

Committee of Public Accounts
Report of the Garda Síochána Ombudsman Commission
Audited Financial Statements for 2020
Vote 24: Department of Justice

Briefing Material April 2022

Background

The Garda Síochána Ombudsman Commission (GSOC) is an independent statutory agency set up in May 2007 under the Garda Síochána Act, 2005, as amended ('the 2005 Act'). GSOC's primary function is to deal with complaints involving possible misconduct by members of the Garda Síochána, in an efficient, effective and fair manner.

Structure

The Ombudsman Commission consists of three members, one of which is appointed as Chairperson. The current Ombudsman Commission is comprised of:

- Mr Justice Rory MacCabe, Chairperson, (Mr Justice MacCabe took up his appointment in January 2022),
- Mr Hugh Hume (Mr Hume took up his appointment in February 2021),
- Ms Emily Logan (Ms Logan took up her appointment in February 2021).

Governance

The Ombudsman Commission is responsible for the control and direction of the Garda Síochána Ombudsman Commission, and for ensuring good governance for which it is accountable to the Minister for Justice. GSOC operates under the Code of Practice for the Governance of State Bodies.

Finance

GSOC is funded through the provision of an annual grant from the Vote for the Department of Justice. The Secretary General of the Department is the Accounting Officer for the Vote and for funding provided to GSOC.

Section 77 of the 2005 Act requires GSOC to keep, in such form as may be approved by the Minister for Justice with the consent of the Minister for Public Expenditure and Reform, all proper and usual accounts of money received and expended by it. The Commission is responsible for keeping adequate accounting records which disclose, with reasonable accuracy at any time, its financial position and enables it to ensure that the financial statements comply with Section 77 of the Act. The Chairperson is responsible for the preparation of GSOC's accounts.

GSOC received a funding allocation of €11.181 million from the Department of Justice Vote for 2020. The total amount of expenditure incurred by GSOC in 2020 came to €11.126 million.

GSOC received a funding allocation of €11.272 million from the Department of Justice Vote for 2021. During 2021, discussions took place with the Department regarding the need for additional resources to meet significant additional workload arising from an increase in the number of complaints and the growing complexity of the matters being investigated by GSOC. It was agreed that the Department would manage overall funding within the Vote such that GSOC could incur additional expenditure in the region of €300,000 in 2021. The total amount of expenditure incurred by GSOC in 2021 came to €11.705 million.

Summary of Expenditure in 2020

Table 1 shows the breakdown between Pay and Non-Pay from GSOC's expenditure in 2020 and Table 2 shows a breakdown of some of the Non-Pay costs in 2020.

GSOC incurred expenditure of €1.109 million on the leasing of its Office accommodation in Dublin and Cork. No leasing costs arise in relation to GSOC's Longford Office.

The remaining non-pay expenditure was incurred through the general day to day operation of the organisation and the expense arising from investigation of complaints and bringing cases to Court.

Table 1 – Breakdown between Pay and Non-Pay in 2020

	Expenditure (€000)
Pay and Allowances	7,638*
Non-Pay	3,792**
Total	11,430

*Includes Pay Accrual of €103K for 2019.

**Includes Depreciation costs of €283K.

Table 2 – Main areas of non-pay expenditure:

	Expenditure (€000)
Leasing of accommodation and service charges	1,109
IT Expenses	1,157
- Case Management System maintenance and development	
- IT Contracted Services	
- IT Hardware and Software maintenance	
- IT Assets	
Staff training and development	94
Travel and Subsistence Costs	104
Legal Costs	79
General Office Expenses (including workplace safety measures to comply with COVID guidelines).	244
Security and Cleaning costs	333
Light and Heat	115

The expenditure outturn for 2020 is set out below and for ease of comparison, the outturn for 2019 and 2021 is also included in this expenditure report.

Expenditure Summary 2018 to 2021

Table 3 shows the increase in GSOC's expenditure since 2018 reflecting the additional staff sanctioned for the organisation in November of that year.

Table 3

	2018 €000	2019 €000	2020 €000	2021 €000
Pay	6,066	6,918	7,638	7,801
Non-Pay	3,781	3,771	3,792	3,904
Total	9,847	10,689	11,430	11,705

Staff

When GSOC was established in 2007, sanction was agreed for 98 staff in the organisation. By the end of 2017, this number had dropped to 93 due restrictions on recruitment which had been in place between 2010 and 2016.

In February 2018, GSOC submitted a business case to the Department of Justice and Equality and the Department of Public Expenditure and Reform outlining the urgent need for additional staff to allow the organisation fulfil its current remit and to conduct its core function of complaint handling and investigation. Following discussions with both Department throughout 2018, Ministerial sanction was received in November 2018 for the full complement of 42 additional staff that GSOC sought. Recruitment of these additional staff took place in 2019.

In 2020, GSOC 's funding and staffing sanctions allowed for a complement of 135 staff in the organisation. There was an ongoing focus on recruitment of staff during 2020, with a number of senior positions filled in addition to filling vacancies throughout the organisation through a mixture of open recruitment and internal promotion competitions. At 31 December 2020, GSOC had 127 staff in place with a number of vacancies to be filled.

Table 4: The following table shows a breakdown of GSOC's staffing resources in place at the end of each year from 2018 to 2021.

Year End	2018	2019	2020	2021
Headcount	92	127	127	123

Overview of GSOC operations in 2020 and 2021

The last two years, 2020 and 2021, has seen the COVID-19 pandemic posing significant challenges for GSOC and its staff. As the providers of an essential service, GSOC's priority was to ensure continuity in the taking and investigation of complaints while at the same time safeguarding the health and welfare of GSOC staff, members of the public, Gardaí and all other people who interact with GSOC. Throughout this time, our staff have remained totally dedicated to continuing their work and have made the continued provision of our statutory functions possible.

COVID-19 Response

The onset of the COVID-19 pandemic in early 2020, and the resulting public health advice and safety measures, rapidly and fundamentally changed the working practices of GSOC with remote and virtual working becoming the norm for most GSOC staff.

GSOC monitored the developments closely, looking to mitigate the risks that may affect the GSOC's business operations, staff and stakeholders. Actions taken by the Commission included: -

- ❖ Initiation of GSOC's Business as Usual (BAU) model and transition of such of its business operations as could be undertaken remotely bearing in mind the nature of GSOC's business as an essential service;
- ❖ Continual assessment of significant risks pertaining to the COVID-19 pandemic and the agility of GSOC to respond effectively;
- ❖ Ensuring robust segregation of duties and adequate cover in place;
- ❖ Ensuring all existing data protection and records management policies and procedures continued to apply in the remote working environment and were monitored and reported on as normal;
- ❖ Ensuring that staff members access GSOC's network using GSOC's approved ICT equipment and that all staff members working remotely have been equipped with the necessary ICT equipment; and

- ❖ Assessing potential for weaknesses in internal controls resulting from COVID-19 and measures to monitor and update internal controls where necessary.

Effect of COVID-19 on GSOC operations

As an essential service, GSOC continued its work throughout 2020 and 2021, and while our Offices remained open and accessible for staff 24 hours per day, our Public Office was closed in March 2020 and remained closed for the remainder of that year. This required GSOC to promote alternative means of taking complaints such as through our website, by email, by phone etc. While complaints could still be made at Garda Stations, we asked people to have regard to the health of everyone and avoid attending garda stations to make complaints unless absolutely necessary. GSOC’s phone lines for the public were checked every hour and messages responded to as necessary.

All of our staff were set up to work remotely with hardware, software, security and data protection matters all attended to. Only staff considered absolutely essential to day-to-day activity were present within the office. Of these, staggered working patterns were introduced to keep physical contact to a minimum and allow for resilience in the event that key personnel became ill.

All non-critical / non-essential face to face interview activity had to be deferred and alternatives were offered including the use of telephone interviews and interview via video conferencing. When face to face interviews had to take place, all current health advices were followed and implemented.

There was on-going communication with An Garda Síochána on a daily basis to ensure coordination of business and consideration of “easing measures” to take pressure off front-line policing activity whilst maintaining and delivering on statutory responsibilities for both agencies.

GSOC’s 102 referral on-call teams remained active and operational as usual for deployment 24/7 to cases referred involving death or serious harm. New additional measures were introduced for out of hours response including enhanced PPE, social distancing, single-occupancy in GSOC response vehicles and the deployment of minimum team numbers to referrals to allow for resilience.

The Local Intervention project was amended to allow for proportionate discontinuance of low-level minor matters to prevent build-up of complaints backlog. An extension of 3 months for the timelines for S.94 disciplinary investigations was agreed with AGS upon certain criteria.

GSOC Workload in 2020 and 2021

Table 5: The following table shows the volume of complaints and other matters dealt with by GSOC in 2020 and 2021:

	2020	2021	% Increase/Decrease
Complaints Opened	1,955	2,189	+12%
Allegations Within Complaints	3,089	3,760	+22%
Complaints Closed	1,724	2,078	+21%
S102 Referrals*	43	59	+37%
Public Interest Investigations Opened**	26	13	-50%
Protected Disclosures	19	20	+5%
Criminal Investigations Opened	572	557	-3%

*S102 referrals from the Garda Síochána of matters where it appeared ‘the conduct of a member of the Garda Síochána may have resulted in the death of or serious harm to a person’.

***These are investigations undertaken in the absence of a complaint or a referral from the Garda Commissioner.*

The level of complaints received in 2020 (1,955) represented an increase of 11% on the number received in 2019 (1,756). This trend has continued in 2021 when the number of complaints received by GSOC rose to 2,189 which represents a 12% increase on 2020.

Similarly, the number of referrals under section 102 of the 2005 Act which GSOC received from An Garda Síochána has risen from 40 in 2019 to 43 in 2020 (an 8% increase) and 59 in 2021 (a 37% increase).

Table 6: This table shows a comparison in the number of complaints received and closed by GSOC in the period 2019 – 2021.

	2019	2020	2021
Complaints Received	1,756	1,955 (11% increase)	2,189 (12% increase)
Complaints Closed	1,896	1,724 (10% decrease)	2,078 (21% increase)

Table 7: This table gives greater detail on the caseload handled by GSOC in 2019, 2020 and 2021.

Nature of Activity	2019	2020	2021
No. of queries handled	3,357	3908	4615
No. of calls answered by caseworkers	4,026	1132	3286
No. of people met in public office	290	51	11
No. of complaints determined admissible	1,153	1264	1332
No. of complaints determined inadmissible	584	746	855
No. of criminal investigations opened	485	572	557
No of disciplinary investigations opened	658	688	752
Referrals from the Garda Síochána under section 102(1)	40	43	59
Investigations opened in the public interest under section 102(4)	44	26	13
No. of allegations dealt with in complaints closed	2,232	1989	2902

Resourcing

GSOC continues to face challenging demands within its current operational environment. The increased work levels over 2020 and 2021 have come at a time when there was no resulting increase in investigative personnel and at a time when COVID restrictions challenged the work of GSOC staff in keeping with the rest of the country. This has had an impact on the conduct of investigations, which are more challenging due to their inherent nature, and inevitably resulted in some delays in our ability to progress cases due to the impact of COVID restrictions on certain investigative activities. The nature of GSOC's current workload, which includes a number of serious and high-profile Article 2 investigations, pose a considerable risk to GSOC's ability to carry out its statutory functions and indeed the State's obligations under the European Convention of Human Rights.

GSOC welcomes the additional funding secured by the Department which has seen GSOC's allocation rise by €2.133 million to €13.406 million in 2022. We are currently working to put in place this year the key resource components, e.g. staff expertise, numbers and grades together with systems and supports,

with the available funding, which it is hoped will allow us to address backlogs in current cases and to improve our performance in terms of timeliness of our response.

It is important to note that this level of resourcing will only allow GSOC to deal with its current workload under the existing legislation. These resourcing levels do not take account of additional requirements consequent on the intended transition to the successor complaints body being provided for in the draft Policing, Security and Community Safety Bill, the General Scheme of which is currently undergoing pre-legislative scrutiny by the Joint Oireachtas Committee on Justice. It is our strong view that the additional functions and obligations proposed under the new legislation will seriously impact GSOC's capacity and will have to be separately addressed in future Estimates allocations.

As part of the preparations to implement the new legislation, GSOC will be engaging with the Department of Justice, including to seek the resources to assist in these preparations during this year, 2022, and into next, 2023.

Impact of Superintendents Dispute on GSOC

Starting in July 2021, as a result of an industrial dispute, some Garda Officers at Chief Superintendent and Superintendent rank withdrew from work they consider outside of their core duties. Such duties include the investigation of complaints involving alleged breaches of discipline which are referred to them by GSOC under section 94 of the Garda Síochána Act, 2005, as amended. Section 94 investigations involve alleged breaches of discipline and do not include criminal allegations.

Section 94 investigations are referred for investigation to the Garda Síochána for either supervised investigation, where the Garda investigation is supervised by GSOC, or unsupervised investigation, which is managed by the Garda Síochána Investigation Officer (GSIO) to whom the case is assigned. In the normal course of events, and under the Protocols and Memorandum of Understanding (the Protocols) agreed between GSOC and An Garda Síochána, these investigations are required to be completed in a timescale of between 16 and 20 weeks.

Where the date for a final report has passed, in line with Chapter 18 of the Protocols, GSOC issues escalations seeking the immediate submission of the report. When requested and where appropriate, GSOC will grant an extension to the date upon which the final report is due. Requests made by GSIO's for an extension on the basis of the dispute were not acceded to as GSOC viewed the dispute as an internal matter for An Garda Síochána.

The withdrawal of some Garda Superintendents and Chief Superintendents from this work has caused delays to the completion of some disciplinary investigations, mainly unsupervised, within the statutory timelines. These delays have been outside of the control of GSOC.

As of 20th March 2022, GSOC has a total of 355 cases referred to Garda Síochána Investigation Officers (GSIO) in section 94(1), in other words, unsupervised investigations, and 73 in section 94(5), i.e. supervised investigations. When the dispute commenced in early July 2021, these figures stood at 285 and 109 respectively.

GSOC was advised in early February 2022 by An Garda Síochána that work on progressing investigations under section 94 was resuming and that measures were being put in place to alleviate any backlog in these investigations resulting from the dispute. GSOC expects that this will result in the backlog being addressed without further undue delay. GSOC remains in close contact with the Garda Síochána to monitor the cases affected and keep relevant complainants informed as to the progress with their cases.

General Scheme of the Policing, Security and Community Safety Bill

Looking to the future, the General Scheme of the Policing, Security and Community Safety Bill, which was published in 2021, proposes sweeping changes which will, when implemented, impact the structure and scope of oversight and establish a new Garda Ombudsman with significantly enhanced functions and independence. GSOC has already commenced preparations for this transition.

These preparations have been a core focus of our work in 2021 and will continue to be a primary focus for the organisation to ensure that the transition to the new structures envisaged will be seamless. Planning the consequential organisational transition will be a task for everyone in the organisation and a cross-organisational transition project group will coordinate the work that needs to be done. As part of this, GSOC has engaged with policy stakeholders and the Oireachtas and set out our observations on the proposed legislation. Chief among these are the need to emphasise our independence, guarantee timely cross-agency cooperation, especially with An Garda Síochána, and lock in adequate resourcing and staffing to ensure an expanded oversight remit can be met in practice.