



Garda  
**Ombudsman**  
INQUIRY INDEPENDENCE IMPARTIALITY

# Observations on Heads 5 and 6 of the General Scheme of the Policing, Security and Community Safety Bill

4 December 2021

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## 1. Executive Summary

The General Scheme of the Policing, Security and Community Safety Bill has been developed on the basis of the recommendations by the Commission on the Future of Policing in Ireland (CoFPI) in its report published in September 2018 and the subsequent Government Decision on the Future of Policing in Ireland.

GSOC welcomed the CoFPI report which recognised the importance of independence when dealing with complaints about police conduct and which set out changes which GSOC believes are necessary to improve public confidence in police oversight. Many of the recommendations echoed GSOC's Proposal for Legislative Change which was submitted to the Department of Justice and Equality in December 2017, including that all complaints about the police should be routed through GSOC to determine what action needs to be taken.

GSOC also welcomed the commitment made by Government to implementing the findings of CoFPI in its plan 'A Police Service for the Future', of which the passage of the General Scheme of the Policing, Security and Community Safety Bill is a core feature.

GSOC has been operational for 14 years, in which time it has built up a significant amount of expertise and insight into policing and policing oversight mechanisms in Ireland. Since its establishment GSOC has dealt with almost 30,000 complaints in addition to over 1,500 referrals from An Garda Síochána. GSOC has also undertaken numerous other investigations into Garda conduct, whether at the request of the Minister for Justice or the Policing Authority or on its own initiative.

Drawing on this experience, GSOC has consistently commented on the need for reform and modernisation of policing in Ireland. Bearing this in mind, the Ombudsman Commission broadly welcomes the reforms proposed in the General Scheme of the Bill and its significant proposals to greatly strengthen the independent oversight of the handling and investigations of wrong doing by Garda personnel. In particular, the Commission welcomes the key proposals to restructure GSOC as a complaints body with greater financial independence, an expanded remit to include Garda staff and enhanced investigation procedures to support timely and effective resolution of complaints and investigations.

Since the publication of the CoFPI report, GSOC has engaged with the Department of Justice during the drafting of the General Scheme and has offered its views, based on GSOC's operational and institutional experience over the past fourteen years, on the provisions to be set out in the legislation.

These observations are largely drawn from those made to the Department during the drafting of the Scheme over these last two years. For the purposes of this paper, GSOC is concentrating on providing observations to Parts 5 and 6 of the Scheme, given that it is these sections which most directly affect the future operation and functions of GSOC as a restructured policing Ombudsman. A small number of additional observations regarding other provisions which are of particular relevance to the Ombudsman's remit are also added.

GSOC would like to draw particular attention to some core areas where the legislation and its implementation will require particular attention to ensure the operation of a successful oversight model. These are:

- Ensuring meaningful enhancement of the reformed policing Ombudsman's institutional and operational independence, in line with the recommendations of the Commission for the Future of Policing.
- Ensuring that the expansion of the reformed body's functions and competencies is accompanied by a commensurate expansion of capacity in the form of resources, personnel and expertise that guarantee the ability to deliver them. Limitations on resourcing during the lifetime of GSOC have contributed to the issues it has faced in delivering on its mandate. Adequate resourcing of GSOC is a core recommendation of the Commission for the Future of Policing.
- Ensuring that the expanded obligations placed on a reformed Ombudsman body, particularly with regard to timely completion of investigations and provision of information, are accompanied by matching statutory obligations for transparency and cooperation on all other parties, including An Garda Síochána and the proposed Independent Examiner of Security Legislation.

These areas will be touched upon throughout the submission.

The broader provisions of the scheme are also of interest to GSOC, and during the passage of the legislation in the Oireachtas, GSOC remains at the disposal of all stakeholders, to provide views and guidance.

## **2. Part 5: Office of the Garda Síochána Ombudsman**

### **2.1 Head 139 Continuation of Garda Síochána Ombudsman Commission under name of Office of the Garda Síochána Ombudsman**

GSOC notes the concerns highlighted by the Commission on the Future of Policing with regard to GSOC's name, and how this may relate to perceptions of independence.<sup>1</sup>

GSOC is of the view that while the perceived independence of the reformed body is of crucial importance, such perception will be grounded, first and foremost, in the degree to which it can, in practice, exercise its mandate efficiently, effectively, and independently. This will depend primarily on the broader provisions of this Bill, and appropriate resourcing of the reformed body.

GSOC is open, however, to further discussion on how the reformed body may be named, and whether or not inclusion, for example, of the terms 'Independent' and 'policing' in its name may be useful to clarify the organisation's nature and independence.

### **2.2 Head 142: Acting Garda Ombudsman**

Head 142(2) currently provides that the Deputy Garda Ombudsman may act as the Garda Ombudsman for a maximum of 2 months.

GSOC believes that this time limitation is too short. In the event, for instance, of the Ombudsman leaving the post permanently, a 2 month period is unlikely to be sufficient for the purpose of running a recruitment competition to fill the vacancy.

**GSOC would suggest that Head 142(2) provide for a period of 4 months, which may be extended if necessary, during which the Deputy Garda Ombudsman may act as Garda Ombudsman.**

### **2.3 Head 143: Objectives, functions and powers of Garda Ombudsman**

#### **2.3.1 Head 143(3)**

Under Head 143(3), the Scheme of the Bill provides that the function of the Garda Ombudsman is to "receive complaints made by members of the public concerning the conduct of a member of garda personnel", and to receive "notifications from the Garda Commissioner ... about incidents of concern

<sup>1</sup> The Commission on the Future of Policing in Ireland report highlighted that 'a complaints mechanism should be independent and be perceived to be so. The name 'Garda Síochána Ombudsman Commission' currently presents a problem as some people assume that the office is part of An Garda Síochána.' It recommended that GSOC should 'have a new name, making it clear that it is not part of An Garda Síochána. Commission on the Future of Policing in Ireland (2018), [The Future of Policing in Ireland](#) p48, 49.

in relation to the conduct of members of garda personnel that are not the subject of a complaint from a member of the public”.

In the context of this draft legislation, and part 6 thereof, ‘garda personnel’ means both members, and members of garda staff. According to Department of Justice figures, as of the end of January 2021, there were over 3,124 Garda staff employed within the Garda workforce, undertaking administrative and technical duties.

GSOC notes the extension of its remit in this regard, which is in keeping with Commission on the Future of Policing’s recommendation that An Garda Síochána “should be seen and treated as a single organisation with a single workforce”.<sup>2</sup> As this expansion will no doubt pose challenges for the organisation it is essential that these proposed measures are accompanied by an appropriate allocation of resources, funding and expertise to ensure that the new body has the capacity to carry out this statutory function as envisaged.

**GSOC stresses the importance of adequate funding, staffing and resourcing to enable the reformed body to manage such a significant expansion in its investigative remit.**

### **2.3.2 Head 143(6): Fair, timely and effective handling of complaints and investigations**

Head 143(6) states “The Garda Ombudsman shall establish and maintain efficient and effective systems and procedures for the handling of complaints and the conduct of investigations in a fair, timely and effective manner”.

GSOC firmly believes in the principle that complaints and investigations should be completed in a fair, timely and effective manner. This is fundamental to both the administration of justice and effective oversight.

GSOC is concerned, however, that the current draft scheme places such statutory obligations solely on the oversight body, while omitting to place similar obligations on other key actors on whose cooperation the timely completion of investigations depends.

In order to conduct its investigations, GSOC regularly requires information from An Garda Síochána. Such information is provided on foot of a protocol pursuant to Section 108 of the Garda Síochána Act 2005 (‘the 2005 Act’). A similar provision is set out in Head 181 (h) of this scheme.

However, GSOC has made clear the challenges it has historically faced in securing cooperation, information and documentation from An Garda Síochána in practice.<sup>3</sup> This remains a significant impediment to the timely completion of complaints and investigations. Without the placement of a clear obligation on An Garda Síochána for timely and full cooperation with the reformed body, GSOC would be concerned that its ability to conduct investigations in a “fair, timely and effective manner” may be compromised.

<sup>2</sup> Commission on the Future of Policing in Ireland (2018), [The Future of Policing in Ireland](#) p49.

<sup>3</sup> GSOC (2018), [Submission to the Commission on the Future of Policing in Ireland](#) p8.

There also appear to be no time limits placed on the proposed new Independent Examiner of Security Legislation in its role of carrying out reviews of requests for information made by oversight bodies. This has the potential to cause additional delay in investigations where such reviews may arise. Such delays raise a number of potential issues, whether with respect to the right of Garda members to fair procedures, preservation of evidence, or ensuring witness cooperation.

GSOC notes that there is no statutory requirement for timeliness in comparable legislation for other oversight bodies, such as the Ombudsman Act 1980, or the Ombudsman for Children Act 2002. GSOC would welcome clarification on the definition of timely, and the standard against which this requirement should be measured.

Finally, GSOC would again observe that in the context of a significant expansion of the remit of the reformed oversight body, its ability to conduct its work in a timely manner will heavily rely on the degree to which it is granted appropriate funding and resources.

The placement of a statutory obligation of timeliness on GSOC in the absence of clarity on how this is to be interpreted; without corresponding statutory obligations on other key actors; and without adequate resourcing, may risk seriously undermining the ability of the reformed body to function, and negatively affect public confidence in police oversight.

**GSOC is of the view that in order for the obligation of timeliness to be effective, the bill should be amended to:**

- **Place a clear corresponding obligation on An Garda Síochána of timely and full cooperation with the reformed body, including through the inclusion of a linking provision between heads 143 and 181.**
- **Provide for a time limit on the Independent Examiner for reviews of requests for information made by oversight bodies, from the time of notification.**
- **Provide further clarity on standards against which the obligation of timeliness in the legislation should be benchmarked.**

## **2.4 Head 150: Special Assistance**

Head 150(1) provides that the reformed body may enter into arrangements with:

“(a) the Garda Commissioner for the engagement of members of garda personnel below the rank of Garda Commissioner who have agreed to be considered for service under such arrangement;

(b) any police service outside the State for the engagement of police officers from that service;

(c) any other body for the engagement of other persons.”

GSOC notes that there may be circumstances where the new Ombudsman may wish to seek special assistance from police officers who are employed in organisations other than a police service. GSOC is also of the view that these categories should be expanded to include a broad provision to encompass other individuals with suitable skills and expertise as the Ombudsman may consider appropriate.

**GSOC would suggest that Head 150(1), paragraph (c) is amended to read:**

**“(c) with any other body for the engagement of police officers or other persons.”**

**and an additional subparagraph be added to Head 150(1) to read:**

**‘(d) with any other person the Ombudsman considers appropriate’.**

## **2.5 Head 154: Confidentiality of information obtained by Garda Ombudsman**

It is GSOC’s experience, in the conduct of investigations into alleged misconduct by a member which involve a child or children, appropriate sharing of information with Tusla, the Child and Family Agency, may be vital to the investigative process. Consequently, it would be helpful if Tusla were named as an organisation, under Head 154(4) with whom the Garda Ombudsman could share necessary information in the appropriate circumstances. Furthermore, in order that information-sharing is not just based on exceptions to a prohibition, but is positively permitted with specified bodies to provide for the performance of our functions, it is suggested that the bodies specified at Head 154(4) should also be named at Head 229 which provides for a statutory information sharing gateway.

**GSOC strongly suggests that Tusla, the Child and Family Agency is added to the bodies named under Head 154(4), to facilitate appropriate information sharing during the investigation of allegations involving children.**

### **3. Part 6 Complaints, incidents of concern, investigations and other matters**

#### **3.1 Head 157: Interpretation**

##### **3.1.1 “Complaint”**

Head 157 provides that ‘complaint’ means “a statement (whether oral, written or electronic) expressing dissatisfaction with an act or omission by a person who, at the time of the act or omission concerned, was a member of garda personnel”.

GSOC welcomes that the legislation broadens the manner in which members of the public can make complaints. It is the practice of GSOC to provide proactive assistance and reasonable accommodation to all those for whom communication is a barrier to making a complaint, whether due to disability, language or literacy barriers, or any other reason. GSOC believes that the expansion provided for in the General Scheme will enhance the Ombudsman’s ability to provide accessible systems for the submission and receipt of complaints and consents from members of the public.

GSOC is however of the view that the definition of ‘complaint’ should be broader, and should encompass any statement or information that indicates possible misconduct by a Garda member. This would be more in keeping with the view of the Commission on the Future of Policing.

**GSOC believes that subparagraph (1) of Head 157 should be amended so that the definition of “complaint” includes, in addition to dissatisfaction with an act or omission, any statement or information indicating possible misconduct by a Garda member.**

##### **3.1.2 “Incident of concern”**

Head 157 provides that an ‘incident of concern’ means:

“any matter which is not and has not been the subject of a complaint under head 159 or a referral under head 165 but in the case of which there is an allegation that a person,

- (a) who is a serving member of garda personnel, or
- (b) who, at the time of the conduct concerned was a member of garda personnel, may have
  - (i) committed an offence, or
  - (ii) behaved in a manner that constitutes notifiable misconduct”

GSOC is concerned that this definition limits applicable misconduct incidents/allegations to those that are ‘notifiable’. GSOC is of the firm view that the Garda Ombudsman should be notified of all allegations of misconduct which may amount to a breach of discipline and that it should be for the Garda Ombudsman to determine how to assess and address such allegations.

## **3.2 Head 158: Supplementary provisions in relation to complaints**

### **3.2.1 Complaints ‘on behalf’ of a person**

The provision under 158(4) to allow the making of a complaint ‘on behalf’ of a person, is a useful provision, invoked in the main in relation to complaints on behalf of children and vulnerable adults. A significant number of complaints made to GSOC under the analogous provisions in the 2005 Act are made on behalf of young people aged between 16 and 18.

In GSOC’s view, it would be appropriate from a children’s rights perspective for this legislation to recognise the capacity of young people age 16 years and above to make a complaint to the Garda Ombudsman in their own right. This would be in keeping with the approach of other legislation, for example, on the provision of consent for dental and medical treatment,<sup>4</sup> and would empower those who may not, for reasons outside their control, have willing adults to act on their behalf.

**GSOC believes that the inclusion of a provision in line with other legislation, e.g. Section 23 of the Non-Fatal Offences against the Person Act 1997, would be appropriate to allow persons aged between 16 and 18 to make a complaint to the Garda Ombudsman in their own right.**

### **3.2.2 Provision for review of requirement to automatically refer complaints to the Ombudsman**

Head 159(6) and (7), provide that the Minister shall “review the operation of this head in so far as it requires An Garda Síochána to refer all complaints received concerning a member of garda personnel to the Office of the Garda Ombudsman” after a period of 3 years in operation. The provisions allow for the possibility that certain categories of complaint may be rescheduled to be dealt with by An Garda Síochána instead of the reformed body.

GSOC is extremely concerned at this provision. It effectively places a three-year lifespan on what should be a fundamental and permanent reform: a statutory obligation on the Garda Commissioner to refer all complaints to the Garda Ombudsman. The provision is not in keeping with a core recommendation of the Commission on the Future of Policing that “all complaints about the police should be routed through the IOPO” and that “IOPO should investigate all such complaints itself, without recourse to Garda investigators”.<sup>5</sup> It has the potential to fundamentally undermine the enhancement of police oversight which is the aim of this Bill.

**GSOC strongly requests the deletion of Head 159(6) and (7), viewing these provisions as having the potential to seriously undermine the aims of the Bill, and the recommendations of the Commission on the Future of Policing.**

<sup>4</sup> Under section 23 of the Non-Fatal Offences against the Person Act 1997, people 16 years and above may consent to medical or dental treatment without parental consent.

<sup>5</sup> Commission on the Future of Policing in Ireland (2018), [The Future of Policing in Ireland](#). p49

### **3.3 Head 159: Making, recording of complaints etc.**

#### **3.3.1 Complaints made to members outside a Garda Station**

Head 159 (c) provides that where a complaint is made to An Garda Síochána in any place other than a Garda Station, such a complaint must be made to “a member not below the rank of superintendent or a senior garda staff member”.

In GSOC’s view, such a restriction of rank may cause difficulty. It is more likely that members at Sergeant and Inspector level are dealing with the public outside of a garda station. These members should be empowered to take a complaint, if necessary, to be referred to the Garda Ombudsman.

**GSOC believes that it should be possible for a complaint to be made to a garda member at the rank of Sergeant or above at a place other than a garda station.**

### **3.4 Head 161: Categories of complaints suitable for resolution by An Garda Síochána**

Under Head 161 (1) to (4), provision is made for the submission to the Minister by the reformed body and An Garda Síochána of a draft list of categories of complaints suitable for resolution by An Garda Síochána. Such a list would be subject to approval by the Minister.<sup>6</sup>

In GSOC’s view that, in the interests of practicality and efficiency, agreement of such a list should be a matter between An Garda Síochána and the Garda Ombudsman, and should not require ministerial approval.

**GSOC requests that further consideration be given to the requirement that the list of categories of complaint provided for under this Head be subject to ministerial approval.**

### **3.5 Head 163: If complaint suitable for resolution by An Garda Síochána is referred under Head 160**

Head 163(3) provides that:

“If, in the course of seeking to resolve a complaint in accordance with the arrangements established and maintained under head 162, it appears to the Garda Commissioner that the complaint may not be suitable for resolution by An Garda Síochána by reason of its seriousness the Garda Commissioner shall refer the complaint to the Garda Ombudsman together with the reason for the referral.”

<sup>6</sup> Complaints provided for in this Head relate to matters that fall outside serious matters such as criminal offence, breach of professional standards, and incidents where death and serious harm occur. As such, they would broadly fall under the rubric of ‘performance management’ complaints.

GSOC observes that this subhead makes no reference to the evidence and material that may have been compiled in the course of seeking to resolve the complaint. In the event of referral back to the Garda Ombudsman, such material would also be required in order for the complaint to be progressed.

**GSOC recommends that 163(3) be amended to include a requirement that, on referral of a complaint back to the Ombudsman, An Garda Síochána also refer on all relevant material.**

### **3.6 Head 164: Matter concerning death of, or serious harm to, a person**

Head 164 (1) provides that:

“(1) The Garda Commissioner shall, without delay, refer to the Garda Ombudsman any matter that appears to the Garda Commissioner to indicate that the conduct of a member of garda personnel may have resulted in the death of, or serious harm to, a person.”

GSOC is of the view that the prompt referral of matters indicating that the conduct of a member of garda personnel may have resulted in death or serious harm is essential. GSOC regularly experiences delays in such referrals under the current legislation. GSOC views it as essential that the new legislation precludes the possibility of such delays.

### **3.7 Head 165: Notification to Garda Ombudsman of incident of concern in relation to conduct of member of Garda personnel**

Head 165(1) provides that

“Subject to subhead (5) the Garda Commissioner shall, as soon as practicable, and in accordance with protocols agreed under head 181, notify the Garda Ombudsman of any incident of concern in relation to the conduct of a member of garda personnel (an “incident of concern”).”

GSOC is also of the view that this provision should not preclude information on the security of the State being furnished to the Garda Ombudsman.

**GSOC recommends the amendment the inclusion of the phrase “including incidents of concern that relate to the security of the State” in subparagraph (1) so that it reads:**

**"Subject to subhead (5) the Garda Commissioner shall, as soon as practicable, and in accordance with protocols agreed under Head 181, notify the Garda Ombudsman of any incident of concern, including incidents of concern that relate to security of the State, in relation to the conduct of a member of garda personnel."**

### 3.8 Head 166: Investigation of matters in the public interest

According to the scheme's Explanatory Memorandum "The Garda Commissioner is empowered to refer a matter to the Ombudsman where he or she believes it in the public interest such as allegations of past wrongdoing."<sup>7</sup>

GSOC believes that in this context, Head 166 may provide for the referral of historic or legacy cases to the reformed body. To date, such investigations have not been practicable due to the lack of a legislative remit.

GSOC is of the view that, if the intention of this Head is to provide that the reformed body conduct investigations into historical and legacy cases, more detailed provision in statute will be necessary, including appropriate safeguards and clarifications on time limits, notifications, reporting requirements and related matters.

GSOC stresses that the expansion of the reformed body's remit beyond that of contemporary police oversight body, into the investigation of historical cases, is a significant step. Such a step would not be practicable without a significant and dedicated allocation of resources and specialist expertise to such a function, distinct from the body's other functions.

### 3.9 Head 167: Protected disclosures relating to Garda Síochána

GSOC notes that the deadline for the transposition of the EU Whistleblowing Directive<sup>8</sup> falls on 17 December 2021.

As a member of the Network of European Integrity and Whistleblowing Authorities (NEIWA), GSOC has been engaging with the Department of Public Expenditure and Reform on the transposition process, and recently submitted observations to the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach as part of the Pre-Legislative Scrutiny of the transposition legislation, the Protected Disclosures (Amendment) Bill 2021.

Given that Head 167 was drafted based on the Protected Disclosures Act 2014, GSOC would expect that the Head will require significant revision to reflect the new Protected Disclosures legislation.

**It is GSOC's view that further consideration may need to be given to ensure that Head 167 is aligned appropriately with the Protected Disclosures (Amendment) Bill 2021, and with the rights and protections afforded to disclosers under the EU Whistleblowing Directive.**

<sup>7</sup> Department of Justice (2021), *General Scheme of the Policing Security and Community Safety Bill: Explanatory Memorandum*. P. 18.

<sup>8</sup> Directive (EU) 2019/1937 of the European Parliament and the Council on the protection of persons who report breaches of Union law (EU Whistleblowing Directive)

### **3.10 Head 168: Formal investigation; Head 169: Powers equivalent to member of An Garda Síochána when undertaking formal investigation; Head 171: Additional powers for purpose of undertaking formal investigation.**

Given the interrelated nature of heads 168, 169 and 171, GSOC proposes to comment on them together in this section.

GSOC has highlighted the challenges it faces due to the unnecessarily complex processes provided for under the current Act for the initiation and conduct of formal investigations.<sup>9</sup> It has clearly signalled the need, in the context of reform of policing oversight legislation, to streamline the process of investigation, making it simpler, fairer, timelier and more accessible for complainants, Garda members, investigators and others associated with the investigative process.<sup>10</sup>

GSOC therefore strongly welcomes the provisions contained in Heads 168, 169 and 171, which permit a streamlined approach while also upholding constitutional and procedural safeguards which are the right of everyone living in Ireland. GSOC is of the view that these provisions have the potential to significantly improve the efficiency of investigations by reducing the practical difficulties caused by the current processes of gathering evidence, and improving these processes, as part of the conduct of investigations. Those being investigated pursuant to Heads 168, 169 and 171 retain the protection of well-established procedural safeguards, which remain a requirement in any investigation

GSOC would further note that the approach taken under these heads to the initiation and conduct of formal investigations is entirely in keeping with best practice in neighbouring jurisdictions and with other statutory bodies provided with civil and criminal investigative powers in this jurisdiction.

GSOC would finally observe that An Garda Síochána enjoys similar powers to those outlined under these Heads in the conduct of its investigations – powers that, far from giving rise to procedural or constitutional concerns, provide protection and reassurance to members of the public.

**In welcoming the provisions contained in Heads 168, 169 and 171 GSOC is of view that they address a clearly defined, and long-signalled, gap in Ireland’s policing accountability infrastructure, and will significantly improve the efficiency, timeliness and fairness of investigations.**

### **3.11 Head 170: Search of Garda premises**

Head 170(3) provides that:

Before issuing an authorisation to search a Garda Síochána premises the Garda Ombudsman shall consult with the Garda Commissioner to ensure that he or she does not object to the search on grounds relating to the security of the State.”

<sup>9</sup> GSOC (2017), [Proposal for Legislative Change: Submission to the Department of Justice and Equality](#). See section 4: Effective Investigations, p 15.

<sup>10</sup> Commission on the Future of Policing, [The Future of Policing in Ireland](#), p49.

The requirement for the Garda Ombudsman to seek the authorisation of the Garda Commissioner in relation to the search of a Garda Station is not compatible with the principle that the Ombudsman should be independent in the investigation of complaints. Nor is it with the obligation to seek out and preserve evidence that has a bearing, or potential bearing, on an investigation.

**GSOC is strongly of the view that the requirement that the search of Garda premises be subject to the authorisation of the Garda Commissioner should be removed. GSOC, however, has no objection to alternative approaches to the authorisation, oversight, and operation of the search of Garda premises, including through judicial oversight.**

Head 170(6) provides that:

“If satisfied, after considering the recommendation of the Independent Examiner, that the search of a Garda Síochána premises or of a part thereof would not be prejudicial to the security of the State or that such search is proportionate and necessary for the proper investigation of a matter concerning the death of, or serious harm to, a person as a result of Garda operations or while in the care or custody of the Garda Síochána, the Minister shall issue directions specifying the part of the document storage facility or the part of the premises that may be searched.”

GSOC notes that, in cases where the Garda Commissioner has objected to the search of a Garda station for reasons relating to the security of the state, but the Independent Examiner has found that such a search would not be prejudicial, this subsection effectively restricts the search of Garda premises to investigations of matters concerning death or serious harm. As such, it represents a significant, and unworkable, limitation on the ability of the Garda Ombudsman to conduct searches in the course of its investigations. GSOC further notes, in light of its recommendation on Head 170(3) above, that judicial, rather than ministerial, authorisation of searches may be a more appropriate approach in this subsection.

**GSOC is of the view that Head 170(6) should be amended to ensure that the search of Garda premises can be conducted in the context of the Garda Ombudsman’s broad investigative remit, rather than only in the context of matters concerning death or serious harm.**

**GSOC recommends that Head 170(6) be amended to provide for judicial, rather than ministerial, directions.**

With regard to the term ‘garda premises’, GSOC also notes the importance of clarity that this includes Garda cars and the property on which a Station is located.

**GSOC requests that for the purposes of this head, the definition of ‘Garda Premises’ should include the curtilage of a Garda station and Garda vehicles.**

### **3.12 Head 172: Power to discontinue formal investigation**

This Head details the circumstances under which the Garda Ombudsman can discontinue the formal investigation of a complaint or other matter. GSOC is of the view that a number of further circumstances should be provided for.

**GSOC requests that under subparagraph (1) (a) a provision also be made for the discontinuation of an investigation where the complainant has disengaged with the Garda Ombudsman.**

**GSOC requests that Head 172 is amended to include an expressed power to discontinue investigations initiated under Head 164 in circumstances where it is subsequently established that the conduct of the member of the garda personnel has not resulted in the death of, or serious harm to a person.**

Head 172(2)(b) provides for the discontinuation of an investigation if the Garda Ombudsman is of the opinion that “continuing with the investigation would interfere with, or conflict with the functions of another statutory body”. However the Head is silent on whether or not this encompasses the functions of An Garda Síochána or the Courts.

**GSOC requests that further clarity is provided in Head 172 to ensure the Garda Ombudsman may discontinue an investigation where it is of the opinion the investigation would interfere with a Garda investigation or the operation of the Courts.**

### **3.13 Head 175: Investigation of matters relating to Garda Commissioner by Garda Ombudsman**

Head 175 provides for the Garda Ombudsman to

“investigate any matter that gives rise to a concern that the Garda Commissioner may have—

- (a) committed an offence, or
- (b) behaved in a manner that would constitute serious misconduct.”

This power is, however, “subject to the consent of the Minister given with the approval of the Government”.

GSOC is of the view that the requirement to seek ministerial approval for such an investigation is not in keeping with the reformed body’s independence or the recommendations of the Commission on the Future of Policing. GSOC would further note that there is no analogous requirement for Ministerial approval of investigations in to police leadership in neighbouring jurisdictions such as Northern Ireland or London, where the Chief Constable of the PSNI and the Commissioner of Police of the Metropolis, respectively, also enjoy a significant state security brief.

In addition GSOC believes that the term ‘serious misconduct’ in paragraph 1(b) could be more clearly defined.

### **3.14 Head 176: Duty to keep certain persons informed**

Head 176(1) provides a list of persons and entities who “Garda Ombudsman shall of his or her own initiative or on request provide [...] with sufficient information to keep them informed of the progress and results of a formal investigation”.

**GSOC requests that this provision is amended to read:**

**‘The Garda Ombudsman shall of his or her own initiative or on request provide the following persons with sufficient information to keep them informed of the progress and results of a formal investigation and any outcome of either disciplinary or criminal proceedings’.**

### **3.15 Head 177: Provision of information to Garda Ombudsman by Garda Síochána**

Head 177 provides that “the Garda Commissioner shall, as soon as practicable, provide the Garda Ombudsman with such information and documents as the Garda Ombudsman may request for the purpose of, or in connection with, the exercise of any of his or her functions.”

GSOC welcomes the provisions made under Head 177, as they provide a much-strengthened statutory basis for information sharing between the Ombudsman and An Garda Síochána.

Head 177 also provides for referral to the Independent Examiner, where requested, documents which, in the view of the Garda Commissioner, relate to the security of the State. GSOC recalls, in this regard, its earlier observations on the need for the imposition of defined timelines on the review process.

**GSOC requests that Head 177 stipulates a time limit for the review by the Independent Examiner of requests for information made under this head.**

### **3.16 Head 179: Extension of time limit for instituting summary proceedings for offences**

Head 179(1) provides that “summary proceedings in respect of a matter relating to an offence reported to the Director of Public Prosecutions under this Part may be instituted within 18 months from the date of the offence.”

It is GSOC’s experience that an 18 month time limit for instituting summary proceedings can present difficulties, particularly where a complaint is made late in the 12 month time frame for making a complaint. It is GSOC’s view that the expansion of this time limit to 24 months would assist both the Garda Ombudsman and the DPP in processing the necessary files. A two year timeline would be more in line with similar provisions made for other bodies.

**GSOC is of the view that the current 18 months limit for initiation of summary proceedings in Head 179 should be extended to 2 years.**

### **3.17 Head 180: Same conduct may form basis for complaint or charge**

GSOC notes that paragraph 2 of this head makes reference to complaints, but is silent on referrals, or on notifications on incidents of concern.

**GSOC recommends that Head 180(2) be amended to read:**

**“However if a complaint or referral is made, or an incident of concern notified to the Garda Ombudsman or a matter is subject to investigation by the Garda Ombudsman, concerning the conduct of a member of the Garda workforce, the person concerned may not be charged with an offence relating to that conduct except by or with the consent of the Director of Public Prosecutions.**

### **3.18 Head 181: Protocols**

The focus of this Head is currently on the agreement of protocols between the Garda Ombudsman and the Garda Commissioner. As already noted above, GSOC benefits from cooperation and information sharing with other agencies in the carrying out of its functions. GSOC is of the view that the legislation should explicitly state that the reformed body is free to formalise such cooperation, including via the agreement of protocols, as it considers appropriate.

**GSOC believes that this section will require further clarification so as to ensure that the Garda Ombudsman is empowered to make arrangements via protocols, including for the sharing of information, with other agencies as it considers appropriate.**

## 4. Miscellaneous observations

While Parts 5 and 6 of the scheme form the primary focus of this submission, GSOC wishes to highlight the following provisions which also have relevance to its work.

### 4.1 Part 1, Head 2: Interpretation

Head 2 of the Scheme defines 'member' as:

“(a) a member of any rank (including the Garda Commissioner) appointed under Part 2, under an enactment repealed by this Act or under an enactment repealed by the former Act, and (b) a reserve member, but does not include a member of garda staff”

It has been the experience of GSOC that complaints in relation to probationary personnel can be made. GSOC has also experienced issues with regard to the extent of its remit where Gardaí are seconded or appointed to other bodies, such as the Criminal Assets Bureau.

For the avoidance of doubt, and to ensure adequate oversight, GSOC is of the view that the interpretation of the term 'member' should be expanded to include probationers, as well as Gardaí seconded or appointed to other bodies or agencies.

The interpretive provisions should also make clear that a trainee is distinct from a probationer. A probationer holds the rank of Garda and is assigned to a Garda Station and will therefore be subject to oversight by the new Ombudsman.

### 4.2 Part 2, Head 43: Duty of members of Garda Personnel to account

Head 43 provides that:

“A member of garda personnel shall, when directed to do so by a member of garda personnel of a higher rank or grade, account for any act done or omission made by the member concerned while on duty.”

This restates in part section 39 of the current Garda Síochána Act, 2005 but it removes in its entirety any reference to the Garda Ombudsman which was inserted by the Criminal Justice Act, 2007.

The inclusion of GSOC in this provision is essential. It is regularly utilised by GSOC in the course of its investigations and has greatly enhanced GSOC's ability to ascertain the truth in investigations into serious disciplinary matters.

Its removal would represent a significant limitation of the reformed body's capacity to investigate Garda discipline.

**GSOC is of the firm view that a reference to GSOC designated officers be added to Head 43, in line with the current provisions of section 39 of the Garda Síochána Act 2005, as amended by the Criminal Justice Act 2007.**