

Mr. Brian Lenihan, T.D.,
Minister for Justice, Equality and Law Reform,
94 St. Stephen's Green,
Dublin 2.

Dear Minister,

Section 80(2) of the Garda Síochána Act 2005, which provides for the establishment of the Garda Síochána Ombudsman Commission, requires that the Ombudsman Commission shall, within two years of its establishment, submit to you a report on

- (a) the effectiveness of the Ombudsman Commission, and
- (b) the adequacy of the functions assigned to it by this Act

The Ombudsman Commission was established on 12th December 2005 and the three members of the Commission received their warrants of appointment from President of Ireland Mary McAleese on February 10th 2006.

The concept and the objective of an independent, well-resourced, police oversight agency have been recognised as a strengthening of our democracy and an enhancement of the accountability of State institutions.

The Commissioners, being fully cognisant and supportive of these principles, accordingly have pleasure in presenting the following report.

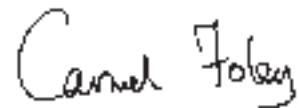
Yours faithfully,



Judge Kevin Haugh, Chairman



Conor Brady, Commissioner



Carmel Foley, Commissioner



THE GARDA SÍOCHÁNA OMBUDSMAN COMMISSION.

Report to the Minister for Justice, Equality and Law Reform on (a) the effectiveness of the Ombudsman Commission and (b) the adequacy of the functions assigned to it under the Garda Síochána Act 2005.

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APPENDICES 2-12. Amendments to the Garda Síochána Act 2005

APPENDIX 1

Garda Síochána Ombudsman Commission - key (external) performance indicators.

APPENDIX 2

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APPENDIX 3

A general statutory power to conduct a preliminary examination.

APPENDIX 4

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APPENDIX 5

Clarify the mechanism by which the duty of the Garda Commissioner to preserve evidence is activated in cases emerging from section 102.

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Acronyms

GSOC	Garda Síochána Ombudsman Commission
OPONI	Office of the Police Ombudsman for Northern Ireland
IPCC	Independent Police Complaints Commission (for England and Wales)
CAF	Central Applications Facility
GSCB	Garda Síochána Complaints Board



1. INTRODUCTORY COMMENT.

The Garda Síochána Ombudsman Commission was established by order of the Minister for Justice, Equality and Law Reform on December 12th 2005. The three members of the Ombudsman Commission received their warrants of appointment from President of Ireland Mary McAleese on February 10th 2006, their nominations having been duly approved, as required under the Garda Síochána Act 2005 ('the Act'), by both Houses of the Oireachtas.

The Ombudsman Commission commenced receiving complaints on May 9th 2007, opening its doors for business at its office at 150 Abbey Street Upper, Dublin 1, on that day.

The 15-month period between the appointment of the Commissioners and the first receipt of complaints was occupied with general preparations, including the recruitment and training of staff, the procurement of premises and equipment and the development of administrative and operational systems.

Additional details of these activities, with acknowledgments of the assistance received from many sources as well as an outline of the Ombudsman Commission's structure and organisation, were made available in its First Annual Report which was published in March 2007.

The actual operational period covered in this current report is thus approximately 7 months. In some respects, this start-up period may not be accurately or fully reflective of the long-term conditions under which the Ombudsman Commission will operate. Nonetheless, the Commissioners believe that it is possible, even at this relatively early stage, to report and comment usefully on both areas identified in section 80(2) of the Act.



2. THE EFFECTIVENESS OF THE OMBUDSMAN COMMISSION.

2.1. Background to the Establishment of the Ombudsman Commission

Prior to the establishment of the Garda Síochána Ombudsman Commission, responsibility for receiving and dealing with complaints about members of the Garda Síochána reposed with the Garda Síochána Complaints Board, which had been established in 1986.

The Garda Síochána Act 2005 (originally the Garda Síochána Bill 2003) provided for a range of reforms in regard to the operation and management of the Garda Síochána, including the establishment of the Ombudsman Commission.

The various reports of the Tribunal inquiring into Garda behaviour in the Donegal Division ('the Morris Tribunal') as well as certain other matters, led to a general, cross-party desire in Dáil Éireann and Seanad Éireann to strengthen the accountability of the Garda Síochána.

Proposals advanced in the Oireachtas for the establishment of the Garda Síochána Ombudsman Commission broadly reflected the models of independent oversight of policing that are provided for in Northern Ireland (through the Office of the Police Ombudsman for Northern Ireland - OPONI) and in England and Wales (through the Independent Police Complaints Commission - IPCC).

Consequently, one of the most significant differences between the Garda Síochána Ombudsman Commission and the Garda Síochána Complaints Board, is that the Ombudsman Commission's officers have what amount to independent powers broadly equating, in certain circumstances, to the powers exercised by members of the Garda Síochána.

For the purposes of the Act, members of the Ombudsman Commission carry the powers, immunities and privileges and all the duties of a member of the Garda Síochána not below the rank of Inspector. The Ombudsman Commission's designated officers, for the purposes of the Act, carry the powers of members of the Garda Síochána below the rank of Inspector.

2.2 The Objectives of the Ombudsman Commission

The Act sets down twin objectives for the Ombudsman Commission (section 67)(1)).

These are:

- (a) to ensure that its functions are performed in an efficient and effective manner and with full fairness to all persons involved in complaints and investigations....concerning the conduct of members of the Garda Síochána, and
- (b) to promote public confidence in the process for resolving those complaints.

3. EFFECTIVENESS OF THE OMBUDSMAN COMMISSION IN REGARD TO OBJECTIVE (a).

3.1 Overview

The Ombudsman Commission is satisfied that the general objectives and the current design of the organisation are suitable for the purposes set down in the Garda Síochána Act 2005. There are, however, areas in which the Ombudsman Commission believes that some amendments to the Act are necessary. These are set out in Appendices 2-12 of this report.

The clear independence provided for under the Act has been essential in establishing the Ombudsman Commission's standing as an impartial agency.

While arguments have been made in favour of the one-person model of police ombudsman operating in Northern Ireland, there are issues of scale. The Garda Síochána has more than twice the number of officers than the Police Service of Northern Ireland and serves almost three times the population across a geographical area that is three times as large. There are 17 Commissioners in the IPCC structure for England and Wales.

The members of the Garda Síochána Ombudsman Commission are of the view that the three-person model is functioning well. The volume of activity is such that divisions of labour are essential. In addition, the input of three Commissioners from differing backgrounds facilitates a multidisciplinary approach to complex issues. The Act provides for decisions to be taken, where necessary, by majority voting among the three Commissioners. However, in practice, to date decisions have been taken by consensus.

3.2 Volume of Activity

The volume of activity at the Ombudsman Commission over the period in review, by way of complaints received and by referral of incidents from the Commissioner of the Garda Síochána under section 102 of the Act, is set out in the table below.

Table 1: Complaints and Referrals received up to 31/12/2007

<i>Status</i>	<i>Complaints</i>	<i>Referrals (section 102)</i>
Admissible	952	
Pending	576	
Inadmissible	556	
Not applicable	0	247
Total	2084	247

The table above indicates continuing high levels of activity.

Other Investigations and Examinations

Complaints received from members of the public, along with the referral of incidents by the Commissioner of the Garda Síochána, under section 102, of the Act constitute the great bulk of the operational work of the Ombudsman Commission to date.

In addition to the above, the Ombudsman Commission has initiated one investigation in the public interest, (section 102 (4)).

The Ombudsman Commission has had discussions with the Minister for Justice, Equality and Law Reform on two matters in regard to its powers to conduct an examination into a practice, policy or procedure of the Garda Síochána, for the purpose of preventing complaints arising (section 106).

In one instance the Minister for Justice, Equality and Law Reform requested the Ombudsman Commission to undertake such an examination.

3.2 (1) Referrals under section 102, Garda Síochána Act 2005

Section 102 referrals to the Ombudsman Commission from the Commissioner of the Garda Síochána take place when it appears to the Commissioner that the conduct of a garda may have resulted in the death of, or serious harm to, a person.

In every such referral, the Act requires that the Ombudsman Commission shall investigate.

The numbers of section 102 referrals have reduced considerably from a high peak in the early months of the operation of the Ombudsman Commission.

There may be several reasons for this. In the early stages, local Garda management considered themselves obliged to refer relatively trivial injuries to the Ombudsman Commission. A review of the Protocols agreed between the Ombudsman Commission and the Commissioner of the Garda Síochána served to clarify these matters with a consequent drop in the number of referrals.

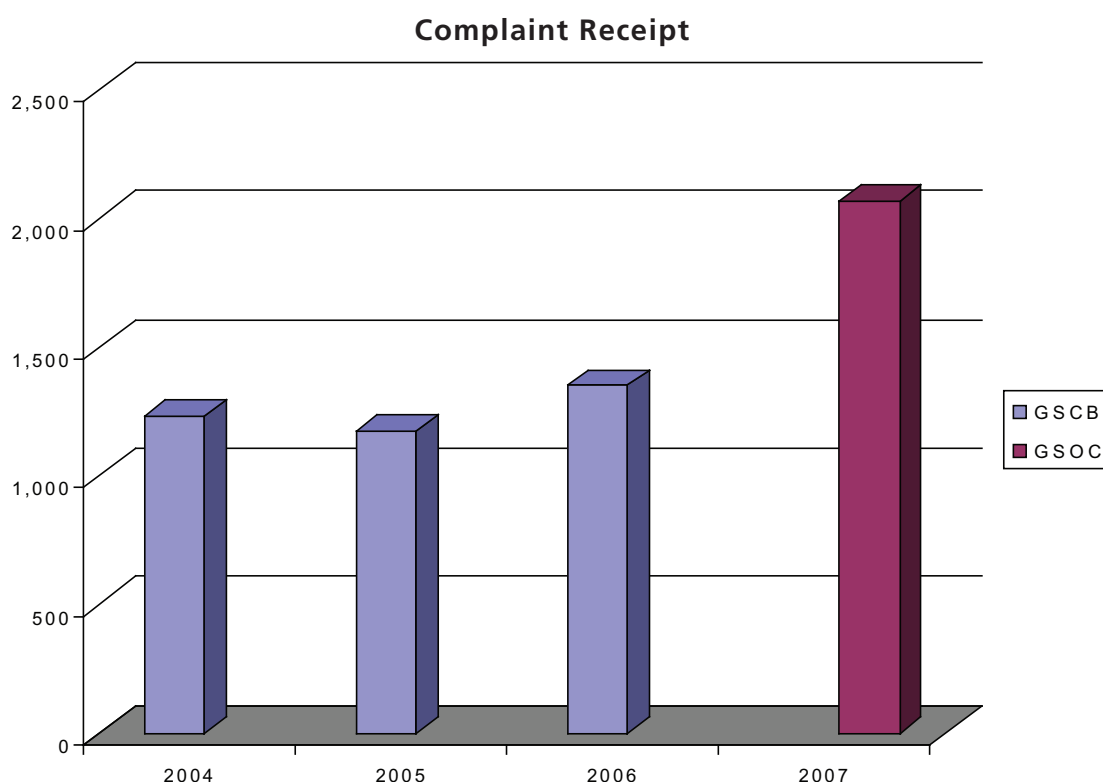
The Ombudsman Commission and the Commissioner of the Garda Síochána will continue to monitor the numbers and the nature of referrals under section 102.

Response to section 102 referrals places heavy demands on the Ombudsman Commission's limited personnel resources. A serious or critical incident will require the deployment of investigators perhaps for days or weeks.

3.2 (2) Complaints received from the general public.

It will be seen from the table below that the volume of complaints received by the Ombudsman Commission from members of the general public about gardai is considerably higher than was the case with the Garda Síochána Complaints Board during each of the three previous years.

Table 2: Complaints received by GSCB (2004-2006) and GSOC (2007)



The numbers of complaints received by the GSCB was low *pro rata* by comparison with complaints about police officers in the adjacent jurisdictions of Northern Ireland (OPONI) and England and Wales (IPCC).

In contrast, the present volume of complaints being received by the Ombudsman Commission is closer *pro rata* to that experienced in these adjoining jurisdictions.

It was anticipated that the advent of a new agency might have the effect of creating an initial 'surge' of complaints. This is apparent in the high weekly volume of complaints in the opening months of the Ombudsman Commission's operations. While the weekly average number of complaints received has dropped, it is currently running at approximately 45 which would project a likely annual total of 2,350 complaints.

3.3 Resources and Capacity.

At the time of this report, the Ombudsman Commission is dealing with an accumulation of investigations and complaints.

Table 3: sets out the status of admissible complaints from members of the public and referrals received.

Status of Admissible Complaints and referrals to 31/12/2007

<i>Status</i>	<i>Complaints</i>	<i>Referrals (section 102)</i>
		-
s90 IR and Mediation	228	-
section 94 Supervised	28	-
section 94 Unsupervised	312	-
section 91	-	6
section 98	384	241
Total	952	247

Clearly, the Ombudsman Commission cannot function at an acceptable level of effectiveness if these backlogs continue. Both complainants and members of the Garda Síochána complained of are entitled to have their business disposed of as swiftly as possible. Independent oversight of policing, by definition, must be responsive and timely.

A number of factors contribute to this current backlog. These are set out hereunder.

Legislative

The Ombudsman Commission is strongly of the view that certain amendments to the Garda Síochána Act 2005 would, if enacted, have the effect of reducing the caseloads of both investigators and case officers while enabling complaints to be dealt with and investigations to be completed more swiftly and more appropriately than at present.

A number of amendments to the Act were incorporated in the Criminal Justice Act 2006 and these have proven efficacious. A number of further proposed amendments have been discussed between the Ombudsman Commission and senior staff at the Department of Justice, Equality and Law Reform.

These proposed amendments and the Ombudsman Commission's reasons for seeking these are adumbrated below in section 6 of this report.

Staffing Levels

For much of its existence to date, the Ombudsman Commission has been functioning at staffing levels below those which were originally envisaged as being necessary to discharge its statutory duties.

The original requirement of four teams of investigators plus an intelligence unit was not approved by the Department of Finance until April 2007. For most of the period under review in this report, the Ombudsman Commission has functioned with three teams with reduced numbers. Additional staff have taken up post since January 2008.

Staffing levels among Case Officers have also fallen short of that required and set out originally. A number of vacancies at all levels remain, with consequent heavy pressure of work on existing staff.

Table 4: sets out the numbers of Investigators/Case Officers and their respective caseload as reported on 31/12/2007.

<i>GSOC Investigators</i>	<i>Independent Investigations</i>	<i>Case officers</i>	<i>Cases</i>
28	618	18	958

Technology IT

The efficiency of the Ombudsman Commission has been hampered by the fact that it commenced operations in May 2007 without the benefit and support of a fully-developed information technology system.

An interim, bespoke Case Management System had to be adopted and at the time of writing is still in use. The receipt, storage, management and tracking of information, including case files has been made unnecessarily difficult because of this deficiency. It is expected that a fully-developed system, suitable to the Ombudsman Commission's needs, will be in operation by the summer of 2008.

No trained information technology staff was available to the Ombudsman Commission during transition or start up phase. Successive assurances that suitably qualified personnel would be assigned under the CAF arrangements came to nothing. The Ombudsman Commission accordingly entered into a number of consultancy and support arrangements with the external services providers in order to meet this need.

3.4 Key Performance Indicators/Corporate Strategy/Quality Assurance for Investigations

When the Commissioners were appointed in February 2006 they agreed to prioritise the bringing of the Ombudsman Commission to an operational capacity as early as might be practicable.

Emphasis was laid upon recruitment, training, acquisition of premises and equipment, etc. Some of the start-up preparations that would be normal for a new body such as this accordingly moved more slowly.

These include the setting down of key performance indicators and the preparation of a statement of corporate strategy.

Work began on preparing a statement of corporate strategy in the latter half of 2007 and it is expected that this will be completed early in 2008. The Ombudsman Commission has retained the services of outside consultants to assist in this process.

A set of 27 key performance indicators was prepared during November and December 2007 covering the investigations section, the case work section and the communications and research section. These are the sections of the organisation that have most interaction with its 'clients' – the general public, gardaí and other stakeholders.

These key performance indicators set down clear targets for delivery of services and completion of functions across the relevant sections of the organisation.

They were agreed and signed off by the heads of each section and have been effective from January 1st 2008.

The full list of these key performance indicators is attached by way of Appendix 1 to this report.

At the time of compiling this report, arrangements are also being put in place for independent quality assurance of the Ombudsman Commission's investigations work.

4. EFFECTIVENESS OF THE OMBUDSMAN COMMISSION IN REGARD TO OBJECTIVE (b).

4.1 Overview

Objective (b) for the Ombudsman Commission is to promote public confidence in the process for resolving complaints.

The Ombudsman Commission took the view from its establishment that the promotion of public confidence in its processes was a matter to be pro-actively managed, with the application of suitable and appropriate resources.

It also took the view (although the Act does not specify this requirement) that it has a duty to promote confidence in the complaints processes among members of the Garda Síochána.

It was recognised that the introduction of an independent system of policing oversight, with independent investigative resources, would require both the general public and the members of the Garda Síochána to adapt to new circumstances.

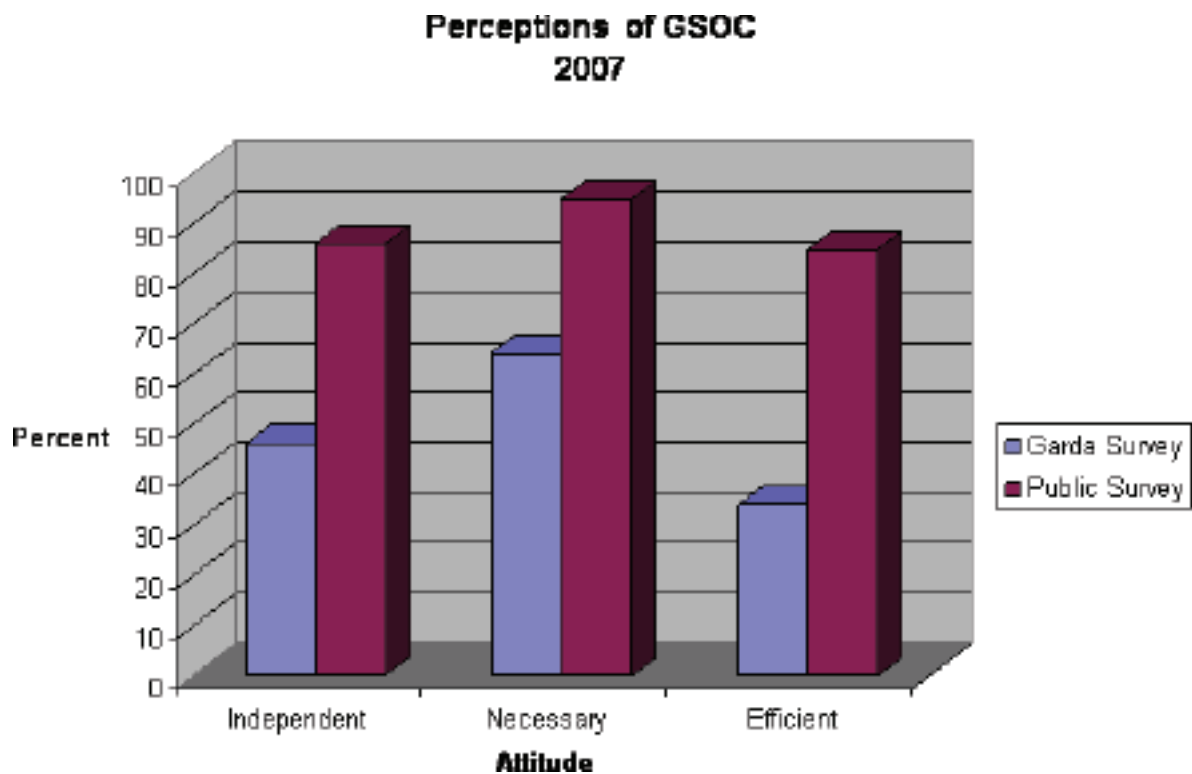
Accordingly, the Ombudsman Commission undertook the following actions in order to familiarise both gardaí and the public with the new processes and to ensure the fullest possible dialogue among interested parties –

1. The establishment of a Consultative Group in which the Ombudsman Commission would meet at regular intervals with Garda management, the Garda staff associations, the Irish Human Rights Commission, the Department of Justice, Equality and Law Reform and the Garda Síochána Inspectorate.
2. Undertaking a programme of meetings with regional staff association groups and local Garda management.
3. A programme of 'outreach' meetings at community level to set out the operations of the Ombudsman Commission and its role.
4. The publishing of a suite of leaflets, pamphlets and guides to the work of the Ombudsman Commission in various languages.
5. The running of a brief promotional campaign on radio and in the press announcing the establishment of the Ombudsman Commission.
6. Presentations by the Ombudsman Commission personnel to training classes at the Garda College, Templemore, Co Tipperary.
7. Establishment of a working party with Garda management to draw up protocols, as required by the Act.
8. Establishment of a working party to draw up a scheme for the informal resolution and mediation of complaints.

4.2 Measuring the Ombudsman Commission's effectiveness in promoting confidence.

It is not easy to measure an organisation's effectiveness in promoting confidence in its work. The polling of public and garda attitudes by way of survey offers useful pointers to the Ombudsman Commission in this regard. The Ombudsman Commission undertook two such exercises before opening for business. The figures displayed for each attitude in Table 5 combine both 'agree' and 'don't know' responses.

Table 5: Surveys of the public and the Garda Síochána compared.



The Ombudsman Commission intends to poll public attitudes, as well as attitudes within the Garda Síochána, at regular intervals. In this way it is hoped that it will be possible to benchmark its performance in creating confidence in the new system of independent oversight of policing.

The Ombudsman Commission is acutely conscious that the advent of an independent oversight agency, with powers identical in many respects to those invested in the gardaí, has represented something of a culture-change for many.

The presence of the Ombudsman Commission's officers on the ground, at the scene of critical incidents, has, on some occasions caused gardaí to react with surprise and discomfiture. It has also, on occasions, caused surprise and puzzlement among members of the general public who have not anticipated the presence of a heretofore unknown agency in a critical situation, perhaps involving family members or loved ones.

The Ombudsman Commission is satisfied, nonetheless, that on-the-ground contacts at operational level have generally been effective, professional and affirming. As the fear of the unknown has been gradually dissipated, good working relations have developed at operational level between the Ombudsman Commission's personnel, gardaí and other agencies.



5. ADEQUACY OF THE FUNCTIONS ASSIGNED TO THE OMBUDSMAN COMMISSION UNDER THE ACT.

The Ombudsman Commission is generally satisfied that the functions assigned to it under the Act are adequate and appropriate. Nonetheless, it is appropriate to note some points of comparison with other police oversight agencies elsewhere and also some issues that have arisen with regard to the scope of the Ombudsman Commission's functions.

5.1 Functions Excluded from the Ombudsman Commission's jurisdiction:

Commissioner of the Garda Síochána

The Commissioner of the Garda Síochána, not being a 'member' of the force, is specifically excluded from the jurisdiction of the Ombudsman Commission.

In this respect, the functions of the Ombudsman Commission are different from those of OPONI and IPCC which have jurisdiction to investigate complaints against their chief officers.

A number of complaints against the Commissioner, received during the year, were deemed to be inadmissible on this basis.

General Direction and Control of the Garda Síochána

A complaint is not admissible insofar as it relates to the general direction and control of the Garda Síochána by the Garda Commissioner.

A number of complaints of this nature, received during the year, were deemed to be inadmissible on this basis.

On Duty/Off Duty

Complaints to the Ombudsman Commission concerning the conduct of a member of the Garda while he/she is off duty are not admissible, unless the conduct, if proved, is likely to bring discredit on the force, (section 87(3)(b)).

However, section 102(1) obliges the Garda Commissioner to refer to the Ombudsman Commission any matter that appears to indicate that the conduct of a member of the force may have resulted in the death of, or serious harm to, a person.

This does not differentiate between a garda who is on or off duty. In practice however, all such matters have been referred to the Ombudsman Commission.

This practice has caused some disquiet among gardaí on the basis that it represents an intrusion into their private lives.

The Ombudsman Commission is satisfied that the current practice is sound and reflects a legal imperative.

Referrals in regard to conduct of off-duty gardaí to date have included a number of serious road traffic incidents and a number of alleged assaults.

5.2 Misconduct or Service/Efficiency issues

The Ombudsman Commission has received a considerable number of complaints alleging serious failures in service and/or inefficiency on the part of members of the Garda Síochána.

These have ranged from alleged lack of attention in the public office of a Garda station to allegations of serious neglect in the investigation of crimes or incidents.

This represents something of a 'grey area' for the Ombudsman Commission. It is often difficult to determine the point at which inefficiency or under-performance can become a 'neglect of duty' – and therefore constitute a breach of the Disciplinary Code.

It may also be difficult to determine the point at which a garda's failure in duty may amount to an attempt to pervert the course of justice.

The Ombudsman Commission is giving close attention to these areas and is seeking to develop detailed policies. The close co-operation of the Garda Síochána, which has been readily available in all matters heretofore, will be required in order to achieve clarity on these points.

5.3 Informal Resolution/Mediation

Section 90 of the Act provides for the issuing of guidelines by the Ombudsman Commission for the informal resolution or mediation of certain categories of complaints against members of the Garda Síochána.

From the beginning, the Ombudsman Commission has regarded this as an important element in its operation. After a lengthy period of consultation with Garda management, the Garda staff associations and others, guidelines were promulgated, as provided for by section 90 of the Act.

The Ombudsman Commission believes that these guidelines are a fair and efficient means of dealing with many less serious complaints. They are designed to allay concerns often expressed by gardaí that by agreeing to informal resolution or mediation they were in effect pleading 'guilty' to some wrongdoing.

The Ombudsman Commission hopes that the rate of take-up through these channels of resolution can be improved. 233 cases have been assigned to informal resolution while just one case has been successfully mediated.

At the meeting of the Consultative Group, held in December 2007, it was agreed that a working party would be formed representing the Ombudsman Commission, Garda management and the Garda staff associations to see if current difficulties in this area can be resolved.

5.4 Written Protocols with the Commissioner of An Garda Síochána

Section 108 of the Act requires that the Ombudsman Commission and the Commissioner of the Garda Síochána shall, by written protocols, make arrangements concerning a number of operational matters. These are (a) the use of detention facilities, (b) the application of the Criminal Justice Act 1984 (Treatment of Persons in Custody) Regulations, (c) the handling of investigations that coincide, and (d) sharing information.

The Ombudsman Commission is satisfied that these Protocols, agreed and signed in May 2007, with some subsequent modifications, are operating appropriately and efficiently.

5.5 Special Assistance

Section 74 of the Act enables the Ombudsman Commission to enter into arrangements with the Garda Commissioner or other agencies for the secondment of personnel for a period of temporary service with the Ombudsman Commission.

Four members of the Garda Síochána at the rank of superintendent were seconded for temporary service with the Ombudsman Commission prior to the operational date of May 9th 2007.

The presence of these members has been a significant strength to the organisation and the Ombudsman Commission would like to acknowledge the value of their input.

5.6 Regulations relating to matters concerning the security of the State

At this writing discussions are in hand between the Ombudsman Commission and officials of the Department of Justice, Equality and Law Reform concerning the arrangements to be made in regard to the above under section 126 of the Act.

The Garda Síochána is both the national police service and the primary national security service. It is inevitable that these functions will overlap and interact at certain points and when this happens it is necessary that there should be suitable arrangements in hand to protect State security.

Section 126 of the Act provides for the designation by the Minister for Justice, Equality and Law Reform of certain Garda stations, documents and things in respect of which the Ombudsman Commission's access is to be subject to ministerial consent.

The Commissioners believe that restriction of access should be very much the exception and that the definition of what constitutes the security of the State must be tightly drawn. It points out that on occasion in the past when malpractices have been revealed in certain quarters of the Garda Síochána, the excuse of State security has been advanced by way of attempted justification.

6. THE FUNCTIONING OF THE ACT – LEGISLATIVE CHANGES.

The Garda Síochána Act 2005 represents the most significant changes in policing arrangements since the foundation of the State. It is recognised that it seeks to bring together many changes, reforms and modernisations.

Part 3 of the Act, dealing with the establishment and functioning of the Garda Síochána Ombudsman Commission, is by far the largest part, comprising 49 sections.

6.1 Legislative changes to date

When the Ombudsman Commission became operational it became apparent that some modifications, if enacted, would greatly enhance its efficiency and would, in certain places, remove potentially troublesome ambiguities.

The Department of Justice, Equality and Law Reform was immediately receptive to the Ombudsman Commission's requests for certain amendments and these were passed into law on 9th May 2007 within the Criminal Justice Act, 2007.

The amendments of May 2007 and the reasons advanced in favour of these are set out below.

Significant Amendments to the Act to date.

- I. Section 98: removal of the restriction of the Ombudsman Commission's powers and responsibilities to the member of the Garda Síochána under investigation. The original wording restricted the Ombudsman Commission's ability to exercise its "garda-type" powers making them effective only in relation to the member of the Garda Síochána under investigation. The removal of that restriction allowed the Ombudsman Commission to conduct investigations more effectively by extending those powers to cover members of the Garda Síochána and members of the public alike.
- II. Section 39: Garda's duty to account extended to a duty to account to a designated officer of the Ombudsman Commission. The duty here provided enhanced the Ombudsman Commission's ability to investigate acts or omissions by on-duty Gardaí.
- III. Section 94: removal of the necessity for the Ombudsman Commission to form the opinion that a breach of the Disciplinary Regulations has been committed. The amendment means that the Ombudsman Commission need only be of the opinion that a breach may have been committed in order to make an appropriate report on the matter. Since the matter could be due for further consideration, it was felt that this was an infringement on due process.

6.2 Further amendments

The Ombudsman Commission has maintained a close dialogue with the Department of Justice, Equality and Law Reform on certain other aspects of the legislation. On June 6th 2007 the Commissioners and members of their executive team met the Minister for Justice, Equality and Law Reform, along with senior officers of his Department, and set out some further modifications to the Act which they believe will aid the efficiency and effectiveness of the Ombudsman Commission.

Further amendments currently proposed or sought are:

- **Section 94** – introduce provision to allow for the “leaseback” of investigations to the Garda Síochána, whether for disciplinary or criminal investigation – see **Appendix 2**
- **Section 91** – introduce a general statutory power to conduct a preliminary examination and not just in cases of complaints of death or serious harm, or referrals under section 102 – see **Appendix 3**
- **Section 91** – introduce the right for the Ombudsman Commission, where appropriate, to “wind up” a preliminary examination without the need to move to a section 95/98 investigation – see **Appendix 4**
- **Section 89** – revise the mechanism by which the duty of the Garda Commissioner to preserve evidence is activated – see **Appendix 5**
- **Section 98** – provision to allow, in appropriate cases, for a section 98 investigation to be converted into an investigation under sections 94 or 95 – see **Appendix 6**
- **Sections 101(7) / 80(5)** - publishing of reports – see **Appendix 7**
- **Section 82** – the provision of practical guidance on “serious harm” – see **Appendix 8**
- **Section 83(1)(b)** – the validation of oral consent to the Ombudsman Commission – see **Appendix 9**
- **Section 95(4)** – bringing this provision into line with the recent change to section 94(7) – see **Appendix 10**
- **Section 88** – Standardise the method for the notification of members of the Garda Síochána of the existence of a complaint, whether admissible or inadmissible – see **Appendix 11**
- Suggested textual amendments to the Garda Síochána Act 2005 – see **Appendix 12**

7. CONCLUSION.

The Garda Síochána Ombudsman Commission is satisfied that it can report good progress in respect of all of its functions and objectives as set out under the Garda Síochána Act 2005.

The Commissioners would like to acknowledge the great contributions by its own staff and the various individuals and agencies that have assisted the organisation in its pre-start up phase and in its initial phase of operation.

In particular, the Commissioners wish to acknowledge the vision and sense of purpose, reflected across the political spectrum in Dáil Éireann and Seanad Éireann in bringing this institution into being.

The establishment of an independent police oversight agency such as this represents a further maturing of our democracy and an important extension of the accountability of the institutions of the State.

The support of the Oireachtas and of the various Departments of State involved in the establishment, funding, equipping and formation of the Ombudsman Commission, is deeply appreciated. It may be a truism – but it has to be articulated – that without such support there would be no Garda Síochána Ombudsman Commission.

In particular, the Ombudsman Commission wishes to record its appreciation of the support and enthusiasm of the Department of Justice, Equality and Law Reform in the establishment of Garda Síochána Ombudsman Commission.

APPENDIX 1

GARDA SÍOCHÁNA OMBUDSMAN COMMISSION - KEY (EXTERNAL) PERFORMANCE INDICATORS.

OBJECTIVES AND TARGETS - 2007/2008 GARDA SÍOCHÁNA OMBUDSMAN COMMISSION - KEY (EXTERNAL) PERFORMANCE INDICATORS

Introduction

It was decided at the Commissioners' meeting of October 9th 2007 that it is necessary to move forward to (a) identifying our key performance indicators (KPI's) and (b) putting down objectives and targets in relation to these.

A review and discussion has now taken place in regard to key external indicators and the following set of indicators has been agreed by those involved. It is now put forward for general discussion and, hopefully, for agreement by the Ombudsman Commission.

The Ombudsman Commission expects to be asked to give an account of its performance and to answer queries before the Joint Oireachtas Committee in the spring parliamentary term.

The Corporate Services Section is currently working on a PMDS (Performance Management and Development System) which will address the role, functions, objectives and requirements of each staff member. Once complete, the PMDS model will fit within an overall Corporate Strategy and the Mission Statement for the Ombudsman Commission.

The first objective of the Ombudsman Commission, as set out in law, is to provide an efficient and effective mechanism for dealing with complaints about the conduct of members of the Garda Síochána, with fairness to all.

We therefore have to serve two principal constituencies – the general public and the members of the Garda Síochána itself.

It follows that our 'visible' or 'external' KPI's must be the efficiency, speed, effectiveness, fairness and professionalism with which we serve our 'clients', within the legislative framework that we have been given.

There are other KPI's which are less 'visible' and more 'internal' but which are no less important; financial control, planning, training, development of review processes, quality-assurance etc. These are not addressed in this document.

What follows here is a set of targets and objectives in relation to the Ombudsman Commission's 'external' KPI's. Because we are dealing, in the first instance, only with 'external' KPI's, this exercise is confined to the work of three sections within the organisation. These three; Case Work, Investigations and Communications and Research are, of course, the sections that primarily interact with our 'clients'.

These KPI's have been developed in discussions with the Director of Administration, Director of Investigations and the Head of Communications and Research.

A total of 27 KPI's are identified here. They are not 'set in stone'. Nonetheless, they are intended as a set of compass-points to be followed during the next 12 months of operations for the Ombudsman Commission and thereafter subject to further review.

There is also an awareness that the advent of the full Case Management System may have an impact on these arrangements.

Case Work

1. Response to telephone contacts from general public. Target: within 60 seconds.
2. Case Officer presence with 'walk-in' clients. Target: within 10 minutes.
3. Written acknowledgment of complaints. Target: within 24 hours of receipt at the Ombudsman Commission.
4. Notification of receipt of complaints to Garda Human Resource Management. Target: within 24 hours of receipt at the Ombudsman Commission.
5. Decision on admissibility of complaints. Target: within 8 days of receipt at the Ombudsman Commission.
6. Decision on admissibility of complaints that require review of information. Target: within 30 days.
7. Decision to refer admissible complaint for local resolution or mediation. Target: within 10 days of receipt at the Ombudsman Commission.
8. Time to contact garda to seek agreement to local resolution or mediation. Target: within 14 days of receipt of complaint at the Ombudsman Commission.
9. Time to contact complainant to seek agreement to local resolution or mediation. Target: within 14 days of receipt of complaint at the Ombudsman Commission.
10. Time to administer complaints not referred for investigation (dealt with by informal resolution or mediation.) Target: 90 days.
11. Time to update/advise complainant on status of complaint. Target: within 28 days of receipt of complaint at the Ombudsman Commission.

Investigations

12. Time for Investigations Officer to make initial contact with complainant in case of alleged criminality. Target: within 7 days of decision on admissibility.
13. Time for Investigations Officer to make initial contact with complainant in case of alleged breach of discipline. Target: within 21 days.
14. Time taken for investigation and report to Commissioners in cases of alleged criminality (other than 'critical incidents'). Target: within 90 days.
15. Time taken for investigation and report to Commissioners in cases of alleged breach of discipline. Target: within 90 days.
16. Time to update/advise complainant on status of investigation into cases of alleged criminality. Target: every 40 days.
17. Time to update/advise garda member on status of investigation into cases of alleged criminality. Target: every 40 days.
18. Time to update/advise complainant on status of investigation into cases of alleged breach of discipline. Target: every 40 days.
19. Time to update garda on status of investigation into cases of alleged breach of discipline. Target: every 40 days.
20. Time to investigate 'critical incidents' matters – unlimited. Report to Commissioners as required but not less than 35 day intervals.
21. Time to report to Commissioners on status of investigations undertaken in 'the public interest'. Target: as frequently as necessary but not less than 35 day intervals.
22. On-the-ground presence in response to 'critical incident' referrals by the Garda Commissioner. Target: By agreement with the Garda Síochána or, in the Dublin Metropolitan Region: within 2 hours; Rest of the State: within 6 hours.

Communications and Research

23. Time to respond to news-media queries within working hours. Target: within 2 hours.
24. Time to respond to news-media queries outside working hours. Target: within 4 hours.
25. Time to respond to information requests from other State agencies. Target: within 24 hours.
26. Time to respond to information requests from general public. Target: within 24 hours.
27. Time to provide speaker/presence for external event. Target: within 14 days.

APPENDIX 2

EXPAND THE PROVISION TO ALLOW FOR THE "LEASEBACK" OF INVESTIGATIONS TO THE GARDA SÍOCHÁNA.

In the absence of a power to leaseback some cases involving allegations of criminal offences, the Ombudsman Commission is in real danger of, in a very short period, becoming completely snowed under by its obligation to use its own limited resources to investigate allegations of less serious/minor offences. Furthermore, there are a very small class of serious alleged offences that fall outside the envisaged "core business" of the Ombudsman Commission (e.g. a domestic dispute leading to a Garda killing his/her spouse while at home and off duty) that could be appropriately investigated if the Ombudsman Commission could lease the matter back to the Gardaí under a significant level of supervision.

Please note that the proposed amendment of section 94 (in Annex11) includes a specific requirement that the Garda Commissioner forwards to the Ombudsman Commission all the information, documentation and evidence collected during the investigation. This is vital as the Ombudsman Commission would remain responsible for sending the file to the Director of Public Prosecution where an offence is alleged and, in that context, is of equal relevance to the scenario where:

- A criminal investigation is conducted by the Gardaí under leaseback, if such a facility is provided by way of statutory amendment; but also
- Under the current state of the law since section 94 (8)(b) obliges the Ombudsman Commission, in certain circumstances, to send a file to the Director of Public Prosecutions.



APPENDIX 3

A GENERAL STATUTORY POWER TO CONDUCT A PRELIMINARY EXAMINATION.

As it currently stands the Ombudsman Commission's designated officers do not have a general power to conduct a preliminary examination into a set of circumstances in order to determine if, and to what extent, the matter may require a formal investigation – whether under sections 94, 95 or 98. This is because section 91 relates only to cases of complaints of death or serious harm to a person as a result of Garda operations or while in the custody or care of the Garda Síochána or (by virtue of section 102(3)) to any matter referred by the Garda Commissioner under section 102(1).

This current system leaves significant gaps, for example:

- As it currently stands one cannot engage in a statutory preliminary examination of an alleged sexual assault (regardless of the gravity of the allegation or, even, if it involves the assault of children) because it is not “serious harm” for the purposes of section 82; or
- A matter can come to the Ombudsman Commission's attention that might merit the launching of an investigation in the public interest, pursuant to section 102(4). However, in order for the members of the Ombudsman Commission to decide to launch such an investigation it will be necessary for them to have a level of knowledge that allows them to decide that the case reaches the “public interest” threshold, rather than being just one of a large class of cases where death occurred following Garda contact. However, as these are not matters that require a section 102(1) referral and, according to section 102(6), are processed through section 92, there is no way to undertake a statutory preliminary enquiry to determine if the case in hand has features that distinguish it from other cases. If one launches an extra-statutory preliminary examination requesting voluntary assistance from the Garda Síochána there is the likelihood that the Garda members involved in the incident would seek to judicially review such an action on the basis that they were being investigated outside the processes envisaged by the Act.

Therefore we suggest an amendment to section 91 (see Annex11) that includes a general power to conduct a preliminary examination in all cases and not just those of death or serious harm. In order to make this an amendment of real purpose and effect, we suggest that the Ombudsman Commission should, if it considers appropriate, have the power to direct that designated officers have the powers conferred by section 98 for this purpose – otherwise the Ombudsman Commission is reliant on the voluntary cooperation of individuals at this stage, which in some cases could undermine the efficacy of the preliminary examination. This involves the addition of a new section 91(2) and an amendment to section 98(1) to reflect the new numbering.

Moreover, in order to facilitate this it is proposed that section 102(6) would be deleted and section 102(3) relocated to the end of the provision to become new section 102(5).

APPENDIX 4

INTRODUCE THE RIGHT FOR THE OMBUDSMAN COMMISSION, WHERE APPROPRIATE, TO "WIND UP" A PRELIMINARY EXAMINATION WITHOUT THE NEED TO MOVE TO A SECTION 95/98 INVESTIGATION.

Some cases may be referred to the Ombudsman Commission under section 102 by the Garda Commissioner that, in early course and on the basis of a preliminary examination pursuant to section 91, it becomes clear that no further action is required.

However, currently, the Act requires that the investigator, having been directed to undertake a preliminary examination under section 91, must recommend either a section 95 or Section 98 investigation to the Ombudsman Commission – see section 91(1).

On foot of this recommendation the Ombudsman Commission must initiate an investigation – even if only for the purpose of "winding up" the matter under section 93(1)(c). This is unsatisfactory since the launching of an investigation under sections 95 or 98 implies that certain investigative procedures/processes are undertaken even if they are patently unnecessary. Therefore the Ombudsman Commission recommends an amendment to section 91(2) that allows for the examination of the matter to be concluded at the preliminary examination stage if further investigation is not reasonably practicable or necessary – see Annex 12.



APPENDIX 5

CLARIFY THE MECHANISM BY WHICH THE DUTY OF THE GARDA COMMISSIONER TO PRESERVE EVIDENCE IS ACTIVATED IN CASES EMERGING FROM SECTION 102.

Section 89 is a vital provision of the Act that greatly assists in ensuring that best evidence can be collected.

When one reads the provision it makes reference to the duty to preserve evidence relating to conduct that is the subject matter of a complaint.

Our concern is that the need to preserve evidence is of equal importance in cases of section 102 as in the case of complaints.

The issue here is one of clarity and legal certainty rather than a definite legal gap. It can be argued that, by virtue of sub-sections 102(3) and (6), section 89 is of equal application to matters coming to the Ombudsman Commission under section 102 as those cases resulting from complaints.

However, given the wording of the Act currently, we are concerned that this interpretation could be disputed and, in the interests of clarity, we would welcome the inclusion of an additional sub-section 89(3) expressly stating that the duty to preserve applies equally to cases under section 102.

APPENDIX 6

PROVISION TO ALLOW, IN APPROPRIATE CASES, FOR A SECTION 98 INVESTIGATION TO BE CONVERTED INTO AN INVESTIGATION UNDER SECTIONS 94 OR 95.

The Act provides, at section 101(1), that upon completion of a section 98 investigation a report must be produced for the Ombudsman Commission by the designated officer.

The Act goes on to provide, at section 101(6), that if after considering this report the Ombudsman Commission is of the opinion that the conduct investigated is not of a kind that may constitute an offence, but it considers that the complaint warrants investigation under sections 94 or 95, it may proceed accordingly.

Section 98(4) makes clear that an investigation under that provision does not preclude the subsequent investigation of the case under section 95 – it makes no mention, however, of section 94.

The Ombudsman Commission, therefore, proposes an amendment to section 98(4) to realign it with section 102(6) so that it includes a reference to section 94 as well as section 95.

This will also tie in with the suggested amendment for the right of leaseback, to the Gardaí under section 94, of some cases alleging the commission of a criminal offence.

APPENDIX 7

THE STATUTORY POWER TO PUBLISH REPORTS.

The Act requires the Ombudsman Commission to promote public confidence in the exercise of its functions. The underlying rationale for an organisation such as ours is that an independent agency provides fair and transparent independent oversight of policing. If the Ombudsman Commission is to gain the confidence of the general public it is important that it is able to provide relevant parties with appropriate information.

There are two issues currently causing concern:

1. Providing information of real value to complainants on the outcome of the complaints process.

Section 103 obliges the Ombudsman Commission to provide relevant parties with sufficient information to keep them informed of the progress and results of an investigation, subject to caveats in section 103(2). Thus, where a file is sent to the DPP, this is the extent of the information that would be provided.

On a first reading section 103 would appear to provide the Ombudsman Commission with the duty, in the case of a section 97/disciplinary file being sent to the Garda Commissioner, to brief the complainant on the results of the investigation. However, at this stage, the Ombudsman Commission will be severely restricted by what it can say regarding the detail of its recommendation to the Garda Commissioner so as to avoid any danger of prejudicing the outcome of the Garda Commissioner's disciplinary process.

However, the situation becomes rather different when that disciplinary process ends. According to section 97(3) the Ombudsman Commission is entitled to be notified of a decision made under the Disciplinary Regulations concerning a Garda who is the subject of a section 97 report. It is likely that members of the public, whose complaints originally prompted the process, will expect at this stage to be provided with some detail of the actual outcome, particularly bearing in mind that they have no entitlement to be present at the disciplinary hearing.

However, given the current state of the law, all that the Ombudsman Commission is entitled to is the "decision" under the Disciplinary Regulations – i.e. this may, in practice, amount to no more than a short statement to the effect that the member was deemed culpable/not culpable of a breach of discipline.

Therefore we request an amendment to section 97(3) to ensure that the Garda Commissioner elucidates on the detail of the outcome of the disciplinary process when communicating with the Ombudsman Commission.

2. Providing information in the public interest

As it currently stands under section 101(7), if having considered the designated officer's report on foot of a section 98 investigation, the Ombudsman Commission is of the opinion that it discloses no misbehaviour by the Garda concerned "the Commission shall take no further action in relation to the complaint".

It strikes us that this is a dangerously limiting provision. While the report may not have disclosed any misbehaviour on the part of individual Gardaí it may have revealed issues that require to be addressed whether they may be systemic problems within the force or unacceptable practices. In those circumstances the Ombudsman Commission recommends the amendment of section 101(7) so that it is replaced by a provision that allows, if it appears to it to be desirable in the public interest, for the laying of a report before the Houses of the Oireachtas (to whom the members of the Ombudsman Commission are answerable) highlighting matters that require airing or attention.

As a complementary provision section 81(4)(a) would have to be amended to include a provision (new "xi") allowing for disclosure to the Houses of the Oireachtas.

Alternatively section 80(5) could be amended so as to allow for its use in cases which, while it may be worthwhile to prepare a report, could not be regarded as reaching the high threshold of being cases of "gravity or other exceptional circumstances".

APPENDIX 8

THE STATUTORY POWER TO PROVIDE PRACTICAL GUIDANCE ON THE MEANING OF “SERIOUS HARM” FOR THE PURPOSE OF A SECTION 102 REFERRAL.

The definition of “serious harm” in section 82 reflects the definition found in the Non Fatal Offences Against the Person Act, 1997, and in particular as it relates to section 4 assaults. In that context it must be established that serious harm has been caused. Therefore for the purposes of seeking a direction from the Director of Public Prosecutions and conducting a trial for a section 4 assault, it is usual practice to wait to assess the outcome of the harm (having regard to any medical treatment given or received), rather than take a decision on the basis of the immediate effect of the injuries sustained.

However, in discussions between the lawyers for the Garda Síochána and the Ombudsman Commission, it has been suggested that, for the purposes of section 102(1) of the Garda Síochána Act 2005, all that is required, to activate the Garda Commissioner’s duty to refer, is that he forms the view that the conduct of a member “may” have resulted in serious harm. Therefore the threshold of knowledge that is required to activate the duty to refer is lower than in the context of the 1997 Act – nevertheless, for many Gardaí on the ground deciding whether it is appropriate to refer, there will still be uncertainty and further practical guidance would be most useful.

In those circumstances we agree that it would be most useful if an amendment to section 82(1) could be introduced to that effect – see Annex 12.

APPENDIX 9

VALIDATION OF ORAL CONSENT TO THE MAKING OF A COMPLAINT BY A THIRD PARTY DIRECTLY TO THE OMBUDSMAN COMMISSION.

Currently section 83(1)(b) provides that a complaint can be made to the Ombudsman Commission on behalf of another individual once written or oral consent has been provided – however the Act is unclear as to whether the written/oral consent has to be provided to the Ombudsman Commission. It is proposed that a very minor amendment to section 83(1)(b) could dispose of this uncertainty – see Annex 12.

APPENDIX 10

BRINGING SECTION 95(4) INTO LINE WITH THE RECENT CHANGE TO SECTION 94(7).

The Criminal Justice Act, 2007 made the following amendment to section 94(7):

*(7) If the Ombudsman Commission, after considering the report submitted under subsection (6), is of the opinion that a breach of the Disciplinary Regulations ~~has been committed~~ **may have been committed** by the member of the Garda Síochána whose conduct was under investigation, it shall make a report in accordance with section 97 to the Garda Commissioner.*

However section 95(4), as it currently stands, requires that a section 97 report must be prepared in all cases even where it is patently clear from the section 95 process that there is no question of misconduct by a Garda. Therefore we suggest an amendment to section 95(4) to bring it into line with the section 94(7) – see Annex 13.



APPENDIX 11

STANDARDISE THE METHOD FOR THE NOTIFICATION OF MEMBERS OF THE GARDA SÍOCHÁNA OF THE EXISTENCE OF A COMPLAINT, WHETHER ADMISSIBLE OR INADMISSIBLE.

As it currently stands section 88(1)(a) requires the Ombudsman Commission to notify a Garda member that a complaint lodged against him or her has been deemed inadmissible, whereas if the complaint is admissible it is the Garda Commissioner who, pursuant to section 88(3), notifies the member.

We suggest that section 88(2) should be amended (which has a knock-on effect for section 88(3)) to require the Ombudsman Commission to notify both the Garda member and Garda management – see Annex 12.



APPENDIX 12
PROPOSED TEXTUAL AMENDMENTS
TO THE 2005 ACT (IN RED).

Section 80(5)

(5) The Ombudsman Commission may make any other reports that it considers appropriate for drawing to the Minister's attention matters that have come to its notice and that, in its opinion, should [delete “, because of their gravity or other exceptional circumstances,”] be the subject of a special report to the Minister.

Section 81(4)(xi)

(4) Subsection (1) does not prohibit a person referred to in that subsection from disclosing information if the disclosure—

(a) is made to:

(xi) the Houses of the Oireachtas in accordance with the terms of sections 94(13), 95(6) or 101(7)(b)

Section 82(1) – for inclusion after the definition of “serious harm”.

For the purpose of providing practical guidance with respect to what constitutes ‘serious harm’ for the purpose of this Part, the Ombudsman Commission may, from time to time, prepare and publish guidance in the form of a Code of Practice.

Section 83(1)(b)

“b) on behalf of that member of the public, by any other person if the member of the public on whose behalf the complaint is being made consents, in writing or orally to the Ombudsman Commission, to its being made or is, because of age or a mental or physical condition, incapable of giving consent.”

Section 88

88.—(1) *On determining under section 87 that a complaint is inadmissible, the Ombudsman Commission shall—*

- (a) *notify, in writing, the complainant, the member of the Garda Síochána whose conduct is the subject of the complaint and the Garda Commissioner of its determination,*
- (b) *include in the notification the reason for the determination, and*
- (c) *take no further action in relation to the complaint.*

(2) *On determining under section 87 that a complaint is admissible, the Ombudsman Commission shall as soon as practicable—*

- (a) *notify, in writing, the complainant, ~~the member of the Garda Síochána whose conduct is the subject of the complaint~~ and the Garda Commissioner of its determination, and*
- (b) *where the complaint was made directly to the Ombudsman Commission, send the Garda Commissioner a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.*

(3) *On receiving ~~[delete “being notified of”]~~ an admissible complaint concerning the conduct of a member of the Garda Síochána, the ~~[delete “Garda Commissioner” and replace with] Ombudsman Commission~~ shall, subject to section 89 ~~[delete “(1)(b)”] and replace with] (2), notify the member that a complaint has been made and specify the nature of the complaint and the name of the complainant.~~*

Section 89

89.—(1) *The Garda Commissioner—*

[Delete “(a)”] shall ensure that members of the Garda Síochána, on becoming aware of a complaint, take any lawful measures that appear to them to be necessary or expedient for the purpose of obtaining and preserving evidence relating to the conduct that is the subject matter of the complaint, and

[Delete “(b)” and replace with]

(2) The Ombudsman Commission may postpone notifying a member of the Garda Síochána whose conduct is the subject matter of the complaint until those measures are taken.

(3) [Delete “(2)”] Subsection (1) applies whether or not a determination has been made under section 87 about the admissibility of the complaint.

Section 91

91.—(1) *Upon receipt of an admissible complaint [delete – “If a complaint concerns the death of, or serious harm to, a person as a result of Garda operations or while in the custody or care of the Garda Síochána,”] the Ombudsman Commission shall immediately direct a designated officer to—*

- (a) examine the complaint for the purpose of recommending whether the complaint should be dealt with [delete “investigated under”] under section 90, 94, 95 or 98, and*
- (b) report his or her recommendation to the Commission as soon as practicable.*

(2) Where the Ombudsman Commission deems it necessary it may direct that the designated officer has the powers conferred by section 98 for the purpose of conducting the examination in subsection (1)(a). ([delete “2” renumber subsection as] 3) On receiving the designated officer's recommendation, the Ombudsman Commission shall either—

- (a) refer the complaint for resolution by mediation or other informal means in accordance with section 90;*
- (b) refer the complaint to the Garda Commissioner to be dealt with in accordance with section 94;*

- (c) conduct an investigation under section 95;
- (d) direct a designated officer of the Commission to investigate the complaint under section 98; or
- (e) direct that further investigation is not necessary or reasonably practicable.

92.—(1).—If an admissible complaint is not resolved pursuant to the guidelines under section 90 or is a complaint referred to in paragraphs (a) to (c) of section 90(1), the Ombudsman Commission [~~delete “may as it considers appropriate”~~] may direct an officer to—

- (a) examine the complaint for the purpose of recommending whether the complaint should be investigated under sections 94, 95 or 98; and
- (b) report his or her recommendation to the Commission as soon as practicable.

(2) On receiving the officer's recommendation, the Ombudsman Commission shall either—

- (a) refer the complaint to the Garda Commissioner to be dealt with in accordance with section 94;
- (b) conduct an investigation under section 95, but, subject to section 95 (2), only if the conduct alleged in the complaint does not appear to constitute an offence, [~~delete “or”~~]
- (c) direct a designated officer of the Commission to investigate the complaint under section 98; or
- (d) direct that further investigation is not necessary or reasonably practicable.

Section 94

94.— (1) On referral of a complaint under section 92(a) or ~~section 91(a)~~, the Garda Commissioner shall—

- (a) appoint a member of the Garda Síochána to investigate the complaint [~~“under the Disciplinary Regulations” removed~~], and
- (b) ensure that the appointed member has not been involved in any capacity in relation to an earlier aspect of the case.

(2) The Ombudsman Commission may require that no appointment be made under this section without its prior approval of the member whom the Garda Commissioner proposes to appoint.

(3) *The Ombudsman Commission may decide, either on referring the complaint under section 92(a) or **section 91(a)** or at any time during the investigation, to supervise the investigation of a complaint if it considers it desirable in the public interest to do so.*

(4) *The Ombudsman Commission shall notify the Garda Commissioner of its intention to supervise the investigation of a complaint.*

(5) *If the investigation is supervised, the Ombudsman Commission may do one or more of the following:*

- (a) *require the appointed member to keep it informed of the progress of the investigation;*
- (b) *require the appointed member to submit to it such interim reports at such times and in relation to such matters as the Commission may direct;*
- (c) *arrange for a designated officer of the Commission to be present during any interview conducted by the appointed member in the course of the investigation; or*
- (d) *direct the appointed member to investigate further any aspect of the complaint.*

(6) *If the investigation is supervised, the appointed member shall submit a report on the results of the investigation to the Ombudsman Commission **together with all information, documentation and evidence collected during the investigation** as soon as practicable after completing the investigation and within the time limit that the Commission may specify for submission of the report **and all the information, documentation and evidence collected.***

(7) *If the Ombudsman Commission, after considering the report **and the information, documentation and evidence** submitted under subsection (6), is of the opinion that a breach of the Disciplinary Regulations may have been committed by the member of the Garda Síochána whose conduct was under investigation, it shall make a report in accordance with section 97 to the Garda Commissioner.*

(8) *If the Ombudsman Commission, after considering the report **and the information, documentation and evidence** submitted under subsection (6), is of the opinion that the conduct under investigation may constitute an offence by the member of the Garda Síochána concerned, the Commission shall—*

(a) *direct a designated officer to investigate the complaint under section 98;*

or

(b) *comply with section 101(2) as though the report had been made by a designated officer under section 101(1).*

(9) If the investigation is not supervised, the Garda Commissioner shall inform the Ombudsman Commission, the complainant and the member of the Garda Síochána whose conduct was under investigation of—

- (a) the results of any disciplinary proceedings instituted following the investigation or, if no such proceedings are instituted, of the results of the investigation, and
- (b) if appropriate, any action that the Garda Commissioner proposes to take in relation to that member.

(10) If dissatisfied with the results of an unsupervised investigation or with any disciplinary proceedings instituted as a result of that investigation, the complainant may request the Ombudsman Commission to review the matter.

(11) Following a review of the matter, the Ombudsman Commission may—

- (a) request the Garda Commissioner to review the investigation of the complaint and to report back to it concerning any further action that he or she proposes to take in the matter, or
- (b) if it considers it necessary to do so, either investigate the complaint under section 95 or direct a designated officer of the Commission to investigate the complaint under section 98.

(12) Nothing in this section prevents the Ombudsman Commission from deciding at any time to take over the investigation of a complaint referred by it to the Garda Commissioner

(13) If, after considering report submitted under subsection (6), the Ombudsman Commission is of the opinion that it discloses no misbehaviour by the member of the Garda Síochána concerned, the Commission shall:

- a) take no further action in relation to the complaint; unless
- b) the investigation has revealed matters that, in the view of the Ombudsman Commission, should be brought to the attention of the Houses of the Oireachtas by the laying of a report before it.

Section 95

(4) If after [delete "As soon as practicable after"] the conclusion of an investigation under this section, the Ombudsman Commission is of the opinion that the investigation discloses misbehaviour it shall make a report in accordance with section 97 to the Garda Commissioner.

(6) If after the conclusion of an investigation under this section, the Ombudsman Commission is of the opinion that the investigation discloses no misbehaviour it shall:

- a) take no further action in relation to the complaint; unless
- b) the investigation has revealed matters that, in the view of the Ombudsman Commission, should be brought to the attention of the Houses of the Oireachtas by the laying of a report before it.

New Subsection 97(3):

The Ombudsman Commission is entitled to be notified of the outcome of any disciplinary proceedings or action taken after receiving a report from the Commission under section 97 and of any disciplinary sanction imposed on the member concerned, to include the grounds, if any, on which the complaint was upheld and the grounds, if any, on which the complaint was not upheld together with a statement of reason(s).

Section 98(1) and (4)

(1) If directed by the Ombudsman Commission under Section 91(3)(d)...

(4) An investigation of a matter under this section does not preclude the subsequent investigation of the matter under section 94 or 95 .

Section 101(7)

(7) If, after considering the designated officer's report, the Ombudsman Commission is of the opinion that it discloses no misbehaviour by the member of the Garda Síochána concerned, the Commission shall:

- a) take no further action in relation to the complaint; unless
- b) the investigation has revealed matters that, in the view of the Ombudsman Commission, should be brought to the attention of the Houses of the Oireachtas by the laying of a report before it.

Section 102

(1) *The Garda Commissioner shall refer to the Ombudsman Commission any matter that appears to the Garda Commissioner to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person.*

(2) *The Ombudsman Commission shall ensure that the following matters are investigated:*

- (a) any matter referred to the Commission under subsection (1);
- (b) any matter that appears to the Commission to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person.

[Relocate sub-section 3 to become new sub-section (5)]

(3) ~~“(4)”~~ The Ombudsman Commission may, if it appears to it desirable in the public interest to do so and without receiving a complaint, investigate any matter that appears to it to indicate that a member of the Garda Síochána may have—

- (a) committed an offence, or
- (b) behaved in a manner that would justify disciplinary proceedings.

(4) ~~“(5)”~~ The Minister may, if he or she considers it desirable in the public interest to do so, request the Ombudsman Commission to investigate any matter that appears to the Minister to indicate that a member of the Garda Síochána may have done anything referred to in subsection (4), and the Commission shall investigate the matter.

(5) *The provisions of this Part relating to investigations and reports apply with the necessary modifications in relation to a matter referred to in subsection (2) of this section as if the matter were the subject of a complaint referred to in section 91.*

~~“(6) The provisions of this Part relating to investigations and reports apply with the necessary modifications in relation to a matter referred to in subsection (4) or (5) of this section as though that matter were the subject of a complaint other than one referred to in section 91 .”~~

