



**Report following a referral made by the Minister for Justice and  
Equality on the 29<sup>th</sup> of April 2014 and related complaints from Mrs  
Lucia O'Farrell and Ms Gemma O'Farrell**

*Issued under section 103 of the Garda Síochána Act 2005*

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## **Part 1. Introduction**

On the 29 April 2014, the then Minister of Justice, Mr Alan Shatter T.D. made a request under Section 102 (5) of the Garda Síochána Act, 2005, as amended (“the 2005 Act”) for an investigation in relation to a number of issues raised by Mrs Lucia O’Farrell of Magheraboy, Carrickmacross, Co. Monaghan, and her family, into the tragic circumstances of the death of her son Shane O’Farrell.

GSOC was already in receipt of six complaints from Mrs Lucia O’Farrell and Ms Gemma O’Farrell and a review was conducted by the Investigation Team.

On 22 July 2014, in light of the Ministerial request, GSOC directed an investigation pursuant to section 98 of the 2005 Act to be conducted into all matters already admitted, as well as any additional admissible matters.

Complaints made by Ms Gemma O’Farrell in February 2012 and March and July 2013 were previously under investigation pursuant to section 94 (5) of the 2005 Act. Pursuant to section 94 (12) of the 2005 Act these investigations were taken over by GSOC. A further complaint made by Ms Gemma O’Farrell in August 2013 which had been under investigation pursuant to section 95 of the 2005 Act was directed by the Ombudsman Commission to be investigated pursuant to section 98 of the 2005 Act.

A complaint of Mrs Lucia O’Farrell made in July 2013 was previously under investigation pursuant to section 94 (5) of the 2005 Act. Pursuant to section 94 (12) of the 2005 Act this investigation was taken over by GSOC. A later complaint of Mrs O’Farrell made in April 2014 was designated for investigation pursuant to section 98 of the 2005 Act on the 2<sup>nd</sup> of May 2014.

On the 9<sup>th</sup> of January 2015, Acting Deputy Director Darren Wright designated all cases in respect of the O’Farrell family for investigation pursuant to section 98 of the 2005 Act. This decision was taken on the basis that they all form part of a wider investigation of a set of circumstances relating to the death of Shane O’Farrell where in relation to some of the complaints received, criminality could not be ruled out.

The decision made had been motivated by the need for GSOC to take a holistic approach to all of the matters under investigation, including the investigation of lines of inquiry relating to alleged criminality.

## **Part 2. Background**

Shane O'Farrell of Magheraboy, Carrickmacross, County Monaghan was 23 years of age and the only son of Lucia and James O'Farrell and brother to four sisters when he was killed on the 2<sup>nd</sup> of August 2011 after being struck by a vehicle driven by Zigmantas Gridziuska. Mr. O'Farrell was a law graduate from University College Dublin and had just submitted his thesis for the final part of a Masters in Trinity College Dublin on the day of his death.

Mr. O'Farrell left the family home in Carrickmacross at around 21.30 on the 2<sup>nd</sup> of August 2011 to go for a cycle as he was in training for an upcoming triathlon. At approximately 22.15 he was struck by vehicle registration 99 D 36371 driven by Zigmantas Gridziuska on the N2 at Tullyvaragh Upper, Carrickmacross, Co. Monaghan. The vehicle left the scene of the accident. Mr. O'Farrell's untimely death was instantaneous.

Gardaí arrived at the scene of the incident at 22.30. A doctor who was passing assisted along with ambulance personnel but Mr. O'Farrell was pronounced dead at 22.35. The scene was preserved and a garda investigation commenced immediately.

On the following day, the 3<sup>rd</sup> of August 2011, gardaí commenced a search of Carrickmacross for a turquoise coloured vehicle that was suspected of being involved in the fatal collision the night before. At approximately 11.28 a turquoise coloured vehicle with extensive damage to the front of the vehicle was located at Derryolam Court, Carrickmacross. The registration number was 99 D 36371.

On the same day at 12.57 Zigmantas Gridziuska presented himself to Carrickmacross garda station and admitted to gardaí that he was involved in a road traffic collision the previous evening. Mr. Gridziuska was arrested for the offence of dangerous driving causing the death of Shane O'Farrell.

Zigmantas Gridziuska was detained under the provisions of section 4 of the Criminal Justice Act 1984 and later released at 23.57. He was then re-arrested and charged with offences related to leaving the scene of the fatal collision. Mr. Gridziuska was remanded in custody and appeared in the District Court on the 4<sup>th</sup> of August 2011 when he was released on bail to appear in the District Court in Carrickmacross on the 28<sup>th</sup> of September 2011.

Mr. Gridziuska was subsequently charged with dangerous driving causing the death of Shane O'Farrell on the 7<sup>th</sup> of March 2012.

## **Part 3. The Investigations**

The Garda Ombudsman investigation arose as a result of complaints from Mrs Lucia O'Farrell and Ms Gemma O'Farrell. There was also a request under section 102 (5) of the 2005 Act by the then Minister for Justice Alan Shatter T.D. on the 29<sup>th</sup> of April 2014 for an investigation into the circumstances of the death of Shane O'Farrell. By the time of the Minister's request there were a total of six complaints under GSOC investigation and all matters were then combined into one investigation.

The O'Farrell family complaints contained a total of 56 allegations, all of which needed to be investigated, although it was noted that there was some repetition in the allegations.

The investigators looked at three investigatory stages to deal with the varied allegations. These were

1. The fatal road traffic collision on the 2<sup>nd</sup> of August 2011;
2. The issue of the granting of bail, conditions attaching to bail orders and other Court orders;
3. The garda investigation into insurance fraud alleged against Zigmantas Gridziuska by the O'Farrells.

The GSOC investigation took statements from members of the O'Farrell family. It reviewed the garda file that went to the Director of Public Prosecutions in relation to the fatal collision. There was correspondence with Monaghan County Council that was considered along with the relevant motor vehicle insurance documentation. The documentation from the National Car Testing Service was considered along with the relevant garda documentation. Statements from various witnesses were obtained and reviewed.

Application was made to a number of courts to obtain transcripts of court proceedings that included hearings in the Circuit Criminal Court in Monaghan in January 2011 and 2012; in the Circuit Criminal Court in Dublin in February 2013 and the District Court sitting in Carrickmacross on the 6<sup>th</sup> of March 2013. GSOC applied for and took up Digital Audio Recordings (DAR) from court sittings in 2012 and 2013. Various court Orders were applied for and received. Copies of court convictions from Northern Ireland were obtained. PULSE printouts were provided to the investigators. High Court bail orders were obtained as well as copy garda bail book entries. Correspondence of relevance was also obtained from the gardaí and the O'Farrell family.

A GSOC investigation under the provisions of section 98 of the 2005 Act is appropriate where complaints appear to involve offences. At the conclusion of an investigation under section 98, the GSOC officer shall report in writing to the Commission with the results of the investigation.

**In this case, at the end of the section 98 investigation and having considered the report under section 101 (1) of the 2005 Act, the Commission is satisfied that there is no conduct**

**which may constitute an offence or offences. However there is conduct that requires further investigation under section 95<sup>1</sup> of the 2005 Act.**

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<sup>1</sup> S. 95 of the Garda Síochána Act 2005 is used where the Commission investigates complaints that do not appear to involve offences and includes a report to the Garda Commissioner at the end, which may include a recommendation for disciplinary proceedings. GSOC does not undertake disciplinary hearings.

## **Part 4. The allegations and findings**

The Commission has attached the allegations to this report. (**Appendix 1**)

The investigation confirmed the following: -

### **1. 11<sup>th</sup> January 2011:**

Zigimantas Gridziuska appeared before His Honour Judge John O'Hagan at Monaghan Circuit Court on the 11<sup>th</sup> of January 2011 having pleaded guilty to five charges of theft and one charge of possession of stolen property. These offences had occurred in 2009 and 2010. On the 11<sup>th</sup> of January 2011 Judge O'Hagan adjourned the case for one year and continued Mr. Gridziuska on bail on the condition that he stay out of trouble and did not commit any further theft offences. If he stayed out of trouble, the Judge indicated he would take a lenient view. Judge O'Hagan further stated that if he was arrested for any offence under the theft and fraud legislation Mr. Gridziuska was to be brought back before Judge O'Hagan, anywhere he was on the Circuit and Mr. Gridziuska would be sent to jail.

Mr. Gridziuska appeared before Judge O'Hagan on the 11<sup>th</sup> of January 2011 on bail, having been returned for trial on bail in one case, and having entered a bail bond on being sent forward for sentence on a plea of guilty. A condition of bail bonds from all courts since the passing of the Bail Act 1997<sup>2</sup> includes a provision that a condition of bail is that an accused person undertakes not to *commit any offence*. The District Court Rules 1997 were amended accordingly to take this requirement into account and it is noted that such a condition applied when Mr. Gridziuska entered into the bond sending him forward on the plea of guilty.<sup>3</sup> As the offences dated from 2009 and 2010 Mr. Gridziuska was on bail with this required condition for much of 2010<sup>4</sup>. When the case was adjourned until the 11<sup>th</sup> of January 2012 the same bonds continued and therefore the condition continued to require Mr. Gridziuska not to *commit any offence*, not just further theft offences as required by Judge O'Hagan.

2. This outcome was entered onto the garda PULSE system and the prosecuting garda was aware of this adjourned sentence and the conditions attaching to the adjournment.

### **3. 9<sup>th</sup> of May 2011:**

On the 9<sup>th</sup> of May 2011 Zigimantas Gridziuska appeared before Judge Patrick Clyne at Ardee District Court on five charges of theft. These offences occurred in April and May 2011, after the order of Judge O'Hagan on the 11<sup>th</sup> of January 2011. All thefts were of bottles of alcohol with values of €20, €40 and €80. Mr. Gridziuska pleaded guilty to all offences. In the presentation of the cases before the District Court on the 9<sup>th</sup> of May 2011 Judge Clyne was informed at that stage Zigimantas Gridziuska had eleven previous convictions, all of which

<sup>2</sup> S. 6 Bail Act 1997.

<sup>3</sup> Order 24 District Court Rules 1997 as amended.

<sup>4</sup> As a person is presumed innocent of an offence charged, the provision of s. 6 of the Bail Act 1997 only comes into effect once the person on bail is convicted of an offence.

were recorded on the PULSE system. The previous convictions included the cases before Judge O'Hagan in January 2011.

Judge Clyne sentenced Mr. Gridziuska to four months imprisonment on all the charges, suspended for a period of two years on the condition that he keep the peace and be of good behaviour for the two years of the suspended sentence.

Judge Clyne was not informed of the conditions of the adjourned sentence from Judge O'Hagan in January 2011 and no effort was made by the gardaí to re-enter Mr. Gridziuska's case at any stage before Judge O'Hagan following the pleas of guilty before Judge Clyne.

The pleas of guilty in these cases were not just only breaches of the Order made by Judge O'Hagan on the 11<sup>th</sup> of January 2011 but were breaches of the bail bonds arising from 2010 and extended on the 11<sup>th</sup> of January 2011.

GSOC is investigating the failure to inform the court on the 9<sup>th</sup> of May 2011 of the adjourned sentence of Judge O'Hagan and the failure to bring these new matters to the attention of Judge O'Hagan under the provisions of section 95 of the 2005 Act.

#### **(Allegation 15 and 16)**

##### **4. 11<sup>th</sup> of May 2011:**

Zigmantas Gridziuska appeared before Dundalk District Court on the 11<sup>th</sup> of May 2011 on foot of a speeding charge from August 2010. He pleaded guilty to the offence and was fined €150.

As this was not a theft offence and had occurred before the 11<sup>th</sup> of January 2011 the gardaí were not required to bring this matter to the attention of Judge O'Hagan.

However as an offence, if the offence was committed while Mr. Gridziuska was on bail and subject to the Bail Act 1997 conditions, this could have been considered a breach of the conditions of bail and brought back before the relevant court.

##### **5. 8<sup>th</sup> of June 2011:**

Zigmantas Gridziuska appeared before Carrickmacross District Court on the 8<sup>th</sup> of June 2011 on a charge of possession of heroin on the 13<sup>th</sup> of September 2010. Mr. Gridziuska pleaded guilty to the charge and was fined €500. GSOC have had sight of the Court Order made on the 8<sup>th</sup> of June 2011 in Carrickmacross District Court and no other penalty or conditions were recorded against Mr. Gridziuska.

As this was not a theft offence and occurred before the 11<sup>th</sup> of January 2011, the gardaí were not required to bring this matter to the attention of Judge O'Hagan.

However as an offence, if the offence was committed while Mr. Gridziuska was on bail and subject to the Bail Act 1997 conditions, this could have been considered a breach of the conditions of bail and brought back before the relevant court.

##### **6. 6<sup>th</sup> of July 2011:**

Zigmantas Gridziuska was a passenger in a motor vehicle on the 6<sup>th</sup> of July 2011, which was stopped and searched by gardaí under the Misuse of Drugs Act, 1977. Mr. Gridziuska was

found in possession of charred tinfoil, which gardaí suspected as having traces of heroin on it. The driver of the vehicle was found in possession of a bag of heroin to the value of €50.

The incident was entered on the PULSE system and recorded as “*Zigimantas Gridziuska found in possession of tinfoil with traces of heroin on it*”. The tinfoil was sent for analysis on the 27<sup>th</sup> of July 2011. On the 23<sup>rd</sup> of August 2011 a certificate of analysis was sent from the Forensic Science Laboratory to gardaí. The certificate of analysis, which GSOC has seen, states “*On analysis, no controlled drugs were detected*. ” On the 30<sup>th</sup> of August 2011 gardaí updated the PULSE to show that the analysis showed that no controlled drugs were found. Mr. Gridziuska was not charged in relation to the stop and search on the 6<sup>th</sup> of July 2011. Examination of PULSE shows no follow up action in relation to the driver of the car by gardaí.

While the initial PULSE entry was recorded as stating Mr. Gridziuska was in possession of traces of heroin, GSOC is not satisfied that this was a falsehood as alleged. (**Allegation 18**)

There were delays between the stop on the 6<sup>th</sup> of July 2011 and the sending of the tinfoil for analysis along with the subsequent delay in updating the PULSE entry. However GSOC is not satisfied that the delay was of such a degree as to warrant further investigation.

**(Allegation 19)**

Gemma O’Farrell complained that her family did not get a response to their queries about the outcome of the drugs search on the 6<sup>th</sup> of July 2011 from the gardaí. The giving of information to persons other than victims of crime, or their family members where appropriate, about accused persons is a difficult issue for the Garda Síochána. Under the “Code of Practice, Data Protection in An Garda Síochána” which was approved by the then Data Protection Commissioner, Mr. Billy Hawkes, it is stated The Data Protection Act 1988 as amended *places serious responsibilities on every employee of An Garda Síochána not to disclose data in relation to any individual to any other individual who is not entitled by law to receive it. Personal Data is used within An Garda Síochána in the normal course of operational functions*. (See [www.garda.ie](http://www.garda.ie) for the full Code of Practice). While the O’Farrell family were entitled to information connected with the fatal collision of the 2<sup>nd</sup> of August 2011 it is unclear where the giving of information to a victim or a family can become a data breach as opposed to information they are entitled to under the Criminal Justice (Victims of Crime) Act 2017. In the light of such uncertainty, the Commission finds no grounds for an investigation into a breach of discipline against any member of the gardaí in this instance.

Gemma O’Farrell complained about the circumstances surrounding the failure to charge Mr. Gridziuska arising from the stop of the vehicle on the 6<sup>th</sup> of July 2011. The family understood that the forensic laboratory results showed that there were drugs detected on the tinfoil seized from Mr. Gridziuska. However, while it was initially entered on PULSE that Mr. Gridziuska was in possession of *tinfoil with traces of heroin on it*, subsequent analysis did not support this and the PULSE entry was updated accordingly. Therefore as Mr. Gridziuska was not in possession of drugs, no criminal charges arose. (**Allegations 17, 19, 21**)

Complaint was also made about the alleged failures of a named Superintendent in the relevant District. GSOC is satisfied from its investigation that the Superintendent was not

assigned to the relevant District in July 2011 or the months immediately following.

Therefore a disciplinary breach does not arise. (**Allegation 20**)

Complaint was also made to GSOC by the O'Farrell family about the failure to seize the car in which Mr. Gridziuska was stopped on the 6<sup>th</sup> of July 2011. Investigation has confirmed that the car on the date in question did not belong to Mr. Gridziuska and he was the front seat passenger at the time of the stop. The GSOC investigation has confirmed that the driver and owner of the vehicle was found in possession of a bag of heroin with an estimated value of €50 but no charges arose. The decision to charge a person is an operational decision and not a matter for further investigation by GSOC in this case. (**Allegation 22**)

Finally, complaint was made to GSOC that gardaí failed to check whether any conditions had been imposed on Zigimantas Gridziuska as a result of the conviction on the 8<sup>th</sup> of June 2011 for possession of heroin. The court conviction is recorded simply as a €500 fine and 90 days to pay the fine with no other conditions attaching to the sanction. When stopped on the 6<sup>th</sup> of July 2011 Mr. Gridziuska still had time to pay that fine. (**Allegation 22**)

GSOC found no evidence to corroborate the allegations about actions of the gardaí arising from the stop of the vehicle of the 6<sup>th</sup> of July 2011. (**Allegations 17 – 22**)

#### 7. 14<sup>th</sup> of July 2011:

On the 14<sup>th</sup> of July 2011 Zigimantas Gridziuska was arrested in Northern Ireland and charged with theft of a pair of trainers, going equipped for theft and a charge of handling stolen property, to wit, perfume and alcohol. On the 15<sup>th</sup> of July 2011 Mr. Gridziuska appeared before Newry Magistrates Court and received a sentence of five-month imprisonment, suspended for two years.

As this was a conviction outside the jurisdiction the conviction is not automatically entered into the garda PULSE system and gardaí were unaware of these convictions until July 2012.

Mr. Gridziuska's first conviction in Ireland was for a charge of theft on the 28<sup>th</sup> of August 2009. He received a sentence of 100 hours of community service from Carrickmacross District Court on the 27<sup>th</sup> of January 2010. Mr. Gridziuska was known by gardaí to be a native of Lithuania from their initial dealings with him. It was not clear throughout the GSOC investigation why no application was made by An Garda Síochána until July 2012 for any information about convictions outside the jurisdiction. The request from the Lithuanian authorities confirmed that Zigimantas Gridziuska had been convicted of a total of eleven offences, including theft offences and criminal damage, on ten occasions in Vilnius, Lithuania between February 2002 and March 2004.

On 17<sup>th</sup> of April 2012 the then Government approved the drafting of the Criminal Records Information System Bill. The Bill was intended to provide for the exchange of criminal records information with other EU member states and other designated states. It was intended to give effect to The European Criminal Records Information System (ECRIS) established by Framework Decision 2009/315/JHA and Council Decision 2009/316/JHA1 which provides for an electronic exchange of criminal record information on a decentralised basis between Member States.

The ECRIS system is operational since April 2012. It was intended under the Irish Bill to provide for exchange of criminal records information with States other than EU Member States. It also was intended that the Court Service would provide the Garda Commissioner with details of all decisions of the courts regarding criminal convictions. This information would be entered on the national register of criminal records.

This Bill did not pass into effect. GSOC is not aware of the current status of this legislation.

The recording of foreign convictions is currently being carried out on an administrative basis and application can be made to other jurisdictions for such information as was done in the case of Zigmantas Gridziuska in July 2012. There appears to be no requirement on gardaí to check convictions outside the Irish jurisdiction.

GSOC, noting that the convictions on the 15<sup>th</sup> of July 2011 are a breach of the conditions of the Order of Judge O'Hagan of the 11<sup>th</sup> of January 2011, is investigating the failure to monitor the conditions of the order of the 11<sup>th</sup> of January 2011 under the provisions of section 95 of the 2005 Act. (**Allegation 23**)

8. **25<sup>th</sup> of July 2011:**

On the 25<sup>th</sup> of July 2011 Zigmantas Gridziuska appeared before Monaghan District Court in relation to an offence of non-display of a tax disc, which occurred on the 26<sup>th</sup> of January 2011. Mr. Gridziuska received a €150 fine for this offence.

The offence in this case occurred after the 11<sup>th</sup> of January 2011 but as it was not a theft matter there was no obligation on the gardaí to bring this matter to the attention of Judge O'Hagan.

However as an offence, if the offence was committed while Mr. Gridziuska was on bail and subject to the Bail Act 1997 conditions, this could have been considered a breach of the conditions of bail and brought back before the relevant court.

9. **2<sup>nd</sup> of August 2011:**

At approximately 21.10 on the 2<sup>nd</sup> of August 2011 motor vehicle 99 D 36371, owned by the wife of Zigmantas Gridziuska but driven by another man, was stopped by members of the Divisional Drugs Unit from Carrickmacross at Cloghan, Annyalla, Co. Monaghan. The car, the driver and the two passengers, including Mr. Gridziuska, were searched but the gardaí located no drugs. The search concluded at 21.20 and all men were noted by the gardaí to be sober. The car, now driven by Zigmantas Gridziuska with the two occupants, was allowed to leave the scene after the search.

The gardaí involved in the drugs search did not seize the vehicle.

Complaint was made to GSOC by the O'Farrell family that the car was not properly taxed and did not display a tax certificate. Enquiries with Monaghan County Council have confirmed that the vehicle was registered to the wife of Zigmantas Gridziuska and taxed the 1<sup>st</sup> of August 2011 to the 31<sup>st</sup> of October 2011. The tax disc issued on the 26<sup>th</sup> of July 2011 and evidence confirmed that the disc was displayed on the vehicle on the 2<sup>nd</sup> of August 2011. No further investigation is needed. (**Allegations 1, 2, and 3**)

Complaint was also made that the vehicle did not have an NCT. There was a NCT disc displayed on the car but this had expired in April 2011. Failure to have an up to date NCT certificate is an offence under section 18 of the Road Traffic Act 1961 as amended. The car was registered in the name of Mr. Gridziuska's wife. The usual procedure adopted by the gardaí where a certificate may appear to be out of date or not displayed is to request a person present at a nominated garda station within ten (10) days with the appropriate documentation. If no documentation or valid documentation is produced, a prosecution can then be commenced. GSOC found no evidence that a request for such a certificate was made on the 2<sup>nd</sup> of August 2011 at the drugs stop by any of the gardaí at that stage.

Complaint was made that the vehicle could have been seized on the 2<sup>nd</sup> of August 2011 and detained by the gardaí. As the vehicle did have tax and an apparently valid insurance disc displayed the only road traffic infringement was in relation to the NCT disc. The power to seize a vehicle not displaying a valid NCT certificate only arose as a result of an amendment in 2006 to the Road Traffic Act 1994 but the required regulations under the Road Traffic Act 2006 amending the 1994 Act only came into effect on the 15<sup>th</sup> of September 2011 through Statutory Instrument 460/2011, Road Traffic (Detention of Vehicles) Regulations 2011. By a matter of some six weeks, the gardaí did not have the legal authority to seize a vehicle for not having a valid NCT.

When the gardaí stopped the vehicle at 21.10 on the 2<sup>nd</sup> of August 2011 it was being driven by another man who, it is now clear, was not insured to drive motor vehicle 99 D 36371. It was open to the gardaí to make a demand of this man and Zigmantas Gridziuska to produce valid certificates of insurance to cover the driving on the 2<sup>nd</sup> of August 2011. GSOC found no evidence that this was done.

The failure by the gardaí to either make demands for insurance to cover the drivers of 99 D 36371 at 21.10 on the 2<sup>nd</sup> of August 2011 is neither a criminal offence nor is it a breach of discipline. While a driver must be insured, a garda may make a demand for such insurance but is not obliged to make a demand. Similarly while a garda may seize a vehicle where there is no valid insurance covering the driver, he/she is not obliged to seize the vehicle. In this instance the gardaí who stopped the vehicle on the 2<sup>nd</sup> of August 2011 were members of the Divisional Drugs Unit who are tasked with detecting and prosecuting drug related offences. While this does not mean that they cannot, or should not, use other legal powers such as those under the road traffic legislation they are entitled to a reasonable exercise of their discretion in the use of their policing powers.

If vehicle 99 D 36371 was seized at 21.10 on the 2<sup>nd</sup> of August 2011 by the gardaí this would have prevented the fatal collision that occurred later that night. However such a seizure must be in accordance with the law and in light of the above matters, GSOC is satisfied that no further investigation is required. **(Allegation 4)**

10. The fatal collision occurred approximately one hour after the drugs search had been completed. By the time of the collision the two other people who had been in the car for the drugs stop had left the vehicle.

Zigmantas Gridziuska did not remain at the scene of the fatal collision. He returned home where he told his wife he had *knocked someone down*. She told gardaí that *There were no*

*thoughts about ringing the guards but we were in shock we didn't know what to do. ... he was saying he didn't see anything in front of him. I asked how he could not see someone, but he said he didn't. ... in the morning we checked the TV and internet and found in the news that the person was killed. Then we decided we have to go to the Garda Station. I left him at the door of the station.*

Complaint was made to GSOC that Mr. Gridziuska's wife should have been charged with withholding information in relation to the failure to contact the gardaí on the night of the 2<sup>nd</sup> of August 2011. Arising from a meeting with the O'Farrell family in February 2012, the State Solicitor was written to on the 4<sup>th</sup> of May 2012 and provided with a copy of Mrs Gridziuska's statement. Directions were sought from the Director of Public Prosecutions as to whether there was evidence to ground a charge of withholding evidence.

No charges were brought by the Director of Public Prosecutions against Mrs Gridziuska for withholding information.

While GSOC is satisfied that the Director of Public Prosecutions did consider whether charges should also be brought against Mrs Gridziuska it is not clear why this was not included in the original investigation in 2011. However in light of the DPP decision no further investigation is required. It is noted that it appears that it was only as a result of the intervention of the O'Farrell family and their request that this matter be advanced that action was taken and this was not the only intervention by the O'Farrell family which led to further investigative steps being taken by the gardaí. (**Allegation 8, 9, and 10**)

Related to the above matters complaint was made that a named garda had misled the O'Farrell family in relation to information given to them prior to the court proceedings in the case. The GSOC investigation has not found evidence to corroborate that allegation and the garda in question denied he had said or done anything to mislead the O'Farrell family at any stage in his dealings with the family. It is clear that he did pursue matters once raised by the O'Farrell family. Therefore no further investigation is required. (**Allegation 11**)

**11. 3<sup>rd</sup> of August 2011:**

Zigimantas Gridziuska presented himself at Carrickmacross garda station at 12.57 on the 3<sup>rd</sup> of August 2011. Complaint was made that gardaí failed to seek a voluntary blood and urine sample from Zigimantas Gridziuska particularly as he had previous convictions for possession of drugs by August 2011. The value of a blood or urine sample in relation to allegations of road traffic breaches is to see whether there was impairment of the driver of a vehicle at the time of a given incident. However under the road traffic legislation the time frame for intoxicant testing is within three hours of the driving under investigation. Intoxicant includes alcohol and/or drugs. There was no evidential value to be gained from testing Mr. Gridziuska at 12.57 on the 3<sup>rd</sup> of August 2011 in relation to driving at 22.15 on the 2<sup>nd</sup> of August 2011. While the gardaí could have sought to take such a sample from Mr. Gridziuska, any findings from the sample would have no evidential value for the subsequent prosecution. Therefore GSOC finds no further investigation is required from the fact that no drug/drink testing of Mr. Gridziuska was undertaken on the 3<sup>rd</sup> of August 2011. (**Allegation 13**)

**12. Zigimantas Gridziuska was charged with the following offences on the 3<sup>rd</sup> of August 2011:**

- (i) On the 2<sup>nd</sup> of August 2011 at Tullyvaragh Upper, Carrickmacross, being the driver of vehicle 99 D 363671 which was involved in causing injury to Shane O'Farrell, failed to give on demand the appropriate information, there being no member of An Garda Síochána present contrary to section 106 of the Road Traffic Act 1961 as amended;
  - (ii) On the 2<sup>nd</sup> of August 2011 at Tullyvaragh Upper, Carrickmacross being the driver of vehicle 99 D 363671 which was involved in causing injury to Shane O'Farrell, failed to stop the vehicle contrary to section 106 of the Road Traffic Act 1961 as amended;
  - (iii) On the 2nd of August 2011 at Tullyvaragh Upper, Carrickmacross being the driver of vehicle 99 D 363671 which was involved in causing injury to Shane O'Farrell, failed to keep the vehicle at or near the place of such occurrence for a period which was reasonable in all the circumstances contrary to section 106 of the Road Traffic Act 1961 as amended;
  - (iv) On the 2nd of August 2011 at Tullyvaragh Upper, Carrickmacross being the driver of vehicle 99 D 363671 which was involved in causing injury to Shane O'Farrell, failed to report the incident as soon as possible to a member of An Garda Síochána contrary to section 106 of the Road Traffic Act 1961 as amended.
13. Complaint was made to GSOC about the failure to charge Mr. Gridziuska with not having a valid NCT certificate in force on the 2<sup>nd</sup> of August 2011. Mrs Lucia O'Farrell provided to GSOC documentation which showed that a garda member had ticked a box on a garda form compiled during the garda investigation to the effect that vehicle 99 D 363671 had a road worthiness certificate displayed. The certificate had in fact expired on the 26<sup>th</sup> of April 2011. The GSOC investigation has confirmed that the document provided by Mrs O'Farrell is a genuine garda document.

A similar complaint was made in relation to Mr. Gridziuska's wife but there is no evidence of Mrs Gridziuska driving vehicle 99 D 363671 on the 2<sup>nd</sup> of August 2011.

GSOC is investigating the failure to charge Zigmantas Gridziuska with not having a valid certificate of road worthiness on the 2<sup>nd</sup> of August 2011 under the provisions of section 95 of the 2005 Act. (**Allegations 5, 6 and 7**)

**14. 4<sup>th</sup> of August 2011:**

Mr. Gridziuska, having been charged with the offences, was brought before Dundalk District Court in custody on the 4<sup>th</sup> of August 2011. Mr. Gridziuska was granted bail without objection on the following terms:

- i. Bail in his own bond of €500;
- ii. Sign on at Carrickmacross garda station on Mondays, Wednesday and Fridays between 9 a.m. and 9 p.m.;
- iii. Surrender his passport and not apply for any travel documents;

iv. Appear before Carrickmacross District Court on the 28<sup>th</sup> of September 2011.

Complaint was made to GSOC that gardaí did not object to bail on the 4<sup>th</sup> of August 2011. It is accepted by GSOC that at this stage the charges before the court were all summary matters, i.e. would be dealt with in the District Court, and he only had one previous bench warrant from 2010 at that stage. The conditions imposed were appropriate in that, if complied with correctly, they could have prevented Mr. Gridziuska leaving the jurisdiction (having to surrender his travel documents or passport) and by signing on regularly at the local garda station which is designed to keep him under the supervision of the gardaí. Therefore GSOC does not find that there are grounds for further investigation into the gardaí not objecting to bail on the 4<sup>th</sup> of August 2011. (**Allegations 24 and 25**)

15. Complaint was made to GSOC about the failure of the gardaí to interview the two occupants of the car when it was stopped about an hour before the fatal collision on the 2<sup>nd</sup> of August 2011 until the 10<sup>th</sup> of August 2011 and the 17<sup>th</sup> of August 2011. It has been accepted by all the parties involved in the investigation that the two occupants had left the vehicle prior to the fatal collision and, while assisting to establish the timeline for the night in question, were not witnesses to the collision itself. GSOC accepts that there was some delay in speaking to these two people but the delay was not such as to require further investigation by GSOC. (**Allegation 12**)

16. **13<sup>th</sup> of September 2011:**

On the 13<sup>th</sup> and 14<sup>th</sup> of September 2011 Mr. Gridziuska was arrested and charged in Belfast with two charges of theft of bottles of aftershave. On the 15<sup>th</sup> of September 2011 Mr. Gridziuska pleaded guilty to the charges before Belfast Magistrates Court and was sentenced to two-week imprisonment in Maghaberry Prison. He served five days between the 14<sup>th</sup> and 19<sup>th</sup> of September 2011 of the sentence.

These were convictions outside the jurisdiction and such convictions are not automatically entered onto the garda PULSE system and gardaí were unaware of these convictions at that time.

17. As Mr. Gridziuska was in custody for five days in Northern Ireland he could not sign on at Carrickmacross garda station as required by the order of the District Court made on the 4<sup>th</sup> of August 2011 in relation to the driving offences arising from the collision with the late Mr. O'Farrell. To be precise, the 14<sup>th</sup> of September 2011 was a Wednesday, the 16<sup>th</sup> of September 2011 was a Friday and the 19<sup>th</sup> of September 2011 was a Monday. Mr. Gridziuska did not sign on at Carrickmacross garda station on those days as he was in custody in Northern Ireland. The last time he signed on in Carrickmacross was on the 12<sup>th</sup> of September 2011 and the next time Mr. Gridziuska signed on was Tuesday 20<sup>th</sup> of September 2011.

No enquiries were made about Mr. Gridziuska's failure to sign on by the gardaí during that period as far as GSOC has been able to establish.

It also transpired that Mr. Gridziuska was not honouring the terms of the District Court order of the 4<sup>th</sup> of August 2011 to sign on each Monday, Wednesday and Friday in other ways. Examination of the garda station records showed that Mr. Gridziuska signed on at

the station on the 18<sup>th</sup> of August 2011, a Thursday; on the 27<sup>th</sup> of August 2011, a Saturday; on the 20<sup>th</sup> of September 2011, a Tuesday. He failed to sign on Friday the 2<sup>nd</sup> of September 2011.

**18. 28<sup>th</sup> September 2011:**

No application to revoke bail was made by the gardaí on the 28<sup>th</sup> of September 2011 when the case in relation to the driving offences arising from the collision with the late Mr.

O'Farrell was up for mention in the District Court. The case was adjourned on the same terms and conditions until the 2<sup>nd</sup> of November 2011 and Mr. Gridziuska continued on bail.

**19. GSOC found that Mr. Gridziuska continued not to honour his bail conditions after the court appearance on the 28<sup>th</sup> of September 2011. He signed on 1<sup>st</sup> of October 2011, a Saturday and on the 4<sup>th</sup> of October 2011, a Tuesday. No application was made to bring him back to the District Court to inform the Judge of his failure to comply with the conditions set on the 4<sup>th</sup> of August 2011 by Judge Hamill.**

GSOC is investigating the failure to monitor the conditions of bail set by Judge William Hamill on the 4<sup>th</sup> of August 2011 under the provisions of section 95 of the 2005 Act.

**(Allegations 26, 27, 28 and 29)**

**20. 16<sup>th</sup> of November 2011:**

On the 16<sup>th</sup> of November 2011 Zigmantas Gridziuska appeared before Carrickmacross District Court on a charge of failure to display a current tax disc on a vehicle, which occurred on the 6<sup>th</sup> of April 2011. He was fined €100. On that day he was further charged with two charges of theft and one charge of possession of drugs. The theft offences occurred on the 25<sup>th</sup> of May 2011 and on the 24<sup>th</sup> of August 2011. The possession of drugs occurred on the 20<sup>th</sup> of September 2011. The prosecuting gardaí applied to remand Mr. Gridziuska in custody until the following day, the 17<sup>th</sup> of November 2011 on the basis that two of the three new offences occurred while he had been on bail for the road traffic offences relating to the fatal collision with Shane O'Farrell. Bail was revoked on the 16<sup>th</sup> of November 2011 and Mr. Gridziuska was remanded in custody until the following day, the 17<sup>th</sup> of November 2011.

**21. 17<sup>th</sup> of November 2011:**

On the 17<sup>th</sup> of November 2011 Zigmantas Gridziuska appeared in custody before Cavan District Court. The three charges were of theft on the 25<sup>th</sup> of May 2011, theft on the 24<sup>th</sup> of August 2011 and unlawful possession of drugs on the 20<sup>th</sup> of September 2011. Mr. Gridziuska pleaded guilty to all the charges on the 17<sup>th</sup> of November 2011 and received a sentence of 6 months imprisonment for the drugs offence and 4 months imprisonment for one of the theft offences, with the second theft charge being taken into consideration by the judge. The sentences were ordered to run concurrently to each other.

Three separate gardaí presented investigation files on which it was noted that, among his previous convictions, Mr. Gridziuska had received a suspended sentence imposed on the 9<sup>th</sup> of May 2011. The Court Presenter dealt with the three cases on the 17<sup>th</sup> of November 2011.

GSOC accepts that the Court Presenter told the District Judge on the 17<sup>th</sup> of November 2011 of the previous convictions, including the suspended sentence from the 9<sup>th</sup> of May 2011.

However no specific application appears to have been made to the District Court sitting on the 17<sup>th</sup> of November 2011 to bring matters back to Judge Clyne in relation to the suspended sentence of the 9<sup>th</sup> of May 2011. Section 99 of the Criminal Justice Act 2006 deals with the power of the courts to suspend all or part of a sentence. It also provides in the section with the procedure for bringing cases back to seek to have suspended sentences revoked. Garda HQ Directive 145/06 states *Where a person is subject to an order suspending the sentence and commits a new offence, the court dealing with the new offence must, after imposing the sentence for the new offence, remand the person in custody or bail to the court which made the original order.*

GSOC accepts that Garda HQ Directive 145/06 is in keeping with the provisions of section 99 of the Criminal Justice Act 2006 which refers to *the court* sending the matter back to the original court, in this case the one that sat on the 9<sup>th</sup> of May 2011. It would appear in this instance the failure of the District Court to refer to the suspended sentence specifically did not cause any application from the gardaí to seek clarity on the matter. As the gardaí were relying on the terms of section 99 of the Criminal Justice Act 2006 no further investigation can arise. (**Allegations 30 and 31**)

However GSOC noted that no application was made to Judge O'Hagan by any of the gardaí involved in the cases on the 17<sup>th</sup> of November 2011 in relation to his order of the 11<sup>th</sup> of January 2011 that Mr. Gridziuska should be brought before him if he committed theft offences between January 2011 and January 2012.

As stated GSOC is investigating the failure to re-enter matters before Judge O'Hagan arising from the convictions on the 17<sup>th</sup> of November 2011 under the provisions of section 95 of the 2005 Act.

## **22. 11<sup>th</sup> of January 2012:**

On the 11<sup>th</sup> of January 2012 Mr. Gridziuska was brought in custody to Monaghan Circuit Court to appear before His Honour Judge O'Hagan on foot of the adjourned case from January 2011. Zigmantas Gridziuska was sentenced to a total of 12 months imprisonment.

## **23. 6<sup>th</sup> of March 2012:**

On the 6<sup>th</sup> of March 2012 gardaí received directions from the Director of Public Prosecutions to charge Zigmantas Gridziuska with dangerous driving causing the death of Shane O'Farrell. On the 7<sup>th</sup> of March 2012 Mr. Gridziuska was charged with this new offence at Carrickmacross District Court when he was returned for trial to the Circuit Criminal Court and bail was revoked in relation to this case.

## **24. 26<sup>th</sup> of March 2012:**

On the 26<sup>th</sup> of March 2012, whilst serving his sentences, Mr. Gridziuska applied to the High Court for bail on the road traffic charges pending from the fatal collision with Shane O'Farrell. On hearing that Mr. Gridziuska had committed offences while on bail, Mr. Justice Eamon de Valera did not grant bail.

## **25. 11<sup>th</sup> of April 2012:**

On the 11<sup>th</sup> of April 2012 Mr. Gridziuska was fined €400 for driving without insurance on the 12<sup>th</sup> of November 2011.

**26. 7<sup>th</sup> and 13<sup>th</sup> of August 2012:**

On the 7<sup>th</sup> and 13<sup>th</sup> of August 2012 Mr. Gridziuska again applied for bail to the High Court. On this occasion there was an objection to bail by the prosecution and the court was told that he had previous convictions (27) in this jurisdiction and (11) outside the jurisdiction. The eleven convictions outside the jurisdiction included the one in Northern Ireland in September 2011. There is therefore no corroboration for the complaint that Mr. Gridziuska's imprisonment of September 2011 was not brought to the attention of the High Court and no further investigation is required. (**Allegation 32**)

Gardaí in Carrickmacross garda station had submitted a request to Garda Criminal Records Office on the 10<sup>th</sup> of July 2012 requesting checks be conducted for previous convictions with the Lithuanian and UK authorities. Details of these convictions were entered on the Foreign Conviction screen on PULSE on the 23<sup>rd</sup> of July 2012.

The High Court was told that Mr. Gridziuska had one bench warrant issued for breach of bail conditions dating from the 26<sup>th</sup> of October 2010.

Mr. Justice Carney granted bail on the 13<sup>th</sup> of August 2012. Along with an independent surety in the sum of €1500, to be lodged in cash, Mr. Gridziuska was required to reside at his home address, not commit any offence and otherwise be of good behaviour, report daily at Carrickmacross garda station between 9 am and 9 pm and sign on, not to apply for any new or duplicate passport or for any other travel documentation as well as not to have contact with certain people. Mrs Gridziuska was accepted as the independent surety.

Zigimantas Gridziuska was released from custody on the **26<sup>th</sup> of September 2012**.

**27. In September 2012 Mrs Lucia O'Farrell informed a Superintendent that she was aware from Mr. Gridziuska's insurance company that he had not declared his previous convictions when applying for motor insurance on the 16<sup>th</sup> of August 2010. Following from Mrs O'Farrell's information an investigation was opened into making of false declarations by Zigimantas Gridziuska to obtain motor insurance. This did not form part of the original criminal investigation after the fatal collision on the 2<sup>nd</sup> of August 2011.**

GSOC is investigating the failure to fully investigate the motor insurance policy and the background of the certificate of Zigimantas Gridziuska that was in force on the 2<sup>nd</sup> of August 2011 under the provisions of section 95 of the 2005 Act. (**Allegations 14, 43, and 48**)

**28. 10<sup>th</sup> of October 2012:**

On the 10<sup>th</sup> of October 2012 the case of dangerous driving causing the death of Shane O'Farrell was transferred from Monaghan to the Dublin Circuit Criminal Court for trial.

**29. 18<sup>th</sup> of December 2012:**

Zigimantas Gridziuska was arrested on the 18<sup>th</sup> of December 2012 for driving without valid insurance. On the 20<sup>th</sup> of December 2012 Mr. Gridziuska appeared before the High Court on foot of a garda application to revoke the bail set by Mr. Justice Carney on the 13<sup>th</sup> of

August 2012. Mr. Justice de Valera adjourned the case until the 2<sup>nd</sup> of January 2013 and remanded Mr. Gridziuska in custody until that date.

**30. 2<sup>nd</sup> of January 2013:**

Zigimantas Gridziuska appeared before Mr. Justice Carney in the bail list in the High Court on the 2<sup>nd</sup> of January 2013. Evidence was given that Mr. Gridziuska had failed on five occasions to sign on as required by the High Court order made by Mr. Justice Carney on the 13<sup>th</sup> of August 2012 and that he had been arrested for driving without valid insurance on the 18<sup>th</sup> of December 2012. Bail previously set on the 13<sup>th</sup> of August 2012 was revoked.

Complaint had been made to GSOC that the gardaí did not deal with the fact that Mr. Gridziuska had failed to sign on according to his bail conditions for five days in November and December 2012 but the GSOC investigation did not find evidence to support those allegations as this evidence was given in the High Court on the 2<sup>nd</sup> of January 2013.

**(Allegation 33)**

**31. 11<sup>th</sup> of February 2013:**

On the 11<sup>th</sup> of February 2013 the trial of Mr. Gridziuska commenced before His Honour Judge Pat McCarran in the Dublin Circuit Criminal court. On the 15<sup>th</sup> of February 2013 Judge McCarran directed a “*Not Guilty*” verdict on the charge of dangerous driving causing death. Mr. Gridziuska had pleaded guilty to the remaining four charges which included failing to stop at the scene, failing to remain at the scene and failing to report the incident. There was a further charge of driving a defective vehicle.

32. Complaint was made to GSOC about gardaí failing to properly advise the Director of Public Prosecutions prior to the trial in February 2013 of the criminal history of the two men who were in the car prior to the fatal collision. The evidence of the two men about events prior to the fatal collision were read out in court in their absence with the consent of the defence. The GSOC investigation was satisfied that these two men formed part of the garda investigation into the fatal collision and were forwarded to the Director of Public Prosecutions for consideration in the bringing of charges against Zigimantas Gridziuska. The use of such evidence thereafter is a matter for the DPP and supervision by the court of trial and not a matter for investigation by GSOC. **(Allegation 34)**

**33. 28<sup>th</sup> of February 2013:**

The sentencing of Mr. Gridziuska was adjourned until the 28<sup>th</sup> of February 2013. On that date Judge McCarran heard that Mr. Gridziuska was the subject of a four-month sentence, suspended for two years which had been imposed by Judge Patrick Clyne in Ardee District Court on the 9<sup>th</sup> of May 2011. The case was adjourned until later that day as Judge Clyne was sitting in Dublin and the matter was referred to him for his consideration. Judge Clyne did not invoke the custodial sentence. In hearing the evidence Judge Clyne was initially told that Mr. Gridziuska was in custody for a period in excess of seven months. This was later corrected to a period in excess of four months.

Complaint was made that there was negligence on the part of unidentified garda members in failing to properly record the correct information on the PULSE system in relation to

convictions of Zigmantas Gridziuska and that this negligence resulted in incorrect information being presented in the court on the 28<sup>th</sup> of February 2013.

The GSOC investigation found that there was no evidence to corroborate this allegation. District Court outcomes are entered onto PULSE by District Court staff. Court outcomes of the Circuit Court are recorded on the PULSE system by members of the gardaí. The PULSE system does not record the time spent in custody. The Prison Service record the actual time spent by a person in custody. (**Allegation 35**)

34. The case was then returned to Judge McCartan on the 28<sup>th</sup> of February 2013 and he imposed three four month sentences on the charges of failing to stop, failing to remain and failing to report the incident on the 2<sup>nd</sup> of August 2011. The charge of driving a dangerously defective vehicle was taken into consideration. The four months sentences were all suspended for four months from the 29<sup>th</sup> of February 2013.

35. His Honour Judge McCartan made it a condition of the bond for the suspended sentences that Mr. Gridziuska leave the jurisdiction within 21 days from the time he entered the bond and not return for a period of ten years. Mr. Gridziuska was further disqualified from driving for ten years from the 28<sup>th</sup> of February 2013.

Zigmantas Gridziuska was released from custody on the 28<sup>th</sup> of February 2013 and was required to leave the jurisdiction within twenty-one days from that date.

36. The GSOC investigation has considered the adequacy of the investigation in relation to the lack of valid insurance held by Mr. Gridziuska after Mrs O'Farrell raised the matter with the gardaí in September 2012. An investigation was commenced in October 2012 which included contact with the insurers in December 2012 which confirmed the position of the insurance policies. The garda investigation found that the first motoring offence committed by Mr. Gridziuska dated from the 8<sup>th</sup> of September 2010. The gardaí were therefore required to look at all the insurance policies thereafter to see whether there had been a failure to disclose information to the relevant insurers in relation to previous convictions. A file was forwarded to the Director of Public Prosecutions thereafter on the 27<sup>th</sup> of February 2013 and directions came from that office which led the gardaí to arrest and interview Mr. Gridziuska on the 5<sup>th</sup> of March 2013. He was then charged and the matter was before the District Court on the 6<sup>th</sup> of March 2013.

The GSOC investigation is satisfied that a full investigation was done and a file with the garda recommendations under the Criminal Justice (Theft and Fraud) Act, 2001 went to the Director of Public Prosecutions. The involvement of Mr. Gridziuska's wife in the insurance applications was noted by the investigating gardaí on the file that went to the DPP. The decision to prosecute, or not, who to prosecute and under which statutory provision is one for the DPP. The direction that came back from the DPP was for the prosecution of Zigmantas Gridziuska under the Road Traffic Act 1961 as amended and this was done. As the direction was for prosecution under the Road Traffic Act, 1961 as amended the case was dealt with in the District Court as a summary case. The O'Farrell family were present on the 6<sup>th</sup> of March 2013 and the gardaí involved stated that the family were kept up to date as to what the proceedings were before the court. Therefore no further investigation on this issue is required. (**Allegations 44, 45, 46, 47**)

GSOC does note that had the insurance matter, whether in relation to driving on an invalid certificate or making false declarations, been investigated in the initial fatal collision investigation, it would in all likelihood have been included with the charges before the Dublin Circuit Criminal Court in February 2013. It is noted that the Circuit Judge was told on the 28<sup>th</sup> of February 2013 there was a charge of no insurance pending in the District Court although this related to another date, the 18<sup>th</sup> of December 2012. At that stage it does not appear a decision had yet been made by the DPP about charging Mr. Gridziuska with another offence arising from the incident causing the death of Shane O'Farrell.

**37. 6<sup>th</sup> of March 2013:**

On the 6<sup>th</sup> of March 2013 Mr. Gridziuska appeared before Judge Sean McBride at Carrickmacross District Court on a charge of driving without insurance on the 18<sup>th</sup> of December 2012 along with making false declarations to obtain motor insurance on the 16<sup>th</sup> of August 2010 and the 2<sup>nd</sup> of September 2011. Mr. Gridziuska pleaded guilty and was sentenced to five months imprisonment on each charge. At this stage the garda evidence on his previous convictions indicated a total of fifty three (53) previous convictions, seventeen (17) of which were committed outside the jurisdiction, in Lithuania and Northern Ireland.

The issue of the alleged failure to investigate the validity of the insurance certificate in use on the 2<sup>nd</sup> of August 2011 by Zigmantas Gridziuska as part of the initial investigation of the fatal collision is the subject of further investigation under section 95 of the 2005 Act.

All facts in relation to the background of the offences and the background of Zigmantas Gridziuska and his previous convictions were given to Judge Sean McBride before he imposed the five month sentence on Mr. Gridziuska to commence from the 6<sup>th</sup> of March 2013. GSOC is satisfied that the garda investigation, once undertaken, was adequate and no further investigation is required. (**Allegations 49, 50, 51, 52, 53, 54, 55 and 56**)

**38. Also on the 6<sup>th</sup> of March 2013 application was made to the District Court to estreat (i.e. forfeit) the bail bond entered into in August 2011 in the sum of €500. Judge Sean McBride ordered the forfeiture of €500 on that date.**

Complaint has been made to GSOC that named gardaí had failed to inform the O'Farrell family that this application was to proceed on that date. The GSOC investigation has found that the O'Farrells were in the District Court on the 6<sup>th</sup> of March 2013 and were informed that the insurance charges and the estreatment of bail application was to proceed on that date. The GSOC investigation is satisfied that the gardaí were given the necessary instructions to proceed with the insurance charges at a late stage and Mr. Gridziuska was only charged with the insurance offences on that morning. However the GSOC investigation is satisfied that the O'Farrell family had been informed in time to be present at the court, as they were, on the 6<sup>th</sup> of March 2013. Therefore no further investigation is required. (**Allegation 36 and 37**).

**39. 27<sup>th</sup> of June 2013:**

Zigmantas Gridziuska was released from custody on the 27<sup>th</sup> of June 2013 and subsequently deported from Ireland for a period of ten years.

40. GSOC received a number of complaints from the O'Farrell family about the level of information that was given to them during the course of the proceedings and also related to the Inquest. Gardaí have denied these allegations and the GSOC investigation has seen supporting documentation which included contemporaneous notes of different meetings or court appearances. The investigation found a considerable amount of garda contact with the family and extended family throughout. The O'Farrell family were diligent about attending court hearings including adjourned dates where cases were further adjourned. Because different cases would involve changing members of the gardaí it was clear that the family were often better informed about the accused person due to their holistic approach as opposed to garda members who were dealing with Mr. Gridziuska on a case by case basis. A family liaison officer was appointed to deal with the O'Farrell family but, due to other garda pressures, such personnel may not be able to provide the type of service a given victim or family require. In this instance the GSOC investigation found that no further investigation is required on the provision of information complaints. (**Allegation 38, 39, 40, 41 and 42**)

At the completion of the investigations into the fifty-six allegations made by Mrs Lucia and Ms Gemma O'Farrell the Garda Síochána Ombudsman Commission has found that the conduct of the various gardaí under investigation does not constitute a criminal offence or offences. However some of the conduct under investigation does require further investigation and that investigation will be conducted pursuant to section 95 of the 2005 Act. That section requires that GSOC give the complainant and the member(s) of the Garda Síochána concerned an opportunity (a) to be heard, in person or by a legal representative, and (b) to present evidence and make submissions to the Commission.

At the completion of an investigation under section 95 of the 2005 Act the Commission shall send a report to the Garda Commissioner who may institute discipline proceedings arising from the report.

As significant work was undertaken to date GSOC intends that the investigation under section 95 will be able to be progressed efficiently.

**Comment:**

GSOC feels it is important to note the following which ten years of investigating complaints on behalf of the public, and in particular on behalf of families such as the O'Farrell family, has revealed. Attendances at courts, particularly District Courts, can be difficult experiences for members of the public generally, but where individuals or families have suffered serious assaults, sexual assaults or death these events can be particularly traumatic. No clear listing systems available for members of the public, cases taken out of turn, new cases being added on the day, delays involving gardaí, lawyers and prison staff extend the time spent waiting for cases to be reached. The inability to hear clearly in the courtroom can be frustrating. It is not uncommon that victims and their families miss all or part of court applications where they are not informed a case is to be dealt with while they are just outside the courtroom.

In this case, as with other complaints received by GSOC, criticism is also made about the written information that is available to victims and or the family members. It is not uncommon for victims and/or their family members to seek statements of witnesses and

garda members, abstracts of evidence relied upon by the gardaí, particularly professional witnesses and background information such as previous convictions. All gardaí, and not just gardaí working in the victim service offices, should be in a position to state what information is available and to whom it is available. As people are becoming entitled to greater information from government departments and services, the same clarity of what victims and their families are entitled to from the gardaí should be known generally throughout society. If victims and their families are to be given information and supporting documentation this should be done in a timely fashion having regard to the trauma suffered by victims and the time they may need to consider such information.

Finally as there are further investigations to be undertaken it is not appropriate to comment on the bail situation revealed in this case until all matters are complete. However even at this juncture it is clear that complex bail arrangements with conditions imposed under statute and by courts apply to many people who appear daily before the courts, particularly in the District Court, around the country. The need for a joined-up system to allow the gardaí, the courts and, in some instances, the prison service to "talk to" one another in an efficient manner is required in this jurisdiction. Once established such a system needs access to other jurisdictions, most notably in Northern Ireland, to give gardaí, judges, victims, and an accused a complete picture on any given day on the requirements to allow a person continued liberty in a lawful way in the community.

## Appendix 1 - The allegations

(Allegations in bold print are to be investigated under s. 95 of the Garda Síochána Act 2005)

GSOC reviewed all six cases submitted by Mrs Lucia O'Farrell and Ms Gemma O'Farrell. The admitted allegations are taken from each of the individual case files. GSOC noted that there was an element of repetition with some of the allegations.

1. That gardaí failed to check that the car driven by Zigmantas Gridziuska on 2 August 2011, was properly taxed;
2. That gardaí failed to charge Zigmantas Gridziuska, or his wife as owner of the vehicle involved, with not having car tax on 2 August 2011;
3. That gardaí failed to charge Zigmantas Gridziuska or his wife, as the owner of the vehicle, with not having the vehicle properly taxed;
4. That on 2 August 2011, one hour before the death of Shane O'Farrell, a named garda failed in his duty to detain a car, registration number 99 D 36371, which was not taxed and did not have an NCT and which was occupied by three men known to him to have criminal records, one of whom named as E. was driving the car without insurance. It is also alleged that the named garda failed to arrest any of the three men despite being able to do so;
5. **That gardaí failed to formally check that Zigmantas Gridziuska, or his wife as owner of the vehicle involved, had a valid NCT on 2 August 2011;**
6. **That gardaí failed to formally check that Zigmantas Gridziuska had a valid NCT for the vehicle he was driving on 2 August 2011, and which hit Shane O'Farrell;**
7. **That gardaí failed to charge Zigmantas Gridziuska or his wife, as the owner of the vehicle, with not having a valid NCT on 2 August 2011;**
8. That gardaí failed to charge the wife of Zigmantas Gridziuska with withholding information, obstruction of justice and aiding and abetting her husband in the case;
9. That the wife of the man who is charged in relation to Ms Gemma O'Farrell brother's death was not charged for withholding information;
10. That gardaí failed to bring any charges against the wife of Zigmantas Gridziuska after he had told her he had knocked someone down and she failed to notify the gardaí;
11. That a named garda misled the O'Farrell family when he told them prior to the relevant Court proceedings that the wife of Zigmantas Gridziuska did not withhold information from the Garda investigation into Shane O'Farrell's death. The family maintain that her evidence to the Court in February 2013, clearly contradicted the named garda's view;
12. That gardaí were negligent and there was gross misconduct in not interviewing the two occupants who were in the car with Zigmantas Gridziuska earlier on the night of Shane O'Farrell's death, until over a week after the incident;

13. That gardaí failed to seek voluntary blood and urine sample from Zigmantas Gridziuska on 3 August 2011, given that they knew he was a heroin addict;
14. **That it is alleged that the gardaí did not formally check if Zigmantas Gridziuska had valid insurance on the 2 August 2011, when he was involved in the fatal road traffic collision and was not charged with having no insurance;**
15. **That the man charged in relation to Ms Gemma O'Farrell's brother's death on 2 August 2011, was arrested and charged with offences prior to that date, but his bail bond of January 2011, was not re-entered;**
16. **That the defendant's bail bond of January 2011, was not brought to the attention of the Judge in May 2011, when he was convicted of offences which had taken place in the meantime and that the bond was not re-entered;**
17. That Ms Gemma O'Farrell and her family did not get a response to their queries about the outcome of a drugs search on 6 July 2011, of the man charged in connection with her brother's death, although they have now learned that a report was made on 30 August 2011;
18. That Ms Gemma O'Farrell is alleging that a named garda made a false record in relation to an incident which occurred on 6 July 2011, when Zigmantas Gridziuska was stopped by the Drug Squad and found in possession of heroin in charred tinfoil. Ms Gemma O'Farrell says she has information that the garda records, possibly PULSE, show that "no controlled substance was found" but she now knows the sample tested positive;
19. That Ms Gemma O'Farrell is complaining about the delay in sending the sample found on Zigmantas Gridziuska on 6 July 2011, to the laboratory. She says the sample was not sent until 27 July 2011, and that the sample was subsequently reported on 23 August but not put on the system in Monaghan garda Station until 30 August 2011. She is alleging that a named garda informed her that the sample was negative which she now knows to be untrue;
20. That a named garda, and/or other garda members, failed in their duty in not charging Zigmantas Gridziuska for possession of a controlled substance on 6 July 2011;
21. That no charges were brought against the man charged in connection with Ms Gemma O'Farrell's brother's death in relation to a drugs search carried out on 6 July 2011;
22. That gardaí failed to detain Zigmantas Gridziuska on 6 July 2011, or seize his car when he was found in possession of drugs paraphernalia and that they also failed to check if there were any conditions imposed on him by the Court as a result of being fined €500 on 8 June 2011, having been charged with possession of heroin on 13 September 2010;
23. **That an application was not made to activate a suspended sentence imposed in May 2011, although Ms Gemma O'Farrell understands that the defendant received another conviction in July 2011;**
24. That on 4 August 2011, gardaí did not object to bail for the man charged in relation to Ms Gemma O'Farrell's brother's death;

25. That gardaí failed to object to Zigmantas Gridziuska being granted bail when he was first charged at Dundalk Court on 4 August 2011, in relation to Shane O'Farrell's death;
26. **That although Zigmantas Gridziuska was to sign on three days a week as part of his bail conditions, it did not come to light that for part of this time he was serving a prison sentence in Northern Ireland;**
27. **That Zigmantas Gridziuska was not charged with breach of the bail conditions set on 4 August 2011;**
28. **That Zigmantas Gridziuska was not brought before the Courts for breach of the bail conditions set on 4 August 2011, after he committed offences in August and September 2011;**
29. **That the defendant's bail bond was not brought to the attention of the Judge in September and November 2011, when he was before the Courts in relation to offences which Ms Gemma O'Farrell believes took place after he was ordered to be of good behaviour;**
30. That no application was made to have the defendant's suspended sentence activated after he was before the Courts for sentencing in September and November 2011;
31. That his imprisonment in September 2011, was not brought to the attention of the Judge when Zigmantas Gridziuska was before the Court in relation to other offences in November 2011 and January 2012;
32. That Zigmantas Gridziuska's imprisonment of September 2011, was not brought to the attention of the High Court when he applied for bail in relation to the charge arising from Shane O'Farrell's death;
33. That gardaí did not deal with the fact that Zigmantas Gridziuska failed to sign on according to his bail conditions for five days in November and December 2012;
34. That gardaí failed to properly advise the DPP prior to the trial in February 2013, of the criminal history of the two men who were in the car with Zigmantas Gridziuska when it struck Shane O'Farrell leading to his death. Mrs O'Farrell believes these two men's history compromised the reliability of their statements which were subsequently read out in Court in their absence;
35. That there was negligence by unidentified garda members in failing to properly record correct information on the PULSE system in relation to convictions of Zigmantas Gridziuska and that this negligence resulted in incorrect information being presented in relevant Court proceedings that took place in February 2013;
36. That named gardaí failed and neglected to inform the family prior to 6 March 2013, that the estreatment of bail in matters relating to Zigmantas Gridziuska would be dealt with in Court on that date;
37. That a named garda did not respond to the O'Farrell family or inform them for months that he had failed in his application to have bail estreated, despite numerous requests from the family as to when the matters of bail would be dealt with. It was not until 12 June 2013, that the family learned that bail had been dealt with on 6 March 2013. The

family say they had been given assurances by the gardaí that they would be advised of all relevant proceedings relating to the case;

38. That gardaí refused to provide the O'Farrell family with the statement of Zigmantas Gridziuska, and they also refused to provide the garda abstract, for the inquest into Shane O'Farrell's death. Ms Gemma O'Farrell says that on the day of the inquest, and following an approach by their Solicitor to the Coroner, the statement was finally produced after lunch which gave no time to review it;

39. That gardaí failed to respond to the O'Farrell family's numerous requests for information in relation to the bail conditions set for Zigmantas Gridziuska after the incident involving Shane O'Farrell's death and as to when all matters of bail would be dealt with in relation to Zigmantas Gridziuska and the various charges brought against him;

40. That the O'Farrell family were not informed that Zigmantas Gridziuska was in prison and they would not encounter him in the locality;

41. That neither Ms Gemma O'Farrell nor any member of her family were informed that the man facing charges in relation to her brother's death would be appearing in Court in relation to that charge on 4 June 2012;

42. That Ms Gemma O'Farrell was obliged to inform the gardaí that they would be required to attend Cloverhill District Court on 1 August 2012;

**43. That it is alleged that the gardaí have been negligent in the manner in which they investigated allegations that Zigmantas Gridziuska was driving with fraudulent insurance on 2 August 2011, when his car was involved in the incident in which Shane O'Farrell lost his life. This alleged insurance fraud was brought to the attention of the gardaí by the O'Farrell family in September 2012;**

44. That it is alleged that the gardaí failed to complete their investigation into the alleged insurance fraud within the five month period up to the trial of Zigmantas Gridziuska in February 2013, in connection with the death of Shane O'Farrell;

45. That the gardaí failed to submit their investigation file to the DPP prior to the trial in February 2013, despite having had the file ready for weeks before the trial commenced;

46. That gardaí delayed in sending their file on the alleged insurance fraud to the DPP – this file was not sent until after the dangerous driving charges had been dealt with in Court in February 2013;

47. That a named garda failed to ensure the Court in February 2013, that Zigmantas Gridziuska was uninsured and that a file was being prepared for the DPP in relation to allegations of insurance fraud by Zigmantas Gridziuska at the time of Shane O'Farrell's death. Ms Gemma O'Farrell believes this failure led to Zigmantas Gridziuska receiving a more lenient sentence in the February 2013 Court case;

**48. That the gardaí failed to check the validity of Zigmantas Gridziuska's insurance in good time following the death of Shane O'Farrell, which has led to the situation, where this issue became statute barred.**

49. That the gardaí failed to inform the O'Farrell family that Zigmantas Gridziuska was due in Court on 6 March 2013, to face charges in relation to insurance fraud despite the family having made a complaint to the gardaí in this particular matter and having received assurances from the gardaí that they would be kept advised of proceedings in the case;
50. That a named officer failed to ensure, as he had promised to the family, that charges of fraud would be brought against Zigmantas Gridziuska for driving without insurance. The family say that the charges were subsequently brought under the Road Traffic Act, 1961;
51. That gardaí failed to ask or recommend that charges for insurance fraud be included in the Dangerous Driving Causing Death proceedings or to bring this fraud to the attention of these particular Court proceedings;
52. That gardaí failed to inform the O'Farrell family that the charges of insurance fraud would be dealt with in the District Court;
53. That a named garda failed to bring to the Judge's attention in Court on 6 March 2013 that Zigmantas Gridziuska was on bail while still committing insurance fraud. It is alleged that the same named member also failed to ask the Court that the three counts of five months imposed by the Judge be applied consecutively;
54. That gardaí have failed to bring charges against Zigmantas Gridziuska and his wife in relation to insurance policies which they took out fraudulently in the period of six years prior to 2011;
55. That gardaí failed to note that Zigmantas Gridziuska had been driving with no valid insurance for six years prior to the fatal traffic incident on the 2 August 2011;
56. That gardaí failed to charge the wife of Zigmantas Gridziuska with having a fraudulent insurance policy.

