



Garda
Ombudsman
INQUIRY INDEPENDENCE IMPARTIALITY

**Report following a complaint made by Mr. Henry McCourt, nephew
of the late Fr. Niall Molloy who died on the 8th of July 1985 in Clara,
County Offaly**

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On the 9th of June 2016 the Garda Síochána Ombudsman Commission (GSOC) admitted a complaint for investigation from Mr. Henry McCourt, nephew of the late Fr. Niall Molloy who died on the 8th of July 1985 in Clara, County Offaly. The owner of the house in which Fr. Molloy died, Mr. Richard Flynn, was charged with manslaughter and tried in relation to the death. Mr. Flynn was acquitted by direction of the trial judge in 1986.

Mr. McCourt was complaining to GSOC about the Garda investigation into the death of his uncle, Fr. Molloy. He made his complaint to GSOC following the publication by the Minister for Justice and Equality in March 2015 of the report of Mr Dominic McGinn, Senior Counsel, concerning the Garda Serious Crime Review Team (SCRT) examination relating to the Garda investigation into the death of Father Molloy.

Mr McCourt stated to GSOC that he has not been given access to the SCRT report but he had received some information from the SCRT who had explained as much as could be explained about the findings that had been made. Mr McCourt said to GSOC that the SCRT and McGinn reports had uncovered serious deficiencies in the Garda investigation into his uncle's death and that the information he had received had prompted Mr McCourt to bring the matter to GSOC's attention.

It was alleged to GSOC that serious deficiencies in the Garda investigation into his uncle's death gave rise to Mr. McCourt's complaint relating to the "shambolic, unprofessional and unacceptable investigation into the death of his late uncle" which has "led to a serious miscarriage of justice in the case".

Mr. McCourt was of the view that "while Dominic McGinn S.C. recommended no further inquiry into his uncle's death, this does not mean that the conduct of the Garda investigation, and the performance of those Garda members involved, could or should not be investigated further".

In terms of the deficiencies which Mr McCourt said had been identified, the main thrust appeared to be that it is now known certain evidence concerning Fr Molloy's business and financial matters which went to the motive involved and cause of his death was made available to the gardai at the time but was not subsequently addressed in the Garda file in the case.

Mr McCourt also referred to the varying medical evidence which exists in relation to the manner of Fr Molloy's death and issues surrounding medical reports and autopsy findings had not been followed up by the Gardai. It was Mr. McCourt's understanding that the matter of the medical evidence could have taken the gardai into other areas of investigation.

Mr McCourt raised concerns about other alleged deficiencies in the Garda investigation particularly around the failure to interview a number of individuals mentioned in witness statements and who should have been interviewed at the time. Other failures include the lack of reports on file on the various items and blood samples taken from the scene and from those present at the incident.

The Commission decided to admit the allegations for investigation, albeit noting the date of the events alleged which went back to 1985. However the publication in 2015 of the McGinn Report was considered by the Commission as a matter which allowed for the correct exercise of its discretion to extend the 12 month time limit for making complaints under the Garda Síochána Act 2005, as amended ("the 2005 Act").

In making the decision to admit the matter for investigation Mr. McCourt was briefed as to the legislative constraints under which GSOC operates. In particular the allegation being made was of a nature which did not appear to involve a criminal offence and thus was to be investigated under the provisions of s. 95 of the 2005 Act. This provision requires at the end of the investigation the compiling of a report by GSOC which goes to the Garda Commissioner with or without a recommendation to the Garda Commissioner about whether or not disciplinary proceedings should be instituted under the Garda Síochána (Discipline) Regulations 2007.

It should be noted that at any stage in a discipline investigation if there is evidence to suggest that the conduct under investigation does involve an offence or offences the case can be upgraded to a criminal investigation.

Mr. McCourt was also briefed that, in light of the time of the murder investigation – 1985, there was a very serious likelihood that most if not all of the personnel involved in the investigation would at this stage be retired. That being the case, GSOC cannot under the current legislative framework investigate the actions of retired members in disciplinary investigations.

The complaint having been admitted Mr. McCourt made a full statement to the GSOC investigators and, as is usual in all investigations, documentation was sought from the gardaí relevant to the initial garda investigation. Mr. McCourt, despite the passage of time, was in a position to provide documentation to GSOC from 1984 and 1985, along with medical reports that had been compiled and he felt were relevant to the medical issues surrounding the cause of death of Fr. Molloy.

A significant amount of material from the original garda investigation from 1985 was provided to GSOC, along with the opportunity to inspect documents in the possession of the gardaí. It was established that a Senior Investigating Officer was still assigned to the file and the case is classified as “open” in light of the fact that no one has been successfully prosecuted for the death of Fr. Molloy.

However it became apparent during the GSOC investigation that many original documents including exhibits are missing. There appears to be no record of handling of exhibits, and as such the person responsible for their loss cannot be identified. The Senior Investigating Office in the gardaí involved with the Molloy investigation endeavoured to find the missing exhibits including searching the Forensic Science Laboratory. By the end of the GSOC investigation the exhibits remained missing.

A review of the original investigation and discussions with gardaí currently tasked with the case confirmed that members of the original team were retired. The original State Pathologist, Dr John Harbison, is also retired. This led to the conclusion that, having reached this stage, GSOC was precluded under the 2005 Act from proceeding further with the investigation of Mr. McCourt’s complaint.

It should be noted that while the GSOC investigation was open Mr. McCourt also had access to gardaí involved with reviewing the original investigation and this cooperation should not be overlooked.

At the end of the investigation the Commission wrote to the Acting Garda Commissioner, Mr. Dónall Ó Cualáin, on the 9th of February 2018. In that letter, having set out the background of the investigation and the finding that the exhibits could not be accounted for by gardaí still assigned to the case, the following was set out:

What has disturbed the Commission is the fact that despite extensive searches by garda personnel it would appear that many original documents and all the exhibits could not be found which may have assisted us in our enquiries. It is accepted that this is an old case, now in excess of some thirty plus years. However the case involves death and has been an open investigation since 1985 and thus, regardless of the public profile of this case, the Commission would expect that keeping all information and evidence safe and accountable would be a requirement until the case is formally closed. Safekeeping of documents and exhibits has become even more pertinent with the developments we see on a regular basis in relation to forensic advances and the ability to solve serious cases years, and decades later, continues to develop apace. Thus this knowledge places an even higher onus on police services to keep safe the documents and evidence which could make a prosecution successful into the future, even where witnesses may have moved on or died.

The issue of safe keeping of exhibits and related evidence in criminal investigations is a matter which GSOC has raised with An Garda Síochána on previous occasions. In this case we have relatives of the late Father Molloy who have lost a loved family member and where the circumstances of that death thirty years later still causes pain. This pain sadly has been compounded by a belief that a poor investigation was carried out into their uncle's death at the time. The lack of regard shown to the evidence and documentation in this matter in the intervening years by gardaí in many ways adds insult to injury which is clearly not a result anyone would wish to see.

In writing to the Acting Commissioner the Commission further noted the October 2014 report of the Garda Inspectorate on "Crime Investigation" which state that "During field visits, gardaí were asked where case files are kept and the consistent response was "everywhere". The majority of gardaí stated that files are kept in their lockers. In extreme cases, locations for keeping files included members taking them home. The retention of files by individual gardaí removes the ability of supervisors to check the progression of cases and if officers are away from work for extended periods, then files are not readily available." (Part 6, page 55).

The Commission is aware of the introduction of the Property and Exhibit Management System (PEMS) by the Garda Síochána in recent years but expressed its concern to the Acting Commissioner in its letter of the 9th of February 2018 that the kind of prior management as outlined above is not being sufficiently captured in this new system. The concerns, then, for what would be considered "cold cases" such as the Molloy case is therefore even greater. The Commission noted in its correspondence with the Acting Commissioner the recommendation further on in the Inspectorate Report at Part 9, page 55 where it says under Recommendation 9.16 "The Inspectorate recommends that the Garda Síochána conducts an urgent examination of the current process for exhibit and property management. (Medium term)."

The Commission asked for a report as to the progress made in relation to the new PEMS process as well as what direction is being given throughout the country in relation to open cases, the solving of which could bring relief to families such as the family of the late Fr. Molloy.

The letter of the 9th of February 2018 to the Acting Commissioner was acknowledged by letter of the 21st of February 2018 which indicated that enquiries were being conducted into the matter. A reminder from the Commission dated the 16th of May 2018 elicited a response from Garda Headquarters that a report on the issues was awaited. No response has been received to date.