC's function, meanwhile, is to deal with matters involving alleged misconduct by members of the Garda Síochána, as effectively and fairly as possible.

GSOC operates in line with the provisions of the Garda Síochána Act 2005 and its amendments (the Act). Almost a decade of experience of implementing the provisions of this very detailed legislation have highlighted that, in several areas, it does not allow for proportionate, effective and customer-friendly handling of complaints and provision of oversight.

We believe that the incorporation of the lessons learned over the last decade of operation into future arrangements would increase confidence in the oversight system and in turn, in the policing system itself. In this submission, we will describe the key ways in which we believe this could be done: our key priorities.

The current system, as dictated by the Act, places too much focus on retribution and not enough on resolution. This is because it channels non-criminal matters primarily towards investigations in line with the Garda Síochána (Discipline) Regulations 2007, which are focused on garda members and which do little to provide satisfaction to the public.

Too many less serious cases are channelled inappropriately towards these adversarial, expensive, time-consuming investigations. We believe that all allegations of criminal behaviour by gardaí should be subject to independent investigation. However, a less bureaucratic way for service issues to be dealt with, using the normal line management processes within the Garda Síochána, could make for much more satisfactory and efficient outcomes in a significant proportion of cases.

Also, to allow the Garda Ombudsman to decide on when informal resolution is appropriate could enable this process to be used more often. These solutions would better reflect the functions of an Ombudsman: that of seeking resolution of problems rather than an exclusive focus on sanctions for misconduct.

In situations where a formal investigation is appropriate, we believe that they should be subject to genuine oversight. In particular, we believe that the concept of the Garda Ombudsman having no power, at the end of a supervised investigation or one undertaken by a GSOC investigator, to seek a rationale should the Garda Síochána deciding officer go against our recommendation, is questionable in terms of effective oversight.

Lastly, we believe that processes and timeliness should and could, with the cooperation of the Garda Síochána, continue to be improved, to build satisfaction in the system.

All of these matters are important as they touch on what the public actually wants from an Ombudsman and on building confidence in the oversight system.

In the following two sections, we describe how we operate currently, within the confines of the Act as it is, and the priorities for the Ombudsman Commission, in terms of implementing solutions to problems highlighted.

## 2. GSOC's Operations

### 2.1 What GSOC does - and doesn't do

The function of the Garda Ombudsman is to deal with matters involving alleged misconduct by members of the Garda Síochána.

One of the main ways that this may arise is as a result of a complaint from a member of the public, about their experience with a garda, which may amount to either:

- **a criminal offence or**
- **behaviour contrary to the Garda Síochána Discipline Regulations 2007** (the Discipline Regulations).

If their experience does not fall into either of those categories, it will **not** fall within the admissibility criteria specified in the Act and we **cannot** deal with it.

For instance, while we can investigate the behaviour of former gardaí, as they no longer employed by the Garda Síochána and are no longer subject to the organisation's Discipline Regulations, we can only really deal with complaints of a criminal nature against them.

GSOC has several other responsibilities unrelated to complaints. These are:

- To conduct independent investigations, following referral by the Garda Síochána, in circumstances **where it appears that the conduct of a garda may have resulted in the death of, or serious harm to, a person** (provided for by section 102(1) of the Act). 52 such referrals were received in 2015, of which 15 related to fatalities.
- To investigate matters in relation to the conduct of gardaí, **when it is in the public interest**, even if a complaint has not been received (provided for by sections 102(4), 102(4)A, 102(5) and 102(7) of the amended Act). 12 such investigations were opened in 2015, most of which were on foot of the Independent Review Mechanism set up in 2014.
- To examine **any "practice, policy or procedure" of the Garda Síochána** (provided for by section 106 of the Act). Two such examinations were completed by GSOC to date. The first, completed and submitted to the Department of Justice and Equality in 2009, examined the Fixed Charge Penalty System. The second, completed, submitted and published last year, was in relation to dealing with persons who are committed to custody on remand by a court.

Last year's legislative amendments mean that the Ombudsman Commission now has the power to decide to undertake such examinations ourselves (previously the permission of the Minister was required). Now that we have more power to do so, this is an area which, with the appropriate staffing resources, we see a benefit in developing.

We have started two such examinations this year. The first relates to the practice within the Garda Síochána of detaining persons arrested under the Criminal Justice (Public Order) Act 1994, where no power of detention exists. It is likely that a recommendation for legislative change in respect of this will be the outcome of this examination. The second is in relation to policy around seizure of vehicles. There have been over 40 complaints to GSOC, evenly spread over years, alleging that occupants of vehicles have been left in vulnerable situations by the Garda Síochána. Garda guidance regarding the safety and welfare of occupants of seized vehicles appears unclear.

Because these examinations tend to look into policy or procedural issues which have been highlighted by our investigations over the years, the activity is complementary to the more wide-ranging inspections conducted by the Garda Inspectorate.

## 2.2 How complaints are handled, and difficulties arising with the processes

The first step for GSOC is to assess whether we can accept the complaint.

The criteria for assessing whether GSOC can accept a complaint – “admissibility criteria” - are clearly set out in section 87 of the Act. The two most common reasons that complaints are deemed inadmissible are that:

- The conduct complained of does not constitute a criminal offence or a breach of the Discipline Regulations. This was the reason in relation to seven in ten inadmissible complaints last year.
- The complaint was not made within the time limit (which, since last year’s legislative amendments, is within one year of the incident). Two in ten complaints which were inadmissible in 2015 were for this reason. There is a practical reason for a time limit, because the longer the time between the alleged incident and the making of the complaint and any subsequent investigation, the more difficult it may be to preserve evidence, find potential witnesses, secure accurate statements, etc., and thereby conduct an effective investigation. However, there is a safeguard in the legislation which allows GSOC to admit “out of time” complaints with good reason and we admit 10-15% of them annually. The Ombudsman Commission also has the power to open an investigation into a matter referred to in a complaint which is “out of time”, should we deem it to be in the public interest.

The possible ways a complaint may be dealt with are:

1. **If the complaint alleges that a Garda member may have committed a criminal offence**, the complaint will be investigated by a GSOC investigator. Section 98 of the Act governs this process. In these investigations, the Garda Ombudsman investigator has “all the powers, immunities and privileges conferred and all the duties imposed

on a member of the Garda Síochána”. At the end of a criminal investigation, if we consider that there is sufficient evidence that a crime may have been committed, a file may be sent to the DPP with a recommendation. The DPP takes a decision, based on the investigation file, whether to prosecute or not. (GSOC does not have this power.)

2. **If the complaint alleges that a Garda member may have committed a breach of the Discipline Regulations**, it may be dealt with in one of the following ways:

### **Informal resolution**

Under section 90, an informal resolution process may be proposed for complaints about discourtesy, non-return of phone calls, non-return of property etc. - where such an approach could potentially resolve the matter more quickly. If both sides agree, the process is a series of phone calls between a GSOC officer and the individuals, to try to find a resolution acceptable to both. This complaint-handling method (because of its informality) has the shortest duration of all.

However, **the Act does not give the Garda Ombudsman the power to decide** that informal resolution should be attempted, in the way that the Police Ombudsman of Northern Ireland can, for example. Both the complainant and the Garda member must agree to participate, which does not always happen. As a result, a low number of complaints are resolved informally.

### **Garda investigation**

Section 94(1) provides for Garda investigation into complaints that appear to involve disciplinary matters, with reporting to the Garda Ombudsman. This is a formal investigation process conducted by the Garda Síochána, in line with their Discipline Regulations. The process is that the Garda Commissioner appoints a Garda investigator from a different Garda division to the garda being complained of to investigate it. They decide on whether (on the balance of probabilities) there appears to be evidence of a breach of the Discipline Regulations or not and inform the complainant, the garda concerned and GSOC of the outcome. The majority of complaints about Garda discipline are handled in this way. This process usually takes 9-10 months (median time in 2015), despite a timeframe of 4 months agreed in the most recent Protocols between the two organisations.

Section 94(10) of the Act allows a complainant to request GSOC to assign an investigator to review this type of investigation if they are unhappy with the outcome. However, according to the process undertaken in line with the Discipline Regulations, the garda concerned will already have been informed of the outcome and this cannot be overruled by GSOC.

### **Garda investigation, supervised by the Garda Ombudsman**

Under section 94(3), the Ombudsman Commission may decide that it is in the public interest for a GSOC officer to supervise the Garda superintendent's investigation. A rationale must be provided for this and it is usually related to how serious or sensitive a case is. We tend to make this decision in 15-20% of discipline cases. In these cases, the GSOC officer is closely involved in deciding how the investigation will be done and reviews it before the outcome is decided. So there is genuine independent oversight of these cases. However, because of the application of the Discipline Regulations process, there is also duplication, which tends to make the process disproportionately long-running:

At the end of these cases, if there is evidence of a breach of discipline, GSOC sends a report to the Garda Síochána, who assign a different superintendent to review the case again and decide whether the outcome is appropriate. So the investigation is undertaken by a Garda superintendent, overseen by a GSOC officer, then reviewed again by a different Garda superintendent. If a possible serious breach of discipline is concerned, there is a fourth step, whereby a board of inquiry may need to be set up to consider the case again.

### **Garda Ombudsman investigation into complaints that do not appear to involve criminal offences**

While it is made clear by the Garda Síochána Act 2005 that disciplinary matters are for Garda authorities to deal with under the Discipline Regulations, there is a provision, under section 95, that the Garda Ombudsman may investigate matters "that do not appear to involve offences" (which we will refer to as non-criminal matters). This may include disciplinary and/or systemic matters. GSOC does not have police powers in conducting these investigations. While the Act states that the Ombudsman Commission may require a person to provide any "information, document or thing" to the investigation and to "attend before the Commission", in practice GSOC has experienced difficulty in securing cooperation with this type of investigation.

They take the longest of all investigation types (median time of 14 months in 2015). At the end of these investigations, similarly to above, GSOC sends a report to the Garda Síochána, who assign a superintendent to review the case and decide whether GSOC's recommendations will be followed. GSOC has no power to impose its findings or recommendations.

So, even if the GSOC investigator has highlighted evidence of a breach, the Garda Síochána may decide that there is no breach, take no action and provide no rationale to GSOC. This happens not infrequently. It contributes to a feeling of futility for a complainant and for GSOC – particularly when such a result is the culmination of years of engagement with, and work on, an investigation.

## **The possible results of complaining to GSOC, for a member of the public**

As mentioned above, with the exception of informal resolution, the possible outcomes of making a complaint to GSOC are all related to proof of a criminal offence or breach of the Discipline Regulations.

GSOC is purely an investigative agency. **We do not have the power to prosecute, nor do we have the power to decide whether there has been a breach of discipline and apply sanctions if appropriate.** These powers are with the office of the DPP and the Garda Síochána respectively.

The possible results of a GSOC investigation are:

- Referral to the DPP – if an investigation establishes evidence that a criminal offence may have occurred, a file is sent to the DPP, who takes a decision whether to prosecute or not. This happened in relation to 0.5% of allegations in 2015.
- Breach of the Discipline Regulations is identified – this was the outcome in relation to 3% of allegations in 2015.
- No breach of the Discipline Regulations is identified –25% of allegations in 2015.
- Complaint informally resolved –just under 0.5% of allegations in 2015.
- Allegation withdrawn –7% of allegations in 2015.
- The most common outcome (over 60% of allegations) is that the investigation is discontinued. This is mostly because independent evidence is not available. This can happen quickly, if it is clear from the outset that there is no independent evidence, or it can happen after many months spent following lines of enquiry and attempting to establish this evidence. Another reason a case may be discontinued is if a complainant does not cooperate. Also, if the garda concerned resigns or retires, the Discipline Regulations no longer apply to them, so there may be little point in continuing the investigation.

### **2.3 Current focus is on retribution rather than resolution**

You will note that, with the exception of the less than 1% of cases which were informally resolved, the possible outcomes as listed above are focused on blame and punishment. The current system, does not favour outcomes related to whether a solution was actually found to the issue that a person complained of.

We know, from our own customer satisfaction research and international studies, that blame and punishment is often not what a complainant is seeking. The issue is highlighted in the following example of a case closed last year with what might be considered a “successful outcome”:

*A complaint was received at the end of 2014 by a person who said that she was the victim of an assault the previous year. She complained that the assault had not been investigated by the Gardaí and that she had made numerous attempts to contact the investigating garda over a period of months but never received any response.*

*The complaint was admitted and designated for investigation under section 94(1) of the Act. A Garda Síochána Investigation Officer (GSIO) was appointed and investigated the matter. The GSIO found the garda concerned to be in breach of the Discipline Regulations by failing to investigate the woman's report of assault and by failing to record the incident on the Garda PULSE system. The sanction of a reduction in pay was recommended.*

*The GSIO's recommendation was upheld by the Chief Superintendent of the Division, who informed the complainant and the garda concerned of the outcome of the investigation. GSOC was also informed and offered the complainant a review, in line with section 94(10).*

*The complainant was not satisfied with the outcome, because her reason for complaining had been to try to get the alleged assault investigated.*

*She requested that an investigator from GSOC review it. GSOC's power of review extends to examining whether there were any issues with the way the Garda disciplinary investigation was undertaken. We do not have the power to re-investigate the complaint, nor to investigate the complainant's allegation of assault, nor to require or suggest that the Garda Síochána do this.*

*The review was carried out and the GSOC investigator found that the GSIO's investigation was thorough and proportionate and that the appropriate outcome was reached.*

*The garda, the complainant and the Garda Commissioner were all notified of GSOC's finding and the case was closed.*

Meanwhile, a case may be discontinued, or a complaint withdrawn, because the complainant's issue has been resolved. Yet such outcomes, in the current retribution-focused system, might be considered "unsuccessful".

### **Systemic recommendations**

A category of investigation outcome that we believe is very constructive is systemic recommendations. The exercise of an Ombudsman function is broader than just complaint handling, and includes providing feedback, so that lessons can be learned from cases.

So while it is not a statutory function, GSOC decided, a number of years in to its operation, to report to the Garda Síochána, not only with regard to the conduct of individuals, but also in relation to systemic issues that come to light during investigations.

Our hope is that such observations will inform policy development and policing practice, helping to reduce the number of complaints against gardaí. We believe that this is as

valuable a contributor as reporting on the behaviour of individuals - and that these recommendations constitute important outcomes to cases, in their own right.

A statutory framework for this would be beneficial to both GSOC and the Garda Síochána.

## **2.4 One decade of independent oversight down – where to for the next decade?**

The descriptions above highlighted, we hope, a need to review the system of oversight, to be more proportionate and more resolution-oriented.

Part 4 of the Garda Síochána Act 2005 is, in general, too cumbersome to allow GSOC to function effectively. Revising it would enable the system to function much more effectively over the next decade.

We have five main priorities, in this regard:

1. **Minor service-focused issues could be resolved in a more efficient and proportionate manner by leveraging the existing line management systems within the Garda Síochána.** This would allow more leeway for resolution of issues, rather than focusing on retribution. It could be achieved more efficiently through line management than through the formal process dictated by the Discipline Regulations. GSOC could potentially provide a second port-of-call for issues that could not be resolved, as is the system operated by both the PIRC for Scotland and the IPCC for England and Wales.
2. **Informal resolution mediated by the Garda Ombudsman could be used more widely and effectively,** by giving the Garda Ombudsman the power to decide whether it should be attempted or not, as is the case for the Police Ombudsman of Northern Ireland.
3. **The lack of proper oversight and accountability in formal disciplinary investigations conducted by Garda Síochána Investigating Officers should be addressed,** to promote public confidence in the process for resolving complaints, which is one of the two objectives laid out for GSOC in the Act. The cooperation of the Garda Síochána would be required to achieve this.
  - In unsupervised investigations, a complainant’s right to a review of the complaint investigation by GSOC under section 94(10) should be rendered meaningful.
  - In supervised investigations, eliminating the need for a second senior Garda officer to review an investigation file when it has already been supervised and reviewed by a GSOC officer, could render this process more efficient. We also believe that the Garda Síochána deciding officer should be obliged to provide a rationale to GSOC when disagreeing with GSOC’s recommendations.

4. The observation that the Garda Síochána deciding officer should be obliged to provide a rationale to GSOC when disagreeing with GSOC's recommendations is also relevant to investigations into non-criminal matters by GSOC. Furthermore, GSOC's powers to secure cooperation from gardaí in order to complete these investigations need to be further clarified and bolstered.
5. Continuous improvement in the timeliness of conducting disciplinary investigations and the provision of information by the Garda Síochána needs to be encouraged. While there have been definite improvements since GSOC first highlighted the extent of the problems experienced with timeliness in 2013 and since the legislative amendments of last year, there is still a lot of room for improvement. This can only benefit both members of the public and gardaí subject of complaints.

We believe that these changes will result in significant improvements in the oversight system. Each point is described in more detail, with proposed solutions, in the following section.

### **3. GSOC's priorities**

#### **3.1 To establish more efficient processes to deal with service issues**

##### **Background**

Many admissible complaints do not allege serious misconduct or criminal behaviour, but rather alleged breaches of discipline. Examples are complaints of discourtesy or dissatisfaction in relation to basic expectations of garda members, for example accounts of curt manners or poor response of garda members at incidents.

The current system allows for the many types of common and less serious complaints to be dealt with under two categories: Informal Resolution (IR), or as a disciplinary matter to be investigated under the Garda Síochána (Discipline) Regulations 2007.

There is little room, at present, for other avenues towards a fair, proportionate outcome that might better match public expectation and achieve speedy resolution of what may be described as simple service failures. At present, nearly all issues coming to notice are treated as complaints of misconduct, whereby a lengthy, expensive and highly bureaucratic process is undertaken, without necessarily addressing the fundamental issue complained of.

##### **Problem**

Focus on whether or not a sanction is appropriate arising from a complaint may cause everyone involved to miss the substance of the problem. It does not engender a problem-solving or organisational learning approach.

We are of the view that issues such as the non-return of phone calls, or non-investigation of a reported crime, are best dealt with by seeking to resolve the problem in the first instance. A management or corporate response, or simple acknowledgement of the issue, in many instances, is what the public seek. The Garda Síochána should be encouraged to provide such responses.

##### **Solution**

Complaints of the types described above, during assessment by GSOC, could, if appropriate, be categorised as "service issues".

The resolution of a service issue would be a matter for Garda line management. They would be given the opportunity to take remedial action to directly address the matter complained of. For example, in relation to curt manners, a line manager bringing the complaint to the attention of the garda concerned and advising the complainant that this has been done may be the appropriate action.

A system like this would mean that the Garda Síochána would become more responsive, offering explanation for any service deficiencies – which would be very positive for public perception of the force.

GSOC could potentially provide a second port-of-call for issues that could not be resolved, as is the system operated in the UK.

It would be a more customer-focused process, and less bureaucratic and costly.

To put in place a process like this would likely require amendment of the Act. We have been exploring the concept over the last year with the Garda Commissioner and the Minister for Justice and Equality to ascertain whether, while waiting for legislative change, there is a way that such a process could be implemented.

## **3.2 To enable informal resolution**

### **Background**

As mentioned above, the current system allows for the many types of common and less serious complaints to be dealt with under two categories: Informal Resolution (IR), or as a disciplinary matter to be investigated under the Garda Síochána (Discipline) Regulations 2007.

IR is seen as a method of dealing with less serious matters quickly, where all stakeholders take a non-judgmental stance and lessons can be learnt.

### **Problem**

In other jurisdictions (such as Northern Ireland for example), the Ombudsman is empowered to make the decision about whether it is most appropriate to resolve a case informally. The process works because of speedy feedback loops where, at the conclusion, in many cases, the complainant receives a satisfactory response from the police organisation.

Under our legislation, however, express consent is required from all parties in order for a matter to be dealt with via IR. This is the major impediment in resolving minor matters informally. GSOC has found that complainants are often happy with this way of dealing with matters, but garda members, in the vast majority of cases, exercise their right to refuse. This has resulted in less than 1% of complaints being resolved informally.

The options then, are closure of the complaint, or commencement of a lengthy, bureaucratic disciplinary investigation - a drain on resources for both GSOC and the Garda Síochána. In addition to the cost to the taxpayer, neither of these approaches tends to be what the complainant really wants, nor may it be appropriate. GSOC believes that currently we have a lose-lose situation.

### **Solution**

The existing IR process could be rendered effective by empowering GSOC to decide whether it should be applied, i.e. removing the necessity for consent by both parties. Proper safeguards to ensure that the rights of the parties are preserved would be required.

This would require amendment of the Act.

### **3.3 To ensure greater oversight and accountability in disciplinary investigations arising from complaints to the Garda Ombudsman**

#### **Background**

The Act provides that Garda Síochána officers may undertake investigations, either supervised or unsupervised, into complaints made by GSOC that contain disciplinary matters. These cases are investigated under the Garda Síochána (Discipline) Regulations 2007.

We believe that the legislation was designed to encourage line management within the Garda Síochána to take responsibility for matters of discipline. The danger may be that, if there is no Garda Síochána involvement in disciplinary investigations, Garda Síochána management could abdicate responsibility for discipline.

We have highlighted already that we do not believe this route is proportionate for minor complaints related to service. However, there are complaints in relation to which such a formal process, which may result in disciplinary sanctions, is appropriate. It should be addressed, therefore, that as it stands there is, effectively, little independent oversight of the results of these investigations.

#### **Problems**

- What happens in many cases is that the outcome is decided and sanctions are applied, if a breach of discipline is found, and only subsequent to this are GSOC and the complainant informed. The information provided by the Garda Síochána to GSOC and the complainant is generally a one-line statement of the outcome, with no explanation. We consider this to be a lack of sufficient information to complainants to ensure accountability of the process. The practice runs contrary to the spirit of the Act, which talks of “ensuring openness, transparency and accountability”; and provides that complainants are entitled to “sufficient information to keep them informed of the progress and results of the investigation...”.
- The complainant may then, under section 94(10) – and did in one in five cases last year – request a GSOC review of the investigation. However, the decision has already been communicated to the garda concerned and the sanctions have already been applied, so any change of outcome recommended by a GSOC review would be open to challenge. Furthermore, GSOC has no power to compel the Garda Síochána to reconsider the outcome and/or impose a sanction and/or try to resolve the original issue that prompted the person to complain, should a review show that any of the above may be advisable. This can be confusing to the general public and gives weight to suggestions that the system of “guards investigating guards”, without independent oversight, has not really changed. GSOC is expected to oversee fair and

impartial investigation processes. Processes such as the above undermine this oversight role.

- At the end of these investigations, as described above, GSOC sends a report to the Garda Síochána, who assign a superintendent to review the case and decide whether GSOC's recommendations will be followed. Even if the GSOC investigator has highlighted evidence of a breach, the Garda Síochána may decide that there is no breach and take no action. This happens not infrequently. Provision of a rationale is not specifically required by the Discipline Regulations, which specifies only that GSOC should be informed of the outcome and any sanctions applied:

*"47. The Commissioner shall notify the Commission of the outcome of any disciplinary proceedings taken after receiving a report from the Commission under section 97 and of any disciplinary sanction imposed on the member concerned."*

For this reason, requests for rationale are, at present, generally refused by Garda officers. Not providing a rationale (to either the complainant or to GSOC) for an outcome goes directly against the principle of independent oversight and the spirit of "ensuring openness, transparency and accountability" laid out in the principal Act.

## **Solution**

The problems which arise in relation to how a complaint is dealt with, and reported on, when a supervised or unsupervised investigation is conducted by the Garda Síochána under the Discipline Regulations, could be resolved by agreement between the two organisations for a specific instruction to be prepared for Garda officers conducting these investigations, including the points below.

Several pieces of legal advice have indicated that the Garda Síochána Act 2005 as a primary piece of legislation has precedence over the Garda Síochána Discipline Regulations 2007, which is a Statutory Instrument, therefore amendment of the Discipline Regulations, while it would be cleaner, is not strictly required.

- The provisions of the Act quoted above could be upheld by instructing Garda investigating officers that the complainant must not only be informed of the results of the investigation, but also given a brief explanation of the steps taken in the investigation and the rationale for the results.
- A complainant's right to a review of an unsupervised complaint investigation by GSOC under section 94(10) could be rendered meaningful by instructing Garda investigating officers that the investigation file and results must be provided to GSOC in a first instance, for the complainant to be informed of the results and rationale, and their right to review. Only upon the time period allowed to request a review elapsing should the garda member be informed of the outcome of the investigation. Options resulting from such reviews should also be agreed and set out in writing.

- The lack of oversight of decisions on investigation outcomes could be resolved if the Garda Síochána deciding officers were instructed to provide a rationale to GSOC when disagreeing with GSOC’s recommendations. This would bring the process more into line with the spirit of “ensuring openness, transparency and accountability” laid out in the principal Act.

### **3.4 To establish more efficient processes for GSOC to investigate non-criminal matters itself**

#### **Background**

While it is made clear by the Garda Síochána Act 2005 that disciplinary matters are for Garda authorities to deal with under the Discipline Regulations, there is a provision that the Garda Ombudsman may investigate matters “that do not appear to involve offences”, that is, non-criminal matters. GSOC does not have police powers in conducting these investigations.

#### **Problems**

While the Act states that the Ombudsman Commission may require a person to provide any “information, document or thing” to the investigation and to “attend before the Commission”, in practice GSOC has experienced difficulty in securing cooperation with this type of investigation.

At the end of these investigations, GSOC sends a report to the Garda Síochána, who assign a superintendent to review the case and decide whether GSOC’s recommendations will be followed. GSOC has no power to impose its findings or recommendations. So, even if the GSOC investigator has highlighted evidence of a breach, the Garda Síochána may decide that there is no breach, take no action and provide no rationale to GSOC.

For the above reasons and others, this process takes the longest of all investigation types to complete (median time of 14 months in 2015).

#### **Solution**

We would like to agree a time period with the Garda Síochána for reviews of cases investigated under section 95 to be reviewed by the Garda Síochána and a discipline decision made.

As described in the previous point, we also believe that in the interest of accountability and oversight, a rationale for decisions to go against GSOC recommendations should also be mandatory in this type of investigation.

Furthermore, GSOC’s powers to secure cooperation from gardaí in order to complete these investigations need to be further clarified and bolstered.

### 3.5 To improve timeliness

#### Background

As discussed above, section 94 of the Act provides that GSOC may refer complaints for either supervised or unsupervised investigation to the Garda Síochána. The operational details, including time-lines, are not provided for in the Act; Protocols defining these were agreed between GSOC and the Garda Síochána. Adherence to these is not compulsory, according to the legislation.

A number of the Committee members will be aware of this issue. Such was GSOC's concern about the impact of time delays on the effectiveness of the complaint-processing system, that we highlighted the issue in 2013.

#### Problems

There have been some measurable improvements since then, but timeliness remains a concern.

- The Protocols defined that investigations under the Discipline Regulations were to be completed within 12 weeks, but year-on-year, the vast majority of them have run considerably over time. Revised Protocols with extended time frames were agreed in 2013, but adherence to these is still of serious concern to GSOC. There has been a definite improvement, but this needs to continue.
- GSOC has also had problems with timeliness in relation to the provision of information from the Garda Síochána. This activity has, until last year's Amendment Act, only been guided by the Protocols, whereby information requested should be provided within 30 days. In 2015, we received full responses to 94% of requests within the time limit of 30 days, which is a positive sign of improved cooperation between the two organisations. The Garda Síochána (Amendment) Act 2015 underpinned this process by inserting a provision to improve timeliness in provision of information:

*9. The Principal Act is amended by the insertion of the following section after section 103:*

*"103A. The Garda Commissioner shall ensure that information to be provided by the Garda Síochána to the Ombudsman Commission for the purposes of an investigation by the Commission of a complaint, or an investigation by the Commission of any matter under section 102 or 102B, is so provided as soon as practicable."*

It was enacted in March 2015. In the period of a year from April 2015 to April 2016, the time taken to receive information through this system was 22 days, in comparison to 28 days in the same period the previous year. This shows that legislative change does have the power to improve the operation of the system. Notwithstanding this, an average 22 day wait for a standard piece of information - such as the name of a garda, or whether they were working at the time of an

incident complained of - clearly contributes to long durations of investigations into even minor matters, and we do hope to see even further improvement in this area.

Because of the long response times described above, it is not practical for requests for evidence, or information requests of a time-critical nature, to be processed through the system above. In such circumstances, the GSOC Designated Officer makes their specific urgent request directly to the relevant District Officer, requesting the return of the information directly to them, or attends in person and takes possession of the evidential material required. (An example of a situation where information requests are typically time-critical would be a request for CCTV footage, or initial accounts in the context of a serious criminal or disciplinary investigation.) In November 2014, an SLA was drafted formalising all of the above arrangements but we have not managed to achieve sign-off on this.

### **Solution**

We note that, in the legislation governing the working of our sister organisation 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 organisation 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.

#### **4. Conclusion**

We believe that findings ways to address the matters covered in this submission is key to the Garda Síochána being able to deliver a strong contribution to police oversight in the next decade . We are confident that continuous improvement of the oversight system, based on learning to date, will maintain and increase confidence in Ireland’s policing system.