



Garda  
**Ombudsman**  
INQUIRY INDEPENDENCE IMPARTIALITY

# GARDA SÍOCHÁNA OMBUDSMAN COMMISSION

## **2016 ANNUAL REPORT**



Ms Frances Fitzgerald TD  
Minister for Justice and Equality  
51 St. Stephen's Green  
Dublin 2

31 March 2017

Dear Minister,

It is with pleasure that we submit to you the eleventh Annual Report of the Garda Síochána Ombudsman Commission, which covers the period 1 January to 31 December 2016. This Report is submitted in accordance with section 80 of the Garda Síochána Act 2005.

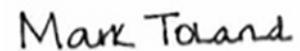
Yours sincerely,



Justice Mary Ellen Ring,  
Chairperson



Kieran FitzGerald,  
Commissioner



Mark Toland,  
Commissioner

Garda Síochána Ombudsman Commission.

## GLOSSARY OF ABBREVIATIONS AND TERMS

<b>Admissibility</b>	All complaints are assessed against the criteria listed in section 87 of the Act to decide whether they can legally be admitted for investigation or not. (More information in Section 1.)
<b>Advice</b>	This is a sanction for breaking the Discipline Regulations (see below) which may be applied by the Garda Commissioner – it can be formal or informal.
<b>Allegation</b>	Each complaint is broken down into one or more allegations, which are individual behaviours being complained about. For example if a person said that a garda pushed them and used bad language, this is one complaint with two separate allegations.
<b>AIO</b>	Assistant Investigations Officer.
<b>Article 2</b>	Article 2 of The European Convention on Human Rights (ECHR) states that everyone’s right to life shall be protected by law.
<b>Complaint</b>	An expression of dissatisfaction made to GSOC by a member of the public, about the conduct of an individual member of the Garda Síochána. A complaint may contain one or more allegations, against one or more gardaí. Each allegation against each garda is assessed individually for admissibility.
<b>Custody Regulations</b>	Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 – regulations related to the detention of people in garda stations. It can be seen at <a href="http://www.irishstatutebook.ie/eli/1987/si/119/made/en/print">http://www.irishstatutebook.ie/eli/1987/si/119/made/en/print</a> .
<b>Discipline Regulations</b>	The Garda Síochána (Discipline) Regulations 2007, as amended. These can be seen at: <a href="http://www.irishstatutebook.ie/eli/2007/si/214/made/en/print">http://www.irishstatutebook.ie/eli/2007/si/214/made/en/print</a>
<b>Disciplinary action</b>	Sanction which may be applied by the Garda Commissioner following an investigation. There are two levels of action provided for by the Discipline Regulations, relating to less serious breaches and serious breaches of discipline respectively.
<b>DLP</b>	Designated Liaison Person under the "Children First – National Guidance for the Protection and Welfare of Children" guidelines.
<b>DMR</b>	Dublin Metropolitan Region.
<b>DO</b>	Designated Officer – a GSOC officer designated in writing by the Commission to perform functions under Part 4 of the Act, which refers to dealing with ‘Complaints, Investigations and other Procedures’.
<b>DPP</b>	(Office of the) Director of Public Prosecutions.
<b>ECHR</b>	European Convention on Human Rights. This can be seen at: <a href="http://www.echr.coe.int/Documents/Convention_ENG.pdf">http://www.echr.coe.int/Documents/Convention_ENG.pdf</a>
<b>Garda Ombudsman</b>	Garda Síochána Ombudsman Commission (the organisation).
<b>GSIO</b>	Garda Senior Investigations Officer, who investigates complaints alleging breaches of the Discipline Regulations.
<b>GSOC</b>	Garda Síochána Ombudsman Commission (the organisation).

<b>Informal resolution</b>	This is a process offered in the case of less serious allegations, for example rudeness. It involves a GSOC case officer speaking to both parties with the aim of each getting a better understanding of the other's point of view and coming to the agreement that the matter is resolved. It is provided for by section 90 of the Act.
<b>Investigation</b>	If a complaint cannot be resolved informally, it must be investigated. Any complaint containing an allegation of a criminal offence is investigated by a GSOC investigator, in line with section 98 of the Act. A complaint containing an allegation of a disciplinary nature is usually investigated by a GSIO (see previous page), under the Discipline Regulations, in line with section 94 of the Act. If the Ombudsman Commission deems it appropriate, these investigations may be supervised by a GSOC investigator. GSOC may also investigate non-criminal matters, in line with section 95 of the Act.
<b>IO</b>	Investigations Officer.
<b>IRM</b>	The Independent Review Mechanism was established by the Minister for Justice and Equality, in consultation with the Attorney General, in May 2014. Its function was to consider allegations of Garda misconduct or inadequacies in the investigation of such allegations, with a view to determining to what extent and in what manner further action may be required in each case.
<b>Median</b>	When numbers are listed in value order, the median value is the number at the midpoint of the list, such that there is an equal probability of falling above or below it.
<b>Member in charge</b>	The member of the Garda Síochána who is designated as being responsible for overseeing the application of the Custody Regulations, in relation to people in custody in the Garda station. This can be a member of any rank. The full legal definition and list of duties of a member in charge can be seen in sections 4 and 5 of the Custody Regulations (see previous page).
<b>OGP</b>	Office of Government Procurement.
<b>Ombudsman Commission</b>	The three Commissioners of the Garda Síochána Ombudsman Commission.
<b>Out of time</b>	A complaint made more than twelve months after the incident being complained of.
<b>PAS</b>	Public Appointments Service.
<b>RTI</b>	Road traffic incident or collision.
<b>SIO</b>	Senior Investigations Officer.
<b>The Act</b>	The principal act governing the functioning of GSOC, which is the Garda Síochána Act 2005, as amended. This can be seen at: <a href="http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/print">http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/print</a>

# GARDA SÍOCHÁNA OMBUDSMAN COMMISSION

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**Source of Data:**

The data used to produce all maps, charts and tables within this report, with the exception of Tables 6 and 7, is sourced from GSOC’s case management system software. The data included in Table 6 is compiled by GSOC Finance Unit, based on information from the Department of Justice and Equality Financial Management Unit. The data included in Table 7 is compiled based on internal contact logs kept by different units within GSOC.



# EXECUTIVE SUMMARY

The introduction of this report summarises matters which occurred in 2016 and had particular impact on the Garda Síochána Ombudsman Commission (GSOC).

The first four sections of the report detail operations for the year in relation to GSOC's four main areas of responsibility:

## **1. To deal with complaints concerning garda conduct.**

In 2016, GSOC received 1,758 complaints containing 3,768 allegations. The types of allegations were similar to previous years, with about one-third related to abuse of authority and one-third to neglect of duty. In the Dublin Metropolitan Region (DMR), the West and South Central Divisions had the highest numbers of allegations, while outside the DMR, Galway and Cork City were the Garda Divisions with the highest numbers of allegations. It is important to note that it follows that there is likely to be a higher number of complaints from larger, or busier, Divisions; and also that not all complaints were deemed admissible.

## **2. To conduct independent investigations, following referral by the Garda Síochána, in circumstances where it appears that the conduct of a garda may have resulted in the death of, or serious harm to, a person.**

GSOC received 51 referrals over the course of 2016, of which 12 related to fatalities. The most common circumstance for such referrals was road policing, notably road traffic incidents. DMR West, DMR North Central, Galway, Meath, Wicklow and Waterford were the Garda Divisions from which most referrals were made. 55 investigations following referrals (received in 2016 or previous years) were closed during the year, over half of which could be closed after an initial examination showed no evidence of misbehaviour or criminality by a garda. In the remaining cases, full investigations were undertaken and the outcomes are listed and explained in Section 2.

## **3. To investigate matters in relation to the conduct of gardaí, when it is in the public interest, even if a complaint has not been received.**

19 investigations in the public interest were opened in 2016. Seven were opened by decision

of the Ombudsman Commission. The remainder followed requests from the Minister for Justice and Equality. All but one of these requests arose from the establishment of the Independent Review Mechanism. Nine public interest investigations were concluded during the year and the remainder were still underway at 31 December 2016.

GSOC also had seven public interest investigations already underway at the start of 2016. While the investigative phase of the majority of these was concluded during the year, there were further actions outstanding in relation to all of these cases at year end.

## **4. To examine any “practice, policy or procedure” of the Garda Síochána.**

Two such examinations were initiated and progressed in 2016.

In the remainder of the report:

**Section 5** describes an inquiry undertaken under section 109 of the Garda Síochána Act 2005, which concluded in May 2016. The recommendations made in the report following the inquiry, and related actions taken by the Ombudsman Commission, are described.

**Section 6** shows that we reduced the time taken to close all types of investigation in 2016 and explains initiatives taken during the year to improve effectiveness and efficiency across the organisation.

**Section 7** lists the recommendations made to the Garda Síochána during the year, when systemic issues came to light during investigations. 36 were made in 2016, with a view to reducing or eliminating the incidence of similar complaints or issues in the future. Where the Garda Síochána has provided a response with regard to measures being taken to address an issue highlighted, the responses are included in the section.

**The final section** describes our organisation structure and allocation of human resources in 2016.

## INTRODUCTION

The term of the outgoing Ombudsman Commission expired in December 2016. Ms Carmel Foley, who had served two terms as a Commissioner, left the organisation. We would like to recognise the work she did during her tenure – in particular the part she played, as a member of the first Ombudsman Commission, in establishing the new organisation on behalf of the State.

Ms Justice Mary Ellen Ring of the High Court, who had already been at the head of the organisation for over a year, was nominated by government for re-appointment as Chairperson for a new term. Following an open competition process, Dr Kieran FitzGerald and Mr Mark Toland were selected to join Judge Ring. The Houses of the Oireachtas approved the nominations and the three members of the new Garda Síochána Ombudsman Commission were appointed on 12 December 2016.

### Operational achievements

Over 1,700 complaints were closed during the year, of which 1,015 were investigated. This was about 20% less than 2015 (due to lower numbers of complaints received). Numbers of investigations in the public interest were up, however, due to 21 being requested by the Minister for Justice and Equality in late 2015 and early 2016, following the Independent Review Mechanism (IRM). Six of these IRM cases were closed during the year, with reports issued to the Minister and the other interested parties. The others remain under investigation. A total of 55 investigations resulting from referrals from the Garda Commissioner were also closed – a similar number to 2015.

GSOC submitted 36 recommendations to the Garda Síochána in 2016, relating to issues which had come to light during investigations and which appeared to be more of a systemic nature, rather than attributable to the behaviour of any individual garda. Our hope is that sharing such feedback will inform policy development and policing practice, in turn helping to reduce the number of complaints against gardaí. The Ombudsman

Commission believes that this is a very important and positive element of oversight.

Whenever we were aware that an investigation's findings and/or recommendations related to work being done by other oversight agencies or working groups, we informed these bodies of our investigation.

### Engagement with inquiries and commissions of investigation

An inquiry under section 109 of the Act was established by the Minister for Justice and Equality in June 2015, following the death of a Garda member, while he was under investigation by GSOC. GSOC continued to engage with the inquiry, led by Mr Justice Frank Clarke of the Supreme Court, throughout the early part of 2016. Judge Clarke delivered his final report to the Minister for Justice and Equality on the results of the inquiry on 3 May 2016. On 17 June 2016, the Minister forwarded a copy of the report to the Ombudsman Commission for such action as it considered appropriate in the circumstances. The Minister also published a section of the report, including its conclusion and recommendations.<sup>1</sup>

The Ombudsman Commission recognises the important work that the inquiry did. The comprehensive report was given careful consideration by the Commission and they began to consider and implement appropriate actions during the second half of 2016. This work is detailed in Section 5.

During 2016, we also continued to engage with two other commissions of investigation, one headed by Justice Nial Fennelly, the second by Justice Kevin O'Higgins.

### New powers, new processes

During 2016, GSOC worked towards implementing the new processes and procedures required to discharge our responsibilities under the Protected Disclosures Act 2014. There was an increase in numbers of disclosures received in 2016 (see Section 3.3), and we expect this trend to

<sup>1</sup> <http://www.justice.ie/en/JELR/Extract-from-the-Report-of-The-Honourable-Mr-Justice-Frank-Clarke-concerning-an-Inquiry-pursuant-to-Section-109-of-the-Garda-Siochana-Act-2005.pdf/Files/Extract-from-the-Report-of-The-Honourable-Mr-Justice-Frank-Clarke-concerning-an-Inquiry-pursuant-to-Section-109-of-the-Garda-Siochana-Act-2005.pdf>

continue into 2017. To this end, the Ombudsman Commission engaged with the Minister for Justice and Equality during the year about the need to commit additional resources to this important function, in order to deliver on it more effectively.

The Ombudsman Commission also exercised the new power contained in the Garda Síochána (Amendment) Act 2015<sup>2</sup> to initiate, of its own volition, examinations of Garda practice, policy and procedure (under section 106 of the Act). This new power was exercised to initiate examinations into two issues which had featured in GSOC investigations over many years. Both examinations were well progressed during the year but were still underway at December 2016. The first examination is looking at certain aspects of the application of the Criminal Justice (Public Order) Act 1994, with which issues have been highlighted by numerous investigations over the years, following referrals under section 102(1). The second is examining consideration given to the safety and welfare of occupants of seized vehicles, an issue which has been the subject of over 40 complaints to GSOC by different individuals over the years. Work undertaken in relation to both of these examinations is described in Section 4. The Commission believes that such examinations have the potential to contribute in a positive and constructive way to continuous improvement of policing practices.

The Garda Síochána (Policing Authority) Act 2015 provided for the establishment of the new Policing Authority, and this was established on 1 January 2016. The Commission and staff met with members of the Authority on various occasions during the year, to agree ways of working together.

### **Towards clearer and more understandable information**

As part of its response to the Clarke Inquiry, GSOC increased its engagement with members of the Garda Síochána in 2016 in an effort to disseminate clear and understandable information about how GSOC operates. In 2016, we delivered customised

half-day workshops to nearly 400 newly promoted gardaí of all ranks at the Garda College, with consistently positive feedback throughout the year. GSOC also delivered four workshops in 2016 to the new DMR Armed Support Unit (ASU) and one to the national Emergency Response Unit (ERU). These workshops focused on the operational response by GSOC to firearms incidents and what gardaí should expect in these circumstances. During the year, we also created a booklet of information for gardaí, based on the most frequently asked questions during the sessions at the Garda College. The Garda Síochána has agreed to make this information available to members via their internal portal system and we expect this to be implemented in early 2017. We also created a leaflet about investigations by GSOC following a referral from the Garda Síochána, to inform any gardaí involved in such investigations about what to expect. Distribution of this leaflet by GSOC investigations staff, when responding to referrals, was in place by year end.

Alongside this work, we also updated our complaint form and developed a new collection of informational materials aimed at the general public, which were printed and put into distribution at the end of 2016. This includes a leaflet to explain how to complain to GSOC; one to explain each of the different ways in which a complaint may be dealt with by GSOC once admitted; and one which provides information specific to victims of crime. We started work on a new website, with delivery in the first half of 2017 planned. The aim of the above work, again, was to make sure that information pertaining to GSOC's services and the way it works is clear, understandable and easily accessible. Alongside the above, GSOC evolved its logo and branding during 2016, moving to a more accessible typeface and a more digital-friendly design. This will be rolled out throughout 2017.

2 [http://gardaombudsman.ie/docs/Legislation/GS\\_Amendment\\_Act2015.pdf](http://gardaombudsman.ie/docs/Legislation/GS_Amendment_Act2015.pdf)

## Working towards the next decade

In September, the Ombudsman Commission met with the Joint Oireachtas Committee on Justice and Equality, to make a submission<sup>3</sup> to the Committee and to discuss the priorities of GSOC and the critical issues and challenges that the organisation faces. Matters discussed included:

- The early resolution of minor service-focused issues in a more efficient and proportionate manner, by utilising the existing line management systems within the Garda Síochána. The Ombudsman Commission believes that this would allow more leeway for resolution of these issues, rather than focusing on retribution. It could be achieved more efficiently through line management than through the formal process dictated by the Garda Síochána (Discipline) Regulations 2007 (the Discipline Regulations). GSOC could potentially provide a second port-of-call for issues that could not be resolved, similar to the system operated by both the Police Investigations and Review Commissioner (PIRC) for Scotland and the Independent Police Complaints Commission (IPCC) for England and Wales.
- That informal resolution mediated by the Garda Ombudsman could be used more widely and effectively, by giving the Garda Ombudsman the power to decide whether it should be attempted or not, as is the case for the Police Ombudsman of Northern Ireland.
- That the lack of proper oversight and accountability in formal disciplinary investigations conducted by Garda Síochána Investigating Officers should be addressed, to promote public confidence in the process for resolving complaints. For example,
  - o In investigations by a Garda officer which are not supervised by GSOC, a complainant's right to a review of the

complaint investigation by GSOC under section 94(10) should be rendered meaningful.

- o In investigations by a Garda officer which are supervised by GSOC (and in investigations into non-criminal matters by GSOC itself), the Garda Síochána should be obliged to provide a rationale when disagreeing with the recommendations in the investigation report.
- That GSOC's powers to secure timely cooperation from gardaí in order to complete investigations need to be further clarified and bolstered.
- Continuous improvement in the timeliness of conducting disciplinary investigations and the provision of information by the Garda Síochána still needs to be encouraged. While there have been definite improvements since GSOC first highlighted the extent of the problems experienced with timeliness in 2013, there is still a lot of room for improvement. This can only benefit both members of the public and gardaí who are subject of complaints.

A very constructive discussion followed the submission. The Committee published a comprehensive report<sup>4</sup> on issues with Garda oversight and accountability in December. A meeting was subsequently held between the Minister for Justice and Equality and the Ombudsman Commission. This built on the previous discussion about the various possible ways to improve the complaints system, focusing on simplifying the legislation and processes. The Commission believes that 2017 – the year of GSOC's tenth anniversary – needs to see fundamental legislative change, which will apply much of the learning made during the organisation's first decade of operation and enable GSOC to fulfil its functions more effectively.

<sup>3</sup> [https://gardaombudsman.ie/docs/publications/Submission\\_JOC\\_GSOC\\_201609.pdf](https://gardaombudsman.ie/docs/publications/Submission_JOC_GSOC_201609.pdf)

<sup>4</sup> <http://www.oireachtas.ie/parliament/media/committees/justice/Report-on-Garda-Oversight.pdf>

# SECTION 1: COMPLAINTS

Sections 83 to 101 of the Act set out rules and processes defining how GSOC must deal with complaints.

## 1.1 VOLUME OF QUERIES

In 2016, caseworkers answered **3,232 phone calls** to the GSOC lo-call number. 99% of calls received were answered within 60 seconds.

Caseworkers also **met 351 people face-to-face** in our public office. Other contact was made with GSOC by post, e-mail, fax and via Garda stations.

Initially each contact is opened on our system as a 'query', until we have sufficient information to upgrade it to a complaint and assess it for admissibility.

## 1.2 VOLUME OF COMPLAINTS AND ALLEGATIONS

**1,758** complaints were opened in 2016, which was a decrease of 12% in comparison to 2015. Within these complaints there were **3,768 allegations** (because there can be several allegations in one complaint).

The three most common contexts of behaviour by gardaí in relation to which complaints were made in 2016 were: the conduct of investigations by gardaí, customer service provided by gardaí and the conduct of arrests by gardaí.

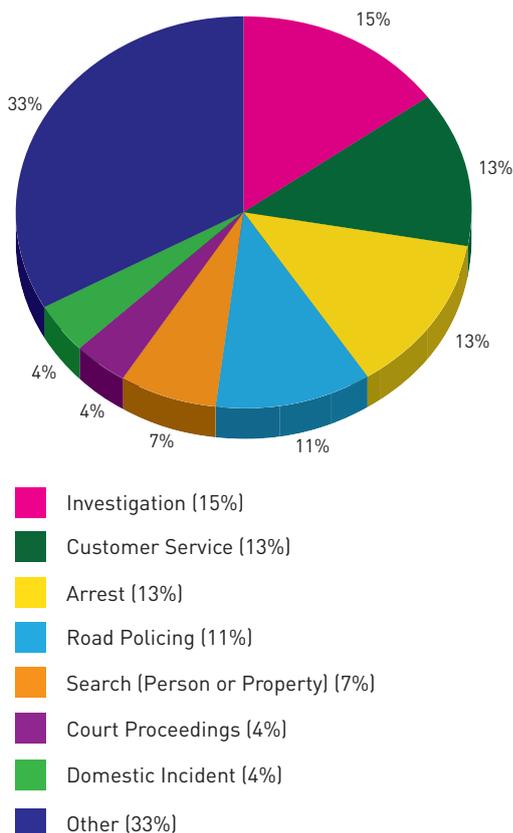
Find out the profiles of people who made complaints, and of gardaí about whom admissible complaints were made, in the Appendices.

The map on the next page shows the geographical distribution of allegations in complaints made against gardaí in 2016. They show all allegations, prior to GSOC determining which could be admitted and dealt with and which could not.

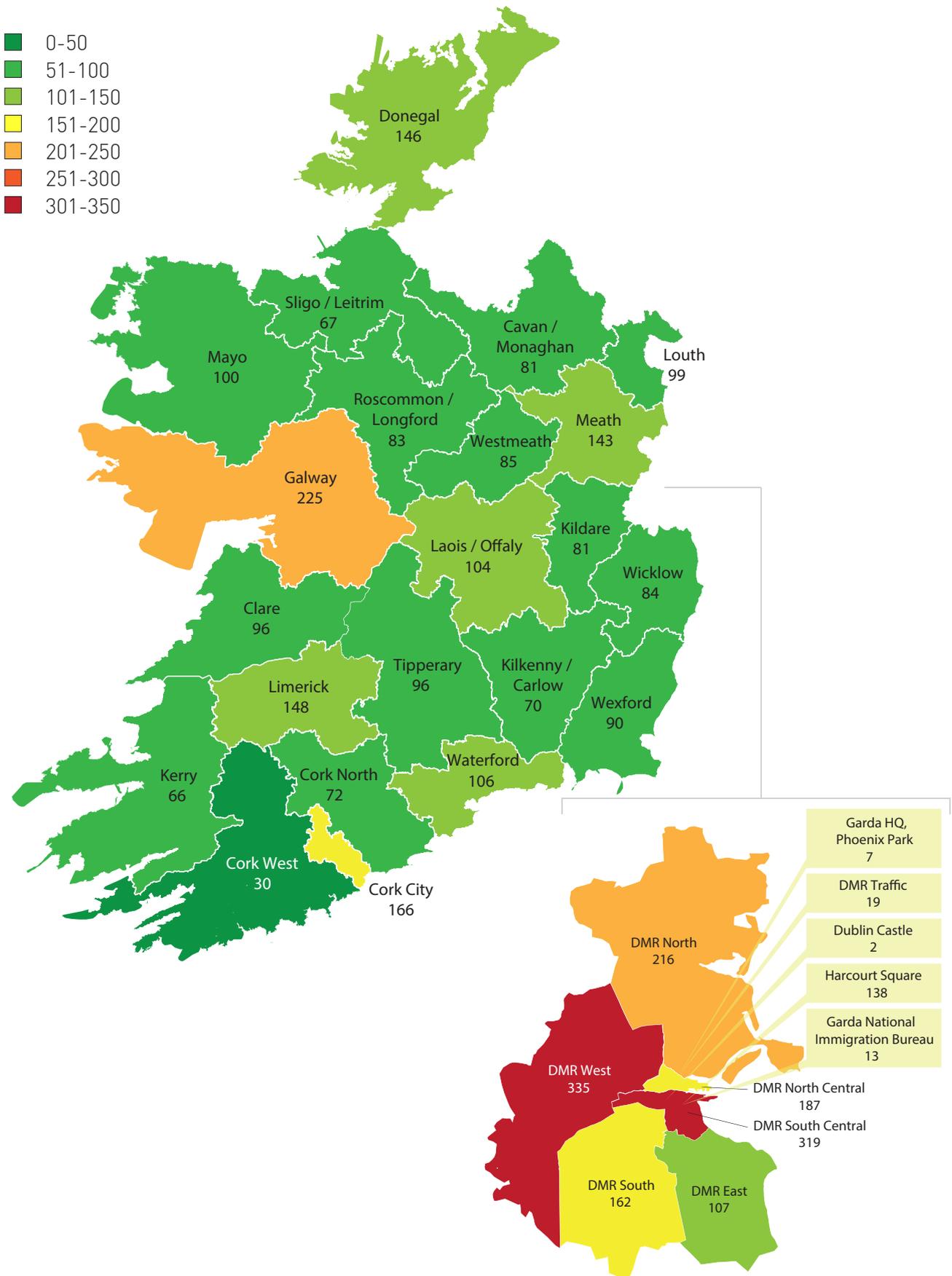
The greatest number of allegations in the country was recorded against gardaí in the Dublin Metropolitan Region, as could be expected, given the greater population and therefore police activity in the capital city. The highest numbers came from DMR West and South Central Divisions, as was the case in 2015 also.

Outside the DMR, however, there were some notable changes since 2015. Galway and Cork were the Divisions with the highest number of allegations made against gardaí in 2016. On the other hand, it is very noticeable that in the Kilkenny-Carlow Division, where the highest number of allegations was made against gardaí in 2015 (220), one of the lowest numbers of allegations was recorded in 2016 (70). Following the publication of the 2015 complaint figures, the Divisional Officer in Kilkenny-Carlow contacted GSOC requesting a detailed breakdown of the matters complained of and the contexts in which most complaints arose in the Division, to inform action by management to reduce complaints against their members. The statistics appear to show that this action has had an effect.

**Chart 1: Circumstances of Complaints Received (Total Complaints: 1,758)**



**Map 1:** Allegations Made to GSOC by Members of the Public, per Garda Division  
 (Total Allegations: 3,743, as Division was unknown in 25 Allegations)



### 1.3 WHAT PEOPLE COMPLAIN ABOUT

The types of matters about which people complain to GSOC tend to stay roughly the same year-on-year.

**Chart 2: Allegation Types (Total Allegations: 3,768)**

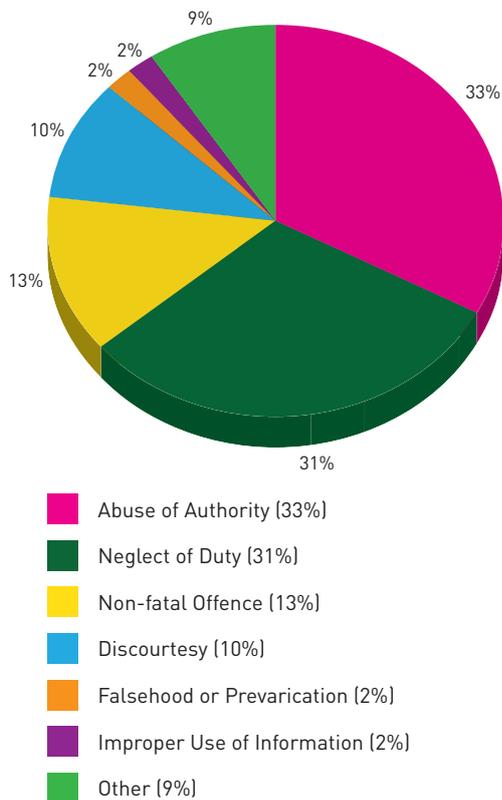


Chart 2 shows that the most common matters about which people complain are:

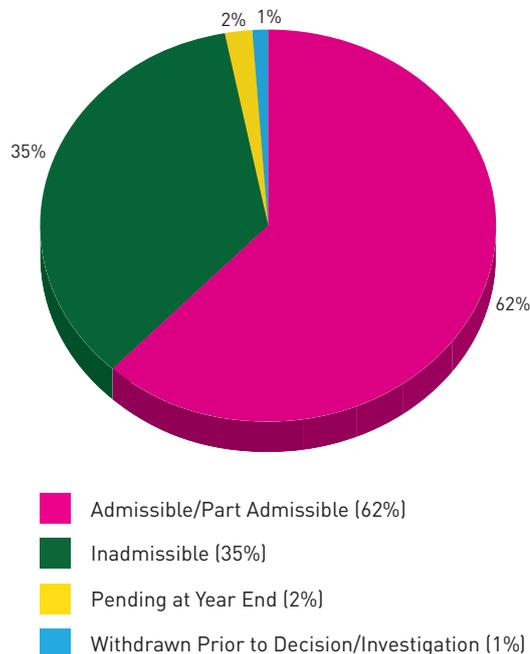
- Abuse of Authority – excessive use of force, or an instruction to do something which the person making the complaint believes was beyond the garda’s authority to instruct, are the main types of allegation categorised as ‘abuse of authority’.
- Neglect of Duty – allegations that a garda failed to take an action that could have been reasonably expected – such as returning a phone call at one end of the scale, or properly investigating an alleged serious crime at the other end of the scale - would be typical examples of ‘neglect of duty’.
- Non-Fatal Offences – these are allegations of a criminal offence listed in the Non-Fatal Offences against the Person Act 1997, for example assault, harassment or false imprisonment.

- Discourtesy – complaints around how a garda spoke to or behaved towards a person.

### 1.4 ADMISSIBILITY

Complaints received are assessed against the criteria listed in section 87 of the Act, to decide whether they can be dealt with by GSOC or not.

**Chart 3: Complaint Admissibility Decisions (Total Complaints: 1,758)**



#### How do we decide if a complaint is ‘admitted’ for investigation?

According to section 87 of the Act, we can admit a complaint if it:

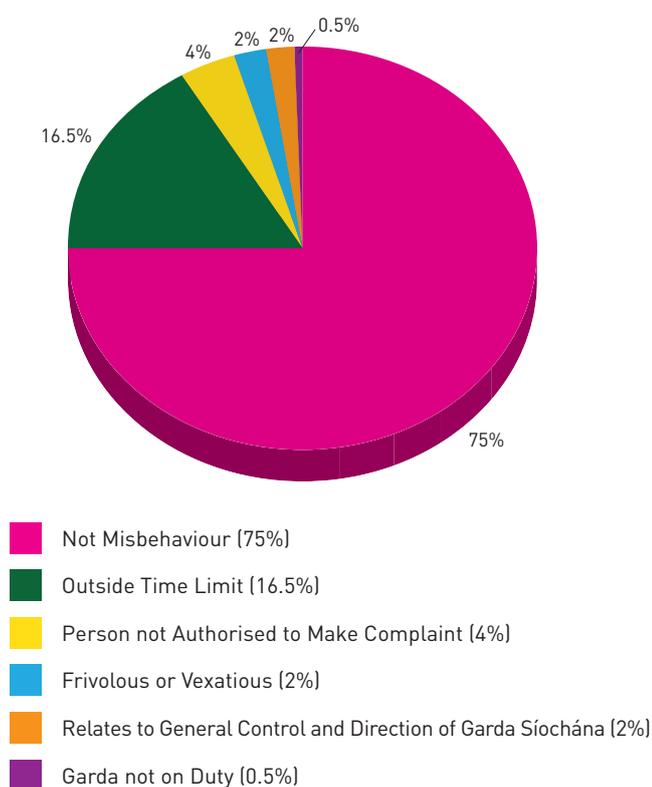
- **is** made by (or, in certain circumstances, on behalf of) a person who is directly affected by, or who witnesses, the conduct subject of complaint; and
- **is** about behaviour which would, if proven, constitute a criminal offence or a breach of Garda discipline by a member of the Garda Síochána; and
- **is** made within the time limit of within one year of the incident subject of the complaint; and
- **is not** frivolous or vexatious; and
- **does not** relate to the general direction and control of the Garda Síochána by the Garda Commissioner; and

- **does not** relate to the conduct of a member of the Garda Síochána while the member was off-duty, **unless** the conduct alleged would, if proven, be likely to bring discredit on the Garda Síochána.

## 1.5 INADMISSIBLE COMPLAINTS

In 2016, 619 of the complaints received were deemed to be completely inadmissible, as none of the allegations in them (868 in total) fulfilled the admissibility criteria laid out in the Act. The chart below shows the reasons.

**Chart 4: Reasons for Inadmissibility of Allegations in Fully Inadmissible Complaints (Inadmissible Allegations: 868)**



The most common reason – with 651 allegations – was that, even if proven, the alleged behaviour would not be a crime or a breach of the Discipline Regulations. Examples are complaints by people who have received penalty points or parking fines: they may have grounds to dispute receipt of these, but GSOC is not the appropriate body to deal with such matters, as the garda who applied the sanction was not necessarily in breach of discipline for doing so.

The second most common reason not to admit a complaint for investigation was because the allegation(s) contained were outside the time limit specified in section 84 of the Act. In 2016, 143 allegations were determined to be inadmissible for this reason.

### Admitting ‘out of time’ complaints with good reason

27 complaints which were ‘out of time’ were admitted in 2016, because GSOC considered that there was a good reason to do so. (Section 84(2) of the Act gives GSOC the discretion to extend time if there is a good reason to do so.)

There is a practical reason for a time limit because the longer the time between the alleged incident and the making of the complaint and any subsequent investigation, the more difficult it may be – depending on the nature of the alleged offence – to preserve evidence, find potential witnesses, secure accurate statements and thereby conduct an effective investigation.

Nonetheless, the Ombudsman Commission considers that the above discretion to admit a complaint in appropriate cases, despite it being ‘out of time’, provides a very important safeguard in the oversight process.

GSOC received 1,758 complaints in 2016. 619 were completely inadmissible, while 1,090 were admissible or part admissible. 49 were either awaiting a decision on whether they could be admitted or not at year end, or had been withdrawn.

## 1.6 ADMISSIBLE COMPLAINTS

In 2016, 1090 cases (containing at least one admissible allegation) were admitted for investigation. Cases were then dealt with in one of five ways, described below.

**Chart 5: Investigations Opened by Type**  
(Total 1,067\*)

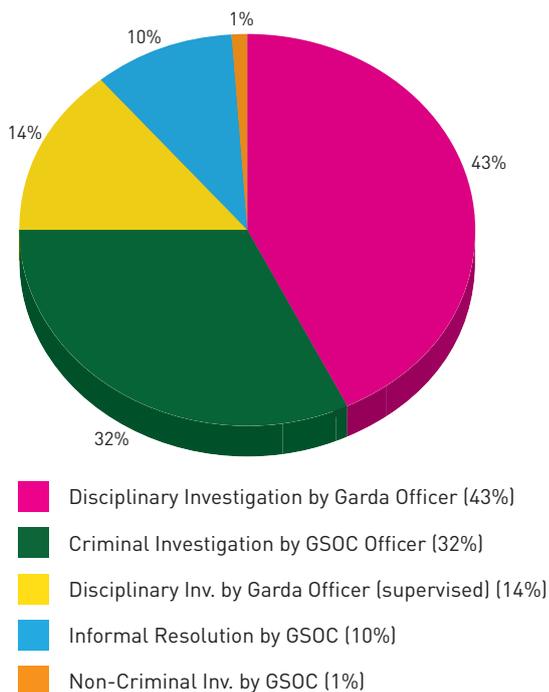


Chart 5 – and the numbers of different investigation types opened which are given throughout this section – refer to the way in which each admitted complaint was initially dealt with. This can change during the lifetime of the case. For example, an unsupervised disciplinary investigation can be escalated to a supervised one, or to a non-criminal investigation undertaken by GSOC. Or, once the criminal aspects of a complaint have been investigated, any non-criminal aspects may then be looked into.

### 1.6.1 Criminal investigations

All allegations of criminal offences by gardaí (under section 98 of the Act) are investigated by GSOC’s own investigators. There were 345 criminal investigations opened in 2016.

#### Case summary

A complaint was made to GSOC by a man who said that gardaí had stopped him without reason. He alleged that he was manhandled, verbally abused and threatened and that, while his partner was protesting and videoing this behaviour, a garda knocked her phone from her hand, damaging it.

The incident occurred in Dublin city centre and enquiries were undertaken to obtain CCTV that might be available. Enquiries were made with shops in the area, with Dublin Bus and with the Garda Síochána, in relation to their street cameras. High quality footage of parts of the incident was recovered from a number of retail premises, as well as Garda cameras. The damaged mobile phone was also sent for analysis and a number of video files from the incident were recovered, using specialised software.

The CCTV and mobile phone footage shows force being used by the garda against the man. The force does not appear to be used to effect an arrest, nor in self-defence. GSOC considered the possibility that the force was being used to prevent a breach of the peace. In his interview under caution, the garda concerned described what he believed to be aggressive behaviour on the part of the man. It appeared from the footage, however, that the man, with his partner and child, was trying to comply with the garda’s orders to leave the area.

The footage available did not show evidence of the damage to the phone being caused by either of the gardaí, that is, no offences relating to criminal damage were disclosed. Therefore no further action was taken in relation to that part of the complaint. »

\* The total number of investigations opened (1,067) is slightly less than the total number of cases admitted. At year end, there were a number of cases still awaiting a decision on the best way to deal with them.

» While the incident occurred during the day in a busy location, no independent witnesses were identified. The colleague of the officer at the centre of the allegations was interviewed by GSOC investigators about what he witnessed and his account resulted in a second statement being taken from the complainant and his partner to clarify matters raised by the officer. The garda accused of the offences was then interviewed under caution and he answered questions put to him.

A file was sent to the DPP to determine if the officer who was the subject of the complaint should be charged with assault. The DPP decided not to prosecute the officer on the basis that the behaviour did not meet the threshold for assault.

GSOC informed all parties concerned of this outcome and sent a report to the Garda Commissioner describing the behaviour, so that disciplinary action could be considered by the Garda Síochána.

### 1.6.2 Disciplinary investigations

There are four ways allegations of breaches of discipline can be handled:

**Informal resolution** (under section 90 of the Act) – Sometimes it makes the most sense for the Garda Ombudsman to try to work with both parties to resolve a situation informally, for example if a person is complaining that their property has not been returned. This can be much quicker than a formal investigation. It is a voluntary process, requiring the consent of both parties. 110 informal resolution cases were opened in 2016.

### Case summary

A woman attended her local Garda station to make a complaint about an incident on public transport. She said that the garda there refused to take her complaint, telling her to make it at another Garda station, where the incident occurred. She believed this was neglect of duty because she had been earlier advised by a Garda helpline that she could make a report at any Garda station.

The complaint was admitted and considered suitable to be dealt with by informal resolution. Following the identification of the garda concerned with the assistance of the Garda Síochána, both parties consented to informal resolution.

Through phone calls between the GSOC case manager and the complainant, and the GSOC case manager and the garda concerned, each party's situation was explained to the other. Particular attention was paid to the reason the garda advised the woman to go to a different station on this occasion. The woman understood the explanation given, but felt that it wasn't clear at the time. The garda understood the reason for her complaint. Both agreed that the complaint had been successfully resolved.

### Disciplinary investigation by the Garda Síochána

(under section 94 of the Act) – These investigations are conducted by Garda Superintendents in line with the Discipline Regulations. GSOC can decide whether to supervise the investigation or not. The majority of complaints referred to the Garda Commissioner for investigation under section 94 are unsupervised (eight in ten in 2016).

If an investigation is unsupervised, the Protocols between GSOC and the Garda Síochána say that it must be completed and a final report issued within 16 weeks. Examples of cases that are investigated in this way are an allegation that a house was searched without a warrant, or that there was abuse of authority in the manner in which an arrest was conducted. There were 456 such cases opened in 2016.

## Case summary

A woman complained to GSOC that she had visited a Garda Station to get forms for her children's passports witnessed and stamped. She said that the garda who dealt with her would not accept the form of ID she offered. When she called back two weeks later, she said that she dealt with the same garda, who accepted the ID on that occasion. She said that she was dealt with discourteously by the garda.

GSOC felt that this complaint could be dealt with informally without the need for an investigation by a Garda superintendent. The woman consented to this but the garda concerned did not. As a result, a disciplinary investigation was undertaken by a Garda superintendent.

The Garda superintendent took statements from the woman and her husband, as well as the garda concerned. CCTV from the Garda station was also requested but, as this is only retained for a set number of weeks, it was no longer available. Documentation showing detail of duty of the garda concerned was requested and this showed that the garda had not been working on the date of the first incident complained of. The date was checked twice with the complainant but she maintained that it was that date.

The garda concerned gave a statement confirming that she was not working on the first date but that she dealt with the woman who had made the complaint on the second date. She gave a detailed account of the interaction and stated that she believed that she had treated the woman correctly throughout.

At the end of the 10-month investigation, the investigating superintendent found that there was no breach of discipline by the garda.

## *Reviews of disciplinary investigations*

If a complainant is dissatisfied with the result of an unsupervised investigation undertaken by a Garda Superintendent, section 94(10) of the Act provides that they can request that a GSOC officer review the matter. In these reviews, GSOC's role is to establish if the investigation was sufficiently comprehensive and the outcome appropriate (not to re-investigate).

GSOC does not have the power to substitute the decision or finding with a new decision. We provide a report to the Garda Commissioner, where concerns in relation to how the investigation was conducted and/or its outcome arose. As the disciplinary process has been concluded in these cases, the case cannot be re-opened or the outcome changed. It is hoped that the feedback may contribute to a reduction in similar issues in future investigations.

In its submission to the Joint Oireachtas Committee for Justice and Equality in September, the Ombudsman Commission highlighted that these circumstances do not allow for a meaningful right of review, and asked that the situation be addressed by legislative change, with a view to promoting confidence in the complaints process. The Commission was happy to receive the support of the Committee, who included this matter in their Report published in December.

50 requests for review were received in 2016 (in relation to investigations completed in 2016 or other years). 48 were completed by year end. In one of these cases, following review, GSOC wrote to the Garda Commissioner concerning the conduct of the investigation, and its outcome. In the remainder of cases, no issues of concern arose with the manner in which the complaint had been investigated, the outcome of the investigation, or the sanction (if any) applied.

### **Supervised disciplinary investigation by the Garda Síochána** (under section 94 of the Act) –

If it is considered desirable in the public interest for GSOC to supervise the investigation, a designated GSOC investigator will meet with the Garda Superintendent to agree an investigation plan, can direct and partake in the investigative actions, and must receive interim reports. The protocols say that supervised disciplinary investigations must be completed and an investigation report provided within 20 weeks. An example might be a more serious allegation of neglect of duty, for example lack of, or insufficient, investigation of a serious crime reported to the gardaí. There were 143 such cases opened in 2016.

#### **Case summary**

A complaint was made to GSOC by the parents of a teenager who, it was alleged, had been sexually assaulted by an adult neighbour. The Garda Síochána had conducted an investigation into this matter, including searching the alleged offender's house and arresting him twice for questioning. The parents complained to GSOC that the Garda investigation was unnecessarily delayed, resulting in loss of evidence, and that vital witnesses were not interviewed.

The complaint was admitted and it was considered appropriate for the investigation to be supervised by a GSOC officer. A strategy was agreed between the investigating Garda superintendent and the Garda Ombudsman officer. The Garda investigation file was reviewed and the alleged shortcomings examined by the superintendent, who met with the parents. He then met with the Garda Ombudsman investigator to recommend which gardaí may be in breach of discipline for their part in the investigation. Six gardaí were identified and interviewed by the superintendent, in the presence of the Garda Ombudsman investigator. The members made submissions and answered questions regarding their performance during the Garda investigation. »

» The superintendent then made recommendations regarding what disciplinary action may be appropriate in relation to each member. The recommendations were endorsed by GSOC and a report was submitted to the Garda Commissioner. Two of the six gardaí concerned were found to be in breach of the Garda (Discipline) Regulations 2007 and were sanctioned.

**Non-criminal investigation by GSOC** (under section 95 of the Act) – Certain cases which do not appear to involve criminal offences, but which may involve disciplinary and/or systemic matters, may be undertaken by the Garda Ombudsman's own investigators. 13 such cases were opened in 2016.

#### **Case summary**

A woman contacted the Garda Ombudsman and made a complaint against a serving member of the Garda Síochána with whom she had previously been in a relationship. She alleged that the garda had accessed her personal details through the Garda Síochána PULSE system. The complainant said that the garda had told her he had looked her up on the system when they had first started dating.

A non-criminal investigation with regard to possible improper practice was opened by the Garda Ombudsman. It was undertaken by a GSOC investigator. A statement was taken from the complainant and information from the PULSE system was requested from the Garda Síochána. This showed that the garda concerned had indeed accessed the complainant's personal details. The garda involved was interviewed and admitted accessing his former partner's details and that it was not in an official capacity.

A report summarising the above findings of the investigation and making a recommendation was issued to the Garda Authorities. The garda concerned was found to be in breach of discipline and sanctioned.

### 1.6.3 Outcomes of investigations

1,704 complaints – opened in 2016 or in previous years – were closed in 2016. These complaints contained 3,839 allegations.

Of these, 1,015 complaints containing 2,879 allegations had been admitted and investigated.

While the 1,015 complaints all contained one or more admissible allegations, 204 of the allegations contained in them were inadmissible, so these were not investigated. The outcomes of the remaining 2,675, which were dealt with, are listed in Table 1.

**Table 1:** Outcomes of Allegations Investigated and Closed in 2016

Outcome/ Reason	Explanation	Type of investigation concerned	Number of allegations
Discontinued – Further investigation not necessary or reasonably practicable	The most common scenarios here are (in order of frequency) that there was no independent evidence to prove either version of events; the complainant did not cooperate with the investigation; or the complaint was deemed to be frivolous or vexatious after investigation had begun.	All types	1,850
No breach of Discipline Regulations identified	The allegations were investigated and the garda whose conduct was complained of was found to have acted correctly.	Disciplinary investigation by the Garda Síochána (s.94 <sup>1</sup> ) or by GSOC (s.95)	524
Allegation withdrawn	The person who made the complaint indicated that they would not pursue it.	All types	154
No misbehaviour identified following criminal investigation	The most common scenario here is that there is no independent evidence to prove the allegation(s) made.	Criminal investigation by GSOC (s.98)	33
Breach of Discipline Regulations identified and sanction applied	A range of sanctions may be applied depending on the gravity of the breach found (see Table 2). The identification of the specific breach and any sanction to be applied is a matter for the Garda Commissioner, under the Discipline Regulations. GSOC has no role in this process.	Disciplinary investigation by the Garda Síochána (s.94 <sup>1</sup> ) or by GSOC (s.95)	75
Referred to the DPP	If there is evidence that an offence may have been committed following criminal investigation, the case is referred to the DPP, who takes a decision whether to prosecute or not. In certain cases, the Ombudsman Commission may refer a case to the DPP even if it does not appear that an offence has been committed, to ensure full transparency and public confidence. (See further detail in Section 2.)	Criminal investigation by GSOC (s.98)	13
Informally resolved	The matter was resolved to the satisfaction of both parties.	Informal resolution (s.90)	8
Garda Discipline Regulations no longer apply	The garda subject of a disciplinary investigation retired or resigned prior to, or during, the investigation.	Disciplinary investigation by the Garda Síochána (s.94 <sup>1</sup> ) or by GSOC (s.95)	18
<b>TOTAL OUTCOMES</b>			<b>2,675</b>

1 Either supervised or unsupervised investigations.

Should an investigation by the Garda Síochána under section 94 (either supervised or unsupervised), or by GSOC under section 95, find evidence of a potential breach of the Discipline Regulations by a garda, the Garda Síochána makes a decision on whether there is indeed a breach. A range of sanctions may be applied, depending on the gravity of the breach found. The sanctions applied in 2016, following decisions of a breach of discipline, are listed in Table 2.

**Table 2:** Sanctions Applied by the Garda Commissioner in 2016, following Disciplinary Investigations

Sanction	Number
Advice	30
Caution	11
Warning	9
Reprimand	3
Reduction in pay/fine	22
<b>TOTAL SANCTIONS</b>	<b>75</b>

### Informal Resolution in 2016

The current legislation governing GSOC requires the consent of both the complainant and the garda concerned for informal resolution. In less than one-in-four cases deemed suitable for IR did both parties give their consent.

Complaints deemed suitable for IR accounted for 167 allegations closed in 2016.

- Only 8 of these allegations were recorded as informally resolved, following consent.
- 59 of the allegations were escalated to a formal disciplinary investigation in the absence of consent to IR, or if we were unable to informally resolve the case to the parties' satisfaction.
- In relation to the remaining 100 allegations, the case was "discontinued", or closed without any further action, following enquiries with both parties. In some of these cases, a resolution of sorts may have been found, but we could not record this because we did not have the written consent of both parties required under the current legislation. In other cases, there may have been no resolution, but we did not believe that the allegations warranted formal investigation.

## SECTION 2: INDEPENDENT INVESTIGATIONS FOLLOWING DEATH OR SERIOUS HARM

### 2.1 REFERRALS FROM THE GARDA SÍOCHÁNA UNDER SECTION 102(1)

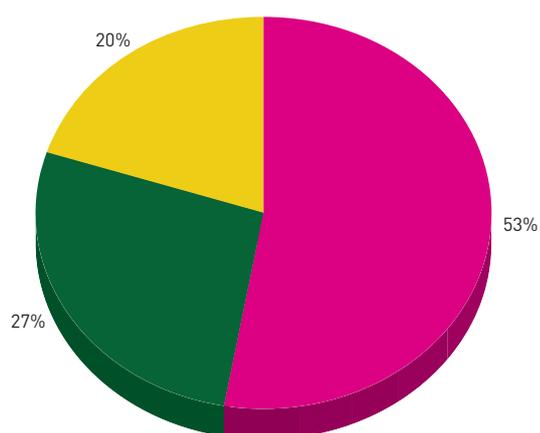
Section 102(1) of the Garda Síochána Act 2005 provides that the “Garda Commissioner shall refer to the Ombudsman Commission any matter that appears to the Garda Commissioner to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person”.

This power is delegated by the Garda Commissioner to Superintendents, whose responsibility it is to decide if it is appropriate to refer an incident, in order that it be investigated independently.

GSOC received 51 referrals over the course of 2016.

We aim to act upon referrals proportionately, according to the circumstances. It is sometimes the case that, following an initial examination, it is clear that there is no evidence of misbehaviour or criminality by a garda. At the other end of the scale, sometimes it is appropriate to undertake a full criminal investigation and refer the case to the DPP.

**Chart 6: Investigation Types in Referrals (Total Referrals Received: 51)**



- Preliminary Examination (53%)
- Non-Criminal Investigation by GSOC (27%)
- Criminal Investigation by GSOC (20%)

12 of the referrals received in 2016 related to fatalities (13 deaths in total). Of these, there were five fatal road traffic incidents and one death in Garda custody.

If there has been a fatality, there must be particular consideration of the State’s obligations under Article 2 of the European Convention on Human Rights. Article 2 states that everyone’s right to life shall be protected by law. The European Convention on Human Rights Act 2003 requires that Irish state bodies including the Garda Síochána, perform their functions “in a manner compatible with the State’s obligations under the convention provisions”.

To be compliant with Article 2 of the Convention, investigations into deaths following police contact should adhere to five principles developed by the European Court of Human Rights<sup>5</sup>. These are:

- independence
- adequacy
- promptness
- public scrutiny
- victim involvement.

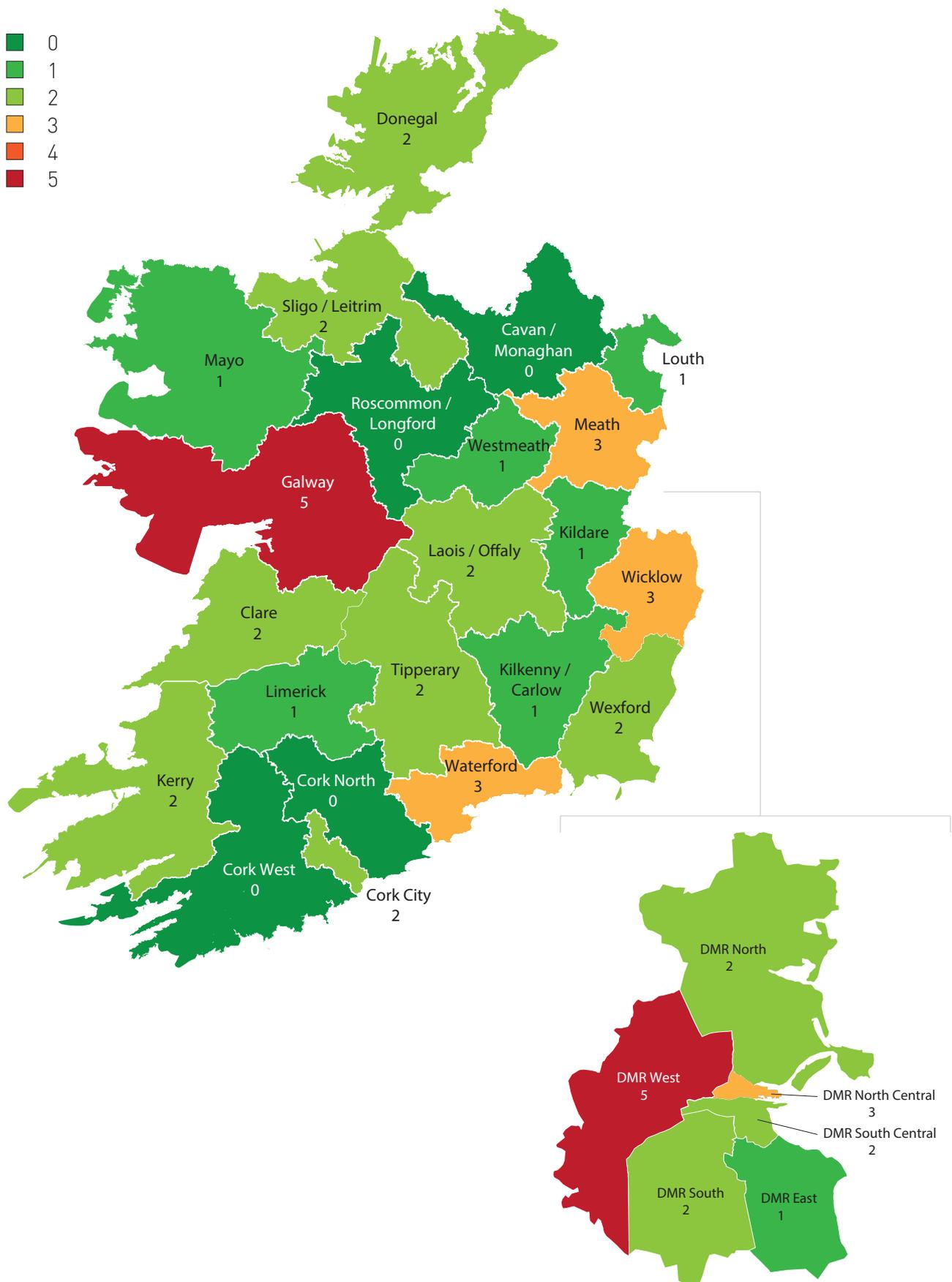
The fact that such investigations are undertaken by GSOC fulfils the requirement for independence. We are conscious of upholding the other four principles too. The last one – victim involvement – ties directly in to the work we have done in 2016 to comply with recent legislation giving specific rights to victims of crime.

We are also conscious that GSOC alone does not ensure that all of these principles are upheld; but it plays a part in doing so, together with the Office of the DPP, the Coroner’s Court and other State bodies.

The map on the next page shows the geographical distribution of referrals made by the Garda Síochána in 2016.

5 See ‘Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police’, 12 March 2009.

**Map 2:** Referrals Made to GSOC, by the Garda Síochána, per Garda Division (Total: 51)



## Case summary

A referral was made to GSOC in July 2016, following the death of a man who had been in Garda custody earlier that day.

The man who died had been arrested on the morning of his death for being intoxicated. He was brought to a Garda station and was held there in a cell for approximately two hours. Later that afternoon, this man was observed seated on a rock by a member of the public in the local area. Shortly after, he was observed slumped over the rock by the same member of the public. When the person checked on him, they found that he was unresponsive and called emergency services. Medical assistance was provided, but to no avail and the man was pronounced dead at the scene. GSOC attended the State Post Mortem, where the preliminary cause of death was natural causes related to an illness.

GSOC investigated the matter under section 95 of the Act, as it appeared clear from an initial examination that there were no potential criminal offences. This man had been brought to a Garda station and held there in a cell for approximately two hours earlier that day, under section 4 of the Criminal Justice (Public Order) Act 1994. It was established that the man, when initially arrested, was unable to give gardaí his address after being repeatedly asked, as a result of which he was detained while gardaí ascertained where he lived. Following his address being verified, he was taken from the cell and given some coffee and biscuits.

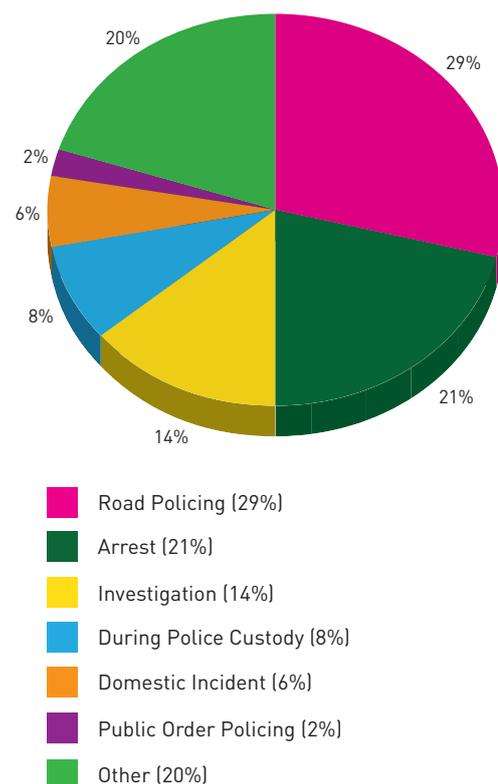
GSOC requested and reviewed documents, reports, submissions and CCTV from the Garda station where the man had been detained. The gardaí stated that they spoke to the man about support services available to him. He was released from custody and a summons was created by the arresting garda at that time. The man was seen on CCTV shaking hands with both gardaí who had dealt with him, prior to leaving the Garda station. »

» The investigation did not disclose any conduct which could be considered a breach of the Garda Síochána (Discipline) Regulations 2007. In fact, the GSOC investigation reported that the deceased, appeared to be shown the utmost respect by both garda members during their interaction with him. It was also noted by GSOC that the family of the man had thanked both gardaí for the care extended to him before his death.

### 2.1.1 Circumstances leading to referrals

The most common circumstance leading to referrals to GSOC in 2016 was road policing, most commonly road traffic incidents.

Chart 7: Circumstances in Referrals (Total: 51)



## Case summary

A road traffic incident where a cyclist sustained serious injury was referred to GSOC by the Garda Síochána. It was a collision between an off-duty garda and a cyclist, which had occurred shortly after 22:00 at night.

GSOC opened a criminal investigation to establish the facts of the matter and whether there was evidence of any criminal offences.

The investigation established that the collision occurred at a junction while the off-duty garda was turning right and the cyclist was going straight ahead. The impact occurred at a point when the driver appeared to have completed most of the right turn. The impact sent the cyclist a considerable distance in the air and he landed in the opposite lane of the road on which he had been travelling. He suffered a broken ankle and toe on his right leg, along with a broken kneecap on his left leg. He underwent surgery and was in hospital for six days.

As the cyclist had the right of way, it was his belief that the collision was the result of careless driving on the part of the driver.

Gardaí arrived almost immediately on the scene of the collision as a patrol car had been driving along the same road. They stated that they had in fact noticed the cyclist just before the incident, because he was waving his arms and shouting something at them as he passed the patrol car. The cyclist stated that this was because he had just passed a scene where it appeared that someone was being beaten up and was trying to communicate to the gardaí in the patrol car that something was happening in the direction from which he had come. This interaction took place approximately 50 metres from where the collision occurred.

The off-duty garda driver and his passenger were interviewed, with the garda being cautioned on suspicion of driving without due care and »

» attention contrary to section 52 of the Road Traffic Act 1961. Both people stated that they only noticed the cyclist when the car had nearly completed its turn. The driver acknowledged that in taking the right turn he did not have the right of way, but said that he had taken this into consideration and was driving in a careful manner at the time of the collision.

At the time of the collision, the cyclist was wearing a watch which has a GPS tracking system. He provided a download from this, covering the time of the collision. It shows that he was travelling at 28 kph at the time of the collision. Various statements showed that he had a front light on his bicycle but he was wearing dark clothing.

There was a pub with excellent CCTV covering the junction in question. However this evidence was lost, because the Garda Síochána only referred the matter GSOC 35 days after it had occurred and had not collected this evidence themselves in the interim.

Although the cyclist had the right of way, the speed at which he was travelling and the fact that he was not wearing hi-visibility clothing could be seen as mitigating factors. The possibility that he was distracted due to an incident which had occurred just prior to the collision may also have had relevance.

Considering all the available evidence, this investigation concluded that the evidence did not suggest that the off-duty garda driver's conduct constituted an offence. GSOC did not believe, having regard to the circumstances, that referring a file to the Director of Public Prosecutions in relation to the garda's conduct was necessary or justified. The case was closed without further action.

### 2.1.2 Outcomes of investigations following referrals

GSOC closed 55 investigations in 2016, initiated (in 2016 or previous years) as a result of referrals from the Garda Síochána.

**Table 3:** Types of Investigation Undertaken and Outcomes (Total Investigations Closed in 2016: 55)

Type of investigation and outcome	Cases
Case closed after initial examination showed no evidence of misbehaviour or criminality by a garda.	32
Non-criminal investigation undertaken and concluded, finding no evidence of misbehaviour by a garda – no further action taken.	7
Non-criminal investigation undertaken and concluded – sanction applied by the Garda Commissioner.	1
Non-criminal investigation undertaken and concluded – no sanction applied by the Garda Commissioner.	3
Criminal investigation undertaken and concluded, finding insufficient evidence of criminal misconduct by a garda – no further action taken.	7
Criminal investigation undertaken and concluded – referred to the DPP – prosecution directed.	0
Criminal investigation undertaken and concluded – referred to the DPP – no prosecution directed.	4
Case discontinued due to lack of cooperation from the injured party and no other issues of concern.	1
<b>TOTAL</b>	<b>55</b>

## 2.2 INVESTIGATIONS OPENED BY THE OMBUDSMAN COMMISSION UNDER SECTION 102(2)(B)

Section 102(2) states that “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”.

There was one investigation opened under 102(2)(b) in 2016, following receipt of a notification about the discharge of a Taser. (Garda Directive 10/10 directs members of the Garda Síochána to notify use of less-lethal force to GSOC.) The Ombudsman Commission decided to open an investigation to establish the facts of this matter.

### Case summary

A Taser was discharged during a public order incident in June 2016, attended by the Garda Regional Support Unit (RSU). The man who was Tasered was subsequently taken into Garda custody and GSOC was advised by the Garda Síochána that he was seen by a doctor during this time, with no further treatment recommended by the doctor. Upon release from custody the following morning, however, gardaí advised that he go to hospital, as his arm was swollen. Gardaí later found out that he had a broken arm and advised GSOC of this when sending in notification of the discharge of a less-lethal device.

Because this injury could be described as “serious harm” and it came to light following Garda contact, the Ombudsman Commission decided that it would be in the public interest to establish the facts of the matter. »

» A GSOC investigator looked at all the available evidence to establish the circumstances of the discharge of the Taser and the circumstances of the injury.

It was clear from this examination that the use of the Taser did not result in any serious harm. The injured man made a statement to the GSOC investigator in which he said that his broken arm was sustained during an altercation between himself and another person, prior to the arrival of gardaí.

While there was no CCTV, nor independent witnesses to the discharge of the Taser, the injured man made no allegations against gardaí regarding the use of force.

From the available evidence, it appears that the garda deployed his Taser because he judged that there was imminent danger to his colleague. According to the accounts of gardaí, the injured man was running at his colleague. It must be recognised that both gardaí were carrying side-arms and there was a real risk that, if the man tackled the garda he was running at, he may have been able to access his firearm. Given the time-scales and distances involved, it is unlikely that the garda would have been able to use hard hand controls on the man, or that deployment of incapacitant spray would have prevented the man from making physical contact with the garda. In those circumstances, GSOC believes that using the Taser was justifiable.

There was no appearance of an offence or of any breach of discipline in relation this matter, so GSOC closed the case, reporting as such to all parties.

## SECTION 3: INVESTIGATIONS IN THE PUBLIC INTEREST

As well as providing for the referral of matters to GSOC by the Garda Commissioner, section 102 of the Act provides for investigations to be undertaken in the public interest, even in the absence of a complaint or a referral by the Garda Commissioner.

Section 102(4) of the Garda Síochána Act 2005 provides that

*“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” .*

Section 102(5) adds that

*“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 gives rise to a concern that a member of the Garda Síochána may have done anything referred to in subsection (4), and the Commission shall investigate the matter.”*

During the course of 2015, this section of the Act was amended

- to also allow the new Policing Authority to request GSOC to investigate matters in the public interest, under the new section 102(4)(A); and
- to allow either the Policing Authority or the Minister to refer a matter to GSOC for the Ombudsman Commission to consider whether it should investigate it in the public interest, under the new section 102(7).

The Policing Authority was formally established on 1 January 2016, whereby the new provisions relating to it became effective. GSOC met with the Authority during 2016 and agreed processes through which these new provisions would be implemented.

### 3.1 CASES OPENED IN 2016

19 new investigations in the public interest were opened in 2016:

- Seven under 102(4)
- 12 under 102(5).

Of the seven cases opened under section 102(4) - that is, by decision of the Ombudsman Commission itself – three were concluded during the course of the year. These are outlined below:

- A complaint was received from an individual about the conduct of a garda when policing a public protest in Dublin in February 2016. Evidence considered during the course of the investigation of that complaint prompted the Ombudsman Commission to open a separate investigation to look into matters which were outside the scope of that complaint. A criminal investigation was undertaken and concluded, finding insufficient evidence of criminal misconduct. No further action was taken.
- The Ombudsman Commission opened an investigation in the public interest following public speculation and concerns expressed by a human rights organisation about a video shared on social media in December 2015. The video appeared to show disproportionate use of force by a garda towards a man in Dublin. A criminal investigation was undertaken and concluded. The evidence gathered showed the actions of the garda, when dealing with the man, to be legal and proportionate. No further action was taken.
- An anonymous complaint was received alleging a cover-up of attempted self-harm by a minor in Garda custody. The complaint was inadmissible under the Act, but the Ombudsman Commission decided that the matter should be investigated in the public interest. An investigation into possible criminal offences was undertaken and concluded. It found that an investigation had already been undertaken into this matter by the Garda Síochána. Several recommendations were nonetheless made to the Garda Síochána to mitigate the risks highlighted by the investigation. (See Section 7 and case summary below.)

The remaining four were still open at the end of 2016. One is the subject of a non-criminal investigation:

- GSOC initiated an investigation upon receiving notification of the accidental discharge of a Garda firearm from the Garda Síochána in January 2016. There were no injuries. The incident is subject of a non-criminal investigation, to establish the facts and whether any actions may need to be taken to prevent recurrence of similar incidents.

The others are the subject of criminal investigations. The matters concerned are:

- Alleged sexual assault by a garda.
- Alleged cover-up of an assault by a garda of an arrested person.
- Alleged assault by a garda of an intoxicated person.

### Case summary

An anonymous complaint was received by GSOC alleging that gardaí found a boy self-harming in his cell at the Children's Court and cut him down, but went on to cover up the incident.

Because we could not establish who the complainant was, the complaint was inadmissible according to the terms of section 83 of the Garda Síochána Act 2005. However the Ombudsman Commission decided that it was in the public interest to open an investigation under section 102(4), to establish the facts of this matter.

An investigation into possible criminal offences was undertaken. The investigation established that an incident as described occurred. It showed that the gardaí who found the boy recorded the fact that he attempted to self-harm in the custody record maintained at the Children's Court. However, the boy was returned to the Detention Centre without escorting staff being informed of the incident. The gardaí involved also failed to report the incident to line management and the matter went undetected by Garda management for nearly six months. »

» The incident was discovered by a Garda Inspector during an unrelated discussion with court staff. This Inspector immediately commenced an investigation and put in place measures to prevent a re-occurrence.

The garda members involved were investigated in accordance with the Garda Síochána (Discipline) Regulations, 2007 and were found not in breach. The Deciding Officer recommended further training for staff dealing with prisoners detained in the Children's Court.

The Ombudsman Commission reported to the Garda Síochána its concern that incidents of this nature are not recorded on the Garda PULSE system. It was pointed out that a member of the Garda Síochána could be placed in a position whereby they are unaware that a person detained at a Garda station attempted to self-harm on a previous occasion while in Garda custody. The potential danger for the individual involved and for the member of the Garda Síochána concerned are self-evident.

Notwithstanding the measures put in place by the Inspector following this incident to prevent a recurrence in that District, GSOC recommended that the Garda Síochána give consideration to:

- Recording incidents of this nature on the PULSE system or in some other format readily available to any member of the Garda Síochána who may have to deal with their detention at a future date
- Issuing an instruction to all garda members directing them to immediately inform their supervisor in writing of any attempt to self-harm by a person in contact with the Garda Síochána.
- Ensuring that all custody facilities, where juveniles are routinely detained, be monitored by video and audio recording equipment, as a matter of course.

Of the 12 cases opened under section 102(5) - that is, on request of the Minister for Justice and Equality - 11 followed the Independent Review Mechanism (IRM).

Established by the Minister for Justice and Equality, in consultation with the Attorney General, in May 2014, the function of the IRM was to consider allegations of Garda misconduct or inadequacies in the investigation of such allegations, with a view to determining to what extent and in what manner further action may be required in each case.

A panel of two Senior and five Junior Counsel was established for the purpose. The review of each allegation consisted of an examination of letters or other papers related to each case by a counsel from the panel.

Following this review process, the Minister requested GSOC, under section 102(5), to investigate 21 of the cases in the public interest. 10 of the investigations were opened in 2015 and 11 in 2016.

In addition to the 11 investigations following the IRM, one other investigation was commenced on request of the Minister in 2016. This followed an allegation of a garda perverting the course of justice, in the course of a Garda Síochána investigation into alleged sexual assault. This investigation was nearing completion at the end of 2016.

In June 2016, the Garda Síochána Ombudsman Commission was also requested by the Minister for Justice and Equality, under section 102(5) of the Garda Síochána Act 2005, to investigate certain matters arising from the O'Higgins Commission.

GSOC was not party to this Commission of Investigation. Therefore we had to request the documentation related to the reported occurrence which we were to investigate, before we could properly investigate it. We were obliged to seek legal advice and subsequently obtain an order of the court, in order to get this documentation. This process was ongoing at end 2016.

**Table 4:** Status of Public Interest Investigations on Foot of the IRM, at end 2016 (This includes the 11 cases opened in 2016 and the 10 opened in 2015.)

Investigation Type	Number	Status and Outcome
Investigations into criminal matters	6	Still open.
	4	Investigation undertaken and concluded. Insufficient evidence of criminal misconduct by a garda found to merit any further action.
	1	Investigation started but discontinued due to lack of cooperation from the complainant and no other issues of concern.
Investigations into non-criminal matters	9	Still open.
	1	Investigation undertaken and concluded, finding no evidence of a breach of discipline by a garda. No further action taken.
<b>TOTAL</b>	<b>21</b>	

## Case summary

In one of the cases that the Minister requested we investigate, a man alleged that he was wrongly accused of involvement in the theft of vehicles. He further alleged that he was mistreated while in a Garda station, describing a specific incident which he said took place in the interview room, and saying that force was used on his thumb while his fingerprints were taken.

GSOC conducted an investigation into the matter in the public interest. We reviewed the Garda investigation file. This showed that the owner of the vehicles had given a statement to gardaí saying that he suspected that the complainant was involved in the removal, without the owner's consent, of his vehicles from the complainant's property, where they were being kept. This suspicion was further strengthened by the discovery of an advertisement of the vehicles for sale, with contact phone numbers connected to the complainant on it. Gardaí conducted enquiries to identify the registered subscribers of the telephone accounts in question, confirming that they were registered to the complainant. The fact that the vehicles were removed from locked property, with no damage done to the lock, added to the suspicion that the complainant may have had knowledge of, or involvement in, the removal of the vehicles. GSOC was satisfied, based on the above, that gardaí had reasonable cause for the arrest and questioning of the complainant.

In respect of the allegation made about specific behaviour in the interview room while the complainant was being interviewed, GSOC investigators reviewed the VHS tape of the interview in full and there was no evidence to support this allegation.

We also considered the allegation that force was used on the complainant's thumb while taking fingerprints. There was no evidence of injury. It is normal practice to firmly hold a »

» person's fingers while fingerprinting, to ensure that a clear fingerprint is obtained. Evidence showed that the complainant had volunteered his fingerprints and for his photograph to be taken.

The GSOC investigation showed that there was a lack of evidence to substantiate the complainant's allegations. GSOC closed the case, reporting on the investigation findings to all parties concerned and taking no further action in relation to the complaint.

### 3.2 CASES ONGOING IN 2016

In addition to the IRM cases listed previously, we had seven public interest investigations already underway at the start of 2016. All remain open:

- An investigation into the adequacy of the Garda investigation and the compilation of the Garda report to the DPP, following a fatal road traffic incident in 2005 where a woman died after being hit by a Garda patrol car in Dublin. This investigation had been unable to progress due to judicial review proceedings that were ongoing for many years. In July 2015, the Supreme Court set aside a previous High Court decision on a point of law. The Supreme Court decision enabled GSOC to continue its investigation of this matter, which it did during 2015 and 2016. The investigative phase of the case was concluded in 2016, but there were further actions pending at year end.
- Two investigations following the receipt of information, directly by GSOC and via the Department of Justice and Equality, in relation to alleged corrupt activities by Garda members. The investigative phase of these cases was concluded in 2016, but there were further actions pending at year end.
- Two investigations into allegations made about wrongful cancellation, by members of the Garda Síochána, of Fixed Charge Penalty Notices, during two particular time periods. GSOC completed the first phase

of the initial investigation in 2014 and 2015. This included considerable analytical work on a total dataset of 1.6 million notices issued; interviews; and review of materials from previous related investigations. This work provided a road-map for a further phase of investigation. In July 2015, the Office of Government Procurement (OGP) published a tender for investigative support, required for this phase. No responses met the qualification criteria. In 2016, a second tender, on an EU-wide scale, was undertaken.

- An investigation requested by the Minister for Justice and Equality in relation to allegations, by an individual, of neglect of duty. The individual had already complained directly to GSOC, therefore the allegations were already under investigation, however re-categorising the case as a public interest investigation served to extend the scope of the investigation beyond the specific allegations made, if necessary. This investigation was nearing conclusion at the end of 2016.
- An investigation was opened into events seen in a video on social media, which appeared to show use of force during the policing of a protest at a property auction in Gorey, Co. Wexford. The investigative phase of this cases was concluded during 2016, but there were further actions pending at year end.

### **3.3 PROTECTED DISCLOSURES**

Under the Protected Disclosures Act 2014 and the subsequent Statutory Instrument 339/2014, the three members of the Garda Síochána Ombudsman Commission became prescribed persons to whom any worker of the Garda Síochána could confidentially disclose allegations of wrongdoings.

At the start of 2016, we had four cases ongoing resulting from disclosures which had been received in 2014 and 2015. Over the course of 2016, seven further disclosures were received. All cases remain open.

In 2016, GSOC continued to deal with these new responsibilities alongside its existing investigative workload, but in 2017 we hope to be allocated further resources so that we can dedicate staff to cases opened under the Protected Disclosures Act 2014.

During the course of the year, GSOC continued to work on developing processes and procedures for dealing effectively with this specific type of case, including seeking legal advice on the reconciliation of responsibilities under the Protected Disclosures Act and procedures laid out in the Garda Síochána Act. This work will be ongoing in 2017.

## SECTION 4: EXAMINATIONS OF GARDA SÍOCHÁNA PRACTICE, POLICY AND PROCEDURE

Section 10 of the Garda Síochána (Amendment) Act 2015 amended section 106 of the Garda Síochána Act 2005, by inserting the following provision:

*“For the purpose of preventing complaints arising in relation to a practice, policy or procedure of the Garda Síochána or of reducing the incidence of such complaints—*

- (a) the Ombudsman Commission may, if it considers it appropriate to do so, or*
- (b) the Commission shall, if so requested by the Minister within such period as he or she may specify in the request,*

*examine the practice, policy or procedure.”*

This gave GSOC the power to initiate examinations of Garda practice, policy and procedure of its own volition, where previously the permission of the Minister for Justice and Equality was required.

The Ombudsman Commission exercised this new power to initiate two examinations into matters which had featured in GSOC investigations over many years. The first focuses on an issue which has been highlighted in numerous investigations following referrals under section 102(1). The second considers an issue which has been the subject of over 40 complaints to GSOC by different individuals over the years.

The examinations are being undertaken by investigators alongside their existing investigative workload. As a result, they could not be completed as quickly as we would have liked and both examinations were still ongoing at the end of 2016. Below are summaries of the objectives and work undertaken and outstanding in relation to each one. GSOC envisages concluding each of these examinations and reporting to the Minister with recommendations in the course of 2017.

### **Examination of Garda Síochána practice, policy and procedure governing the application of the Criminal Justice (Public Order) Act 1994**

During the nine years of operation of the Garda Síochána Ombudsman Commission, the application of the Criminal Justice (Public Order) Act 1994 has arisen as an issue in numerous investigations.

Investigation reports have identified that people have been detained in circumstances where there is no lawful power to detain i.e. following arrest under certain provisions of the Public Order Act. Such practice may be contrary to Article 40 of the Constitution and Article 5 of the European Convention on Human Rights.

Successive investigations have appeared to indicate that balancing a moral duty of care to members of the public against the constraints of the Public Order Act presents difficulties for gardaí.

The examination has undertaken to:

- Establish the frequency of arrests under the Criminal Justice (Public Order) Act 1994 across the State.
- Establish, from the arrests under the Criminal Justice (Public Order) Act 1994, the frequency of prisoners being detained for extended periods – either prior to charge, or following charge, or both.
- Identify options available to the Garda Síochána for dealing with intoxicated persons.
- Establish whether the policies and procedures of the Garda Síochána in relation to the application of the Criminal Justice (Public Order) Act 1994 are appropriate and adhered to.

Custody records produced in 2015 within randomly selected Garda stations from all Garda divisions have been examined. This has provided a broad representation of the extent to which people are arrested under the Criminal Justice (Public Order) Act 1994; and the extent to which prisoners are detained in Garda stations, following arrests under that Act. Investigations conducted by GSOC and their outcomes have also been reviewed. As part of the next stage, Garda practices, policies and procedures in place up to and including 2015 are being examined, including any relevant training material. The views and concerns of members in charge<sup>6</sup> and Garda management in relation to the issue are being sought, as well as the views of other relevant stakeholders, such as Coroners and the HSE.

<sup>6</sup> See Glossary.

Options currently available to gardaí, under Irish law, for dealing with intoxicated persons, as well as relevant case law, will be examined. Practice within other law enforcement agencies for dealing with intoxicated persons will also be researched and considered.

The purpose of this examination is not to identify any potential breaches of the Treatment of Persons in Custody Regulations, but rather to examine the matter from a more strategic perspective to see if any recommendations may be made to improve how the system works.

### **Examination of Garda Síochána practice, policy and procedure governing the consideration given to the safety and welfare of occupants of seized vehicles**

The legitimate seizure of a vehicle can mean that a driver and other occupants are left on a roadside without transport. There have been over 40 complaints to GSOC alleging that occupants of seized vehicles have been left in what they perceive to be vulnerable situations by the Garda Síochána.

Such complaints present a difficulty for GSOC in that they are unlikely to be admissible under the Garda Síochána Act 2005. One of the admissibility criteria set out in the Act is that the behaviour complained of must be a criminal offence or a potential breach of discipline. Members of the Garda Síochána are empowered under statute to seize a vehicle and there is no prescribed duty of care on them in relation to members of the public affected by this, so a complaint such as this would not necessarily make it through the admissibility process.

Therefore, the Ombudsman Commission decided that an examination under section 106 into Garda Síochána practices, policies and procedures around the safety and welfare of occupants of seized vehicles would be the most appropriate way to try to deal with the issue.

The examination has set out to:

- Review relevant complaints, analysing in particular the factors that have given rise to them.

- Identify and review relevant policies, practices, training materials and other procedures of the Garda Síochána.
- Set out the options open to members of the Garda Síochána when dealing with the occupants of seized vehicles.

As well as looking at documentary evidence, the views and experience of the Garda National Traffic Bureau and of rank and file gardaí will be sought. The current legal position with regard to any duty of care to be considered by members of the Garda Síochána in the context of seizure of vehicles will be examined; relevant case law considered; and the views of policy makers researched. How other law enforcement agencies from inside and outside the jurisdiction address the issue in question will be examined.

The aim of the examination will be to make recommendations which could prevent or reduce this type of complaint.

The amended section of the Act specifies that a report following any examination under section 106 should be provided to the Minister and to the Garda Commissioner, and that it should include any recommendations to prevent or reduce such complaints. It further specifies that (unless it would be prejudicial to the interests of national security, or might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person):

*“The Minister shall cause copies of any reports received by him or her ... to be laid before the Houses of the Oireachtas.”*

The Ombudsman Commission considers that this effective obligation to publish the reports of such examinations makes it more likely that meaningful results may be achieved.

The Commission looks forward to submitting these two reports, on which considerable work was undertaken by GSOC staff during 2016, to the Minister and Garda Commissioner in the course of 2017.

## SECTION 5: JUDICIAL INQUIRY INTO THE CONDUCT OF DESIGNATED OFFICERS

An inquiry under section 109 of the Garda Síochána Act 2005, the first of its kind, was completed in June 2016. This section provides for a judicial inquiry into the conduct of designated officers of the Garda Síochána Ombudsman Commission:

*109.— (1) After consulting with the Ombudsman Commission, the Minister may request the Chief Justice to invite a judge to inquire (while serving as a judge) into the conduct of a designated officer in performing functions under section 98 or 99 in relation to any investigation under this Part.*

*(2) The Chief Justice may invite—*

- (a) a judge of the Supreme Court,*
- (b) with the consent of the President of the Court of Appeal, a judge of the Court of Appeal, or*
- (c) with the consent of the President of the High Court, a judge of the High Court, to conduct the inquiry and, if the invitation is accepted, the Chief Justice shall appoint that judge to conduct the inquiry.*

*(3) The appointed judge's terms of reference shall be specified in the request and may relate to the designated officer's conduct either on a particular occasion or in general in performing functions under section 98 or 99 .*

*(4) The appointed judge may conduct the inquiry in the manner he or she thinks proper, whether by examining witnesses or otherwise, and may, in particular, conduct any proceedings relating to the inquiry otherwise than in public.*

*(5) For the purpose of the inquiry, the appointed judge has the powers, rights and privileges vested in a judge of the High Court on the hearing of an action, including the power to—*

- (a) enforce the attendance of witnesses, and*
- (b) compel the production of records.*

*(6) On completing the inquiry, the appointed judge shall report its results to the Minister who shall forward a copy of the report to the Ombudsman*

*Commission for such action as it considers appropriate in the circumstances.*

The inquiry was undertaken by Mr Justice Frank Clarke of the Supreme Court. It had the following terms:

*“An inquiry into the conduct of designated officers of the Garda Síochána Ombudsman Commission in performing functions under section 98 or 99 of the 2005 Act in relation to the investigation by the Ombudsman Commission in the matter referred to it by the Garda Commissioner on 1 January 2015 under section 102(1) of the 2005 Act, that matter being the contact which members of the Garda Síochána had with Ms Sheena Stewart in the early hours of 1 January in Ballyshannon, Co. Donegal, shortly prior to Ms Stewart's death in a road traffic collision.”*

GSOC cooperated fully with the inquiry, over its 11 month duration. This included 14 GSOC staff members giving evidence to the inquiry. Justice Clarke delivered his final report to the Minister for Justice and Equality on 3 May 2016. On 17 June 2016, the Minister forwarded a copy of the report to the Ombudsman Commission for such action as it considered appropriate in the circumstances. The Minister also published a section of the report, including its conclusion and recommendations.<sup>7</sup>

The Ombudsman Commission gave the report careful consideration.

The Commission is conscious that legal proceedings resulting from the original road traffic incident remained outstanding throughout 2016. For this reason, only references to the extract of the report of Justice Clarke which was published are made here.

Upon receiving the report, over the following months, the Ombudsman Commission considered and acted upon the inquiry's recommendations that:

- The legislation be reviewed to bring greater clarity. Constructive discussions

<sup>7</sup> <http://www.justice.ie/en/JELR/Extract-from-the-Report-of-The-Honourable-Mr-Justice-Frank-Clarke-concerning-an-Inquiry-pursuant-to-Section-109-of-the-Garda-Siochana-Act-2005.pdf/Files/Extract-from-the-Report-of-The-Honourable-Mr-Justice-Frank-Clarke-concerning-an-Inquiry-pursuant-to-Section-109-of-the-Garda-Siochana-Act-2005.pdf>

were held in relation to this, during the second half of 2016, with the Joint Oireachtas Committee for Justice and Equality and with the Minister for Justice and Equality. The Ombudsman Commission believes that progress will be seen in relation to this in 2017.

- More detailed guidance be given by GSOC to its designated officers regarding the precise circumstances in which progress updates should be given, during an investigation. During 2016, we worked on a standard operating procedures manual for our designated officers, which will be implemented in 2017 and will improve guidance for these officers across a wide spectrum of operational matters.
- More detailed information be made available to members of the Garda Síochána, in a clear form, likely to be read and understood, about the way in which GSOC investigations are carried out. Actions taken in 2016 to improve the availability of such information are described in Section 6.3 of this report. In particular, by the end of 2016, we had created and were distributing a leaflet specifically for members of the Garda Síochána involved in an incident which has been referred to GSOC, to inform them about the way such investigations are carried out.
- Consideration be given to changing the current practice whereby gardaí are notified solely by the Garda Síochána of a criminal investigation by GSOC, to one where notification was also carried out by GSOC. The Ombudsman Commission contacted the Garda Síochána in 2016, requesting contact details for gardaí in order to be able to issue these

notifications (and provide a direct point of contact for gardaí subject of investigation, to further deliver on the recommendation above). We will be able to implement this recommendation as soon as we receive contact details.

In addition to the above recommendations the inquiry *"tentatively suggested"* that the Ombudsman Commission might review its policy, since establishment, of sending a file to the DPP at the conclusion of every criminal investigation involving a death.

The Commission has considered this matter. The Commission believes that it is appropriate that every investigation file involving a fatality should come before the Ombudsman Commission itself for careful consideration, and that investigators should operate on the premise that a file may need to be prepared for the DPP in any such case.

The Commission also believes that referring such cases to the DPP, even where they themselves may not feel that there is sufficient evidence to warrant a prosecution, contributes to the delivery of the five principles developed by the European Court of Human Rights, to which deaths following police contact should adhere. (See Section 2.1.)

Notwithstanding this, the Commission makes a decision on each case individually and, should it appear unnecessary for a particular case to be referred to the DPP, it is open to the Commission to make that decision.

We are conscious that rights proposed by The Criminal Justice (Victims of Crime) Bill 2016 may also affect this issue. Therefore the Ombudsman Commission will continue to keep this policy under consideration.

## SECTION 6: IMPROVING EFFICIENCY AND EFFECTIVENESS

Section 67 of the Garda Síochána Act 2005 sets out that “the objectives of the Ombudsman Commission 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 under Part 4 concerning the conduct of members of the Garda Síochána,
- (b) to promote and encourage the use of mediation and other informal means of resolving complaints that are suitable for resolution by such means, and
- (c) to promote public confidence in the process for resolving complaints referred to in paragraph (a).”

As such, continuous endeavours are made by the organisation to ensure efficiency and effectiveness, that we are dealing with all persons fairly, and that there can be public confidence in our processes.

### 6.1 TIME TAKEN TO CLOSE CASES

#### 6.1.1 Time taken to close cases by type in 2016

In 2016, we reduced the number of days taken to complete all types of investigation.

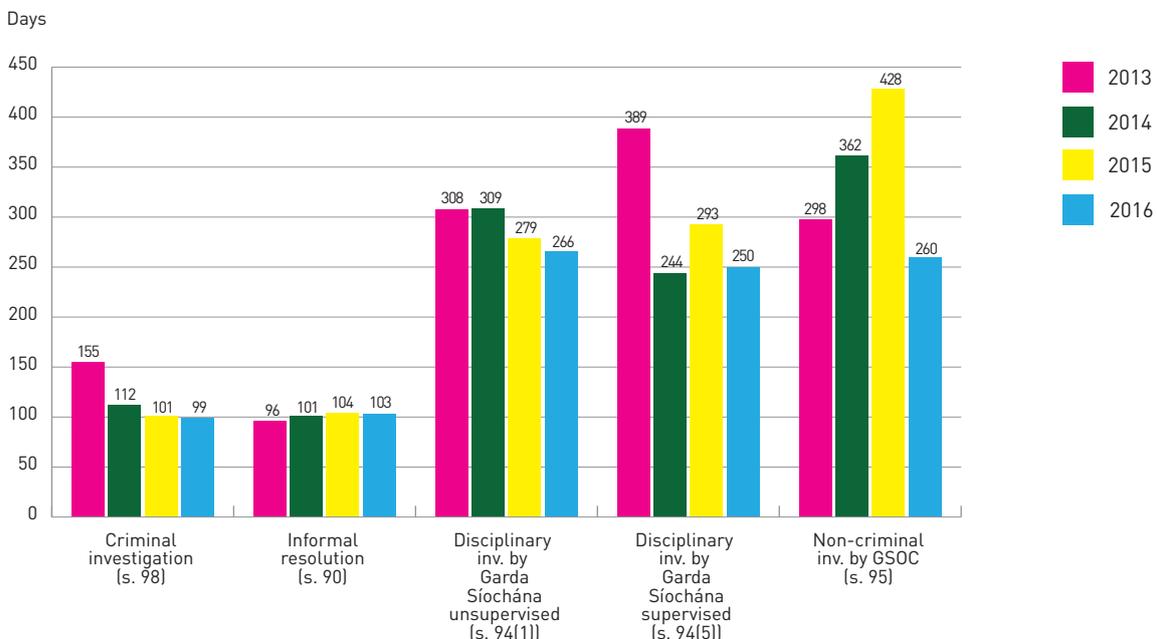
#### Criminal investigations

All admissible allegations appearing to disclose criminal offences by gardaí, for example, assault, are investigated by the Garda Ombudsman’s own investigators. (These are governed by section 98 of the Act.)

At the end of 2016 the median time taken to close criminal investigations was 99 days, an improvement on 101 days in 2015.

Criminal investigations are subject to a review process, which includes standard control measures. As part of this process, cases which have been open for 60 days are formally reviewed

**Chart 8: Median time taken to close cases by type at end 2016<sup>8</sup>**



8 When numbers are listed in value order, the median value is the number at the midpoint of the list, such that there is an equal probability of falling above or below it. The calculation of median times taken to complete each investigation type shown in chart 8 is based only on cases initiated as a result of complaints. However, 1,704 out of a total of 1,769 investigations closed in 2016 were complaint cases, so the majority of cases are represented in the calculation.

by Senior Investigations Officers and those which have been open for 90 days are formally reviewed by the Deputy Director of Investigations. Cases open for 120 days are brought to the attention of the Director of Investigations for appropriate decisions. In parallel, cases categorised as containing a very serious allegation are subject of review on a bi-monthly basis by the Director of Investigations and the Ombudsman Commission. This process continued in 2016.

## Disciplinary investigations

There are four ways allegations of breaches of discipline can be handled. The most common way is by disciplinary investigation by a Garda Síochána Investigations Officer (GSIO) under the Discipline Regulations – over eight in ten disciplinary allegations were handled in this way in 2016.

*Disciplinary investigation by the Garda Síochána* (under section 94 of the Act) – These can be supervised by a GSOC designated officer, depending on the seriousness and/or nature of the allegation, or investigated without supervision.

- The majority are *unsupervised* and the protocols between GSOC and the Garda Síochána say that these must be completed and an investigation report provided within 16 weeks/ 112 days. (A typical complaint dealt with in this manner might allege that a search of a house was conducted without a warrant, or someone was mistreated while being arrested or in Garda custody.)

In relation to these unsupervised disciplinary investigations undertaken by the Garda Síochána, the median duration at the end of 2016 was 266 days, which was an improvement of almost a fortnight on 2015 (279 days). This improvement built on a reduction in median duration of approximately a month achieved in 2015.

The Garda superintendent seconded to GSOC continued to visit and provide support to Garda officers responsible for undertaking these cases in 2016. The aim of the visits was to provide general advice on the process under section

94(1), as set out by GSOC, with a view to working towards timely and proportionate investigations.

GSOC also spoke to all newly promoted Superintendents and Inspectors (who are often asked to assist Superintendents in undertaking these investigations) during their promotion courses at the Garda College in 2016. We highlighted the effect of long delays in concluding investigations on complainants and gardaí who are subject of complaints; and told them about the information and advice available from GSOC to help them to conclude these investigations as quickly as possible.

- If they are *supervised* a designated GSOC investigator will meet with the GSIO to agree the investigation plan, can direct and partake in the investigative actions, and must receive interim reports. The protocols say that supervised disciplinary investigations must be completed and an investigation report provided within 20 weeks/ 140 days. The median duration for 2016 was 250 days, which was a good improvement on 2015 (293 days).

*Informal resolution* (under section 90 of the Act) – Sometimes it makes the most sense for GSOC to try to work with both parties to resolve a situation informally, for example if a person is complaining that a garda was discourteous, didn't return phone calls, didn't answer letters, etc. As shown by chart 8, this is much quicker than a formal investigation and focuses on resolution of the problem rather than punishment.

For informal resolution, the median time taken to close a case was 103 days at the end of 2016, which was similar to the figure of 104 days in 2015.

*Non-criminal investigation by GSOC* (under section 95 of the Act) – Certain cases which do not appear to involve criminal offences, but which may involve disciplinary matters, may be undertaken by the Garda Ombudsman's own investigators. The median duration for the year was 260 days. This was a considerable improvement from the 2015 median of 428 days. However on a small list of

numbers (there were only 20 cases of this type closed in 2016 and 16 in 2015) median is not as good an indicator of overall performance, so we are hesitant to draw strong conclusions from this.

In 2016, the Ombudsman Commission decided to review the process for undertaking these investigations, in an effort to establish more efficient methods and reduce the typical duration of this type of investigation.

The officer asked to complete this review considered every aspect of the process followed by GSOC officers until now, in relation to these investigations. Legal advice was also sought as part of the review. Recommendations were made to the Ombudsman Commission about how the process could be made more efficient and effective. Detailed guidelines for a simplified and streamlined process were proposed. This new process will be implemented in 2017.

The Ombudsman Commission believes that this more efficient process will put GSOC in a better position to be able to investigate more non-criminal complaints itself, should it be resourced to do so in the future.

### 6.1.2 Admissibility

When a complaint is received, each allegation within it must be identified and assessed against the criteria set out in section 87 of the Act to decide whether it can be admitted and dealt with or not.

If insufficient information is provided by the complainant to be able to decide whether the case is admissible or not and we have to go back to them asking for further detail or clarifications, this can be time-consuming. Nonetheless, we are constantly working on bringing down the amount of time a case spends in this admissibility stage, as it of course has a knock-on effect on the time taken to close a case.

In 2016, numbers of complaints awaiting admissibility decisions at any one time was much lower than in 2015 or in 2014. At the end of January, there were 180 cases awaiting decisions,

but in October and November of 2016, the number of cases in admissibility stage at month end reached a low of 107. This is no doubt a reflection of the reduced number of complaints received in 2016 – there were approximately 230 less received than in 2015.

### 6.1.3 Provision of information by the Garda Síochána

The provision of information needed for investigations by the Garda Síochána was, until recently, only guided by the Protocols between the two organisations, which stated that information requested should be provided within 30 days. The Garda Síochána (Amendment) Act 2015 underpinned this process by inserting a provision to improve timeliness in the provision of information:

*9. The Principal Act is amended by the insertion of the following section after section 103:*

*“103A. The Garda Commissioner shall ensure that information to be provided by the Garda Síochána to the Ombudsman Commission for the purposes of an investigation by the Commission of a complaint, or an investigation by the Commission of any matter under section 102 or 102B, is so provided as soon as practicable.”*

There are two ways in which GSOC requests information and evidence needed in the course of investigations from the Garda Síochána:

- Requests for routine information and documentation are sent to a dedicated, central e-mail address which the Garda Síochána set up for this purpose. The average time taken to receive a response following a request for information made through this centralised system was 23 days, in 2016.
- Because of these long response times, it is not practical for requests for evidence or information of a time-critical nature to be processed through the system above. In such circumstances, the GSOC investigator makes their specific

urgent request directly to the relevant superintendent, requesting the return of the information directly to them, or attends in person and takes possession of the evidential material required. (Examples of time-critical requests would be for CCTV footage, or initial accounts, in the context of a serious criminal or disciplinary investigation.)

GSOC has asked for further legislative change so that provision by the Garda Síochána of information and evidence requested by GSOC in the context of any investigation becomes mandatory under the law and any uncertainty for the Garda Síochána is cleared up.

Long waiting periods and difficulties in obtaining information and evidence contribute significantly to long durations of investigations. As timeliness in investigations is a key indicator of efficiency and effectiveness of the oversight system, we are continuously trying to find ways to effect further improvements in this area.

## 6.2 READINESS FOR NEW LEGISLATION

### 6.2.1 Child protection

GSOC participated throughout 2016 on the Children First Implementation Committee (Justice Sector). Sections of the Children First Act 2015 had been commenced in 2015 and some further sections were commenced during 2016.

GSOC is already in full compliance with the provisions of the Children First Act 2015. We have a Child Protection policy, developed in accordance with the “Children First – National Guidance for the Protection and Welfare of Children” guidelines. Furthermore, all staff who may come into contact with children in the course of their employment have received Child Protection Training. Staff are trained to properly identify child protection concerns, such as suspected neglect or abuse, and GSOC has two Designated Liaison Persons (DLPs) who assess all cases where any such concerns are identified. The DLPs maintain regular liaison with TUSLA (Child and

Family Agency) and the Garda Síochána so that appropriate action can be taken in relation to any child welfare concerns.

In 2016, GSOC staff identified 246 cases where there was a potential risk to the protection and welfare of a child. 40 files were also carried over from 2015, so overall, GSOC handled 286 such cases in 2016. Of these:

- 71 resulted in referrals being made to TUSLA. Referrals are made where there is reasonable grounds for concern that a child may be the victim of neglect, or emotional, physical or sexual abuse, at the hands of any person.
- 187 cases were considered and a decision made not to refer to TUSLA. Often it is decided not to refer because we know that TUSLA is already aware of the incident; because there may no longer be any risk to any child; or where we do not have enough information to make a referral.
- 28 cases were still under consideration at year end, as they did not contain sufficient information to warrant making an informative referral. (A decision on all of these cases will be made in 2017.)

#### Case summaries

A woman made a complaint to GSOC because she was dissatisfied with the Garda response to a dispute with her neighbours. Within the complaint, she described how her young children had been threatened by her neighbours and were still traumatised as a result. As this was a clear child welfare concern, after speaking to the complainant, GSOC made a formal referral to TUSLA. As a result, TUSLA decided to offer their ‘Meitheal’ service to the family. This is a coordinated service offered where the skills of different organisations and agencies would be useful to improve the wellbeing of a child and their family. »

» On another occasion, GSOC received information that a child had been sexually assaulted and opened a criminal investigation. TUSLA was informed of the GSOC investigation and multi-agency meetings were held between TUSLA, Garda Síochána and GSOC staff.

GSOC received a complaint which included information that children had been the victims of sexual abuse. We made enquiries with TUSLA in relation to the matter and discovered that TUSLA was fully aware of these allegations. GSOC had no new information which was not already in the possession of TUSLA. Therefore it was decided that there was no need for a formal referral.

A complaint was made to GSOC that a young teenage boy was being harassed by gardaí, having been searched a number of times. Upon assessment, our Child Protection DLP decided that there was nothing to indicate that the child was the victim of physical or emotional abuse and made a decision that no formal referral to TUSLA was necessary. The GSOC case owner was requested to revert back to the DLP if any further concerns were disclosed as the investigation progressed, as the decision could be reviewed.

## 6.2.2 Victims of crime

Directive 2012/29/EU<sup>10</sup> came into effect at the end of 2015, giving, for the first time, a specified set of rights to victims of crime. GSOC participated, throughout 2016, in a working group coordinated by the Department of Justice and Equality to input into the drafting of the legislation to transpose the Directive into law. The Criminal Justice (Victims of Crime) Bill 2016 was published just before year end.

In anticipation of the transposition into Irish law, GSOC continued to work on putting in place systems to provide the information and support required by the Directive. This included:

- Providing a specially created information leaflet to any complainant alleging

that they are a victim of crime, clearly informing them of their rights per the Directive, of what they can expect from GSOC in terms of how their complaint will be dealt with, and of support available to them from other agencies.

- Continuing with the roll-out of assessment procedures to be applied by our Investigations staff to people alleging that they are victims of crime. In particular, we have asked our staff to assess whether a person who has made a criminal allegation to GSOC appears vulnerable to repeat victimisation, intimidation or retaliation (according to a number of specified factors), and/or whether they require any special measures during the investigation, such as specialist interviewing or assistance with communication.
- Inviting speakers from different types of advocacy groups to speak to our staff. We also followed up with these advocacy groups providing clear information about GSOC's service.
- Ensuring we provide "clear and understandable information" to all complainants, not only alleged victims of crime. The Directive prompted us to review our website and other informational materials.
  - o We tendered for a new website in 2016 and work started on its development. It will be delivered in early 2017. A complaint form and the information necessary to understand the complaints process will be available in ten different languages. It will also be fully compliant with Web Content Accessibility Guidelines 2.0 to AA level and will have an intuitive design which makes things easy for people who need to complain.
  - o We also developed a new suite of informational materials, which were printed and put into distribution at the end of 2016. This includes a leaflet to explain how to complain to GSOC; one to explain each of the different ways in which a complaint may be dealt

with by GSOC; and one which provides information specific to victims of crime, as mentioned above.

### **6.3 ENGAGEMENT WITH MEMBERS OF THE GARDA SÍOCHÁNA**

As well as working to provide “*clear and understandable information*” to complainants, in line with our objective of “*full fairness to all persons involved in complaints and investigations*”, GSOC increased its engagement with members of the Garda Síochána in 2016, providing them with clear and understandable information about how GSOC operates. This had also been one of the recommendations made by Judge Clarke, in his report which we received in June 2016 (see section 5).

A GSOC module has now been incorporated into the curriculum of promotion courses in the Garda College for all ranks. In 2016, we delivered customised half-day workshops to nearly 400 newly promoted gardaí:

- Two groups of superintendents and chief superintendents
- Eight groups of inspectors
- Ten groups of sergeants

Depending on the rank concerned, the workshops included information on the different processes of dealing with complaints; on the particularities of conducting investigations under section 94 of the Act; on complaint statistics with discussion about the capacity of line managers to reduce complaints; on the Protocols and practices around shared scenes (in the context of referrals under section 102(1)); and on changes to legislation. We worked through practical scenarios and scheduled in time for Q&A sessions, as well as one-on-one conversations.

The Ombudsman Commission was happy to note that feedback from participants, as forwarded by Garda College, was consistently positive throughout the year. We hope that this activity will help to generate more positivity towards oversight among Garda managers, who have the opportunity to influence rank-and-file gardaí with their actions and guidance. The excellent feedback

from the promotion courses throughout 2016 has resulted in a GSOC module being included in the Probationers’ Training from early 2017.

GSOC also delivered four workshops in 2016 to the new DMR Armed Support Unit (ASU) and one to the national Emergency Response Unit (ERU), with four more of the latter planned for 2017. These sessions have focused on the operational response by GSOC to firearms incidents. Their aim was to let gardaí know what to expect if involved in such an incident, with detailed information on how the Protocols engage; and on evidential, investigative, legal, welfare and other practical considerations. They included a comprehensive, detailed case study of an investigation which followed a shooting by a garda of a man brandishing a sawn-off shotgun, in a bar in Cork in May 2010.

In 2016, we created a booklet of information for gardaí, based on the most frequently asked questions during the sessions at the Garda College. The Garda Síochána has agreed to make this information available to members via their internal portal and we expect this to be implemented in the first half of 2017. We also created a leaflet about investigations following a referral under section 102 of the Act, to inform any gardaí involved in such investigations about what to expect and their rights and obligations. The leaflet was finalised and printed near the end of the year and distribution in the course of such investigations was put in place.

### **6.4 ADMINISTRATIVE IMPROVEMENTS**

GSOC also completed a number of projects to improve efficiency and effectiveness in administration during the course of 2016. These included the following:

- A centralised Document Management System was implemented and rolled out across the majority of the organisation’s business units. This has improved our correspondence handling and internal communication within the organisation
- An external specialist contractor conducted a security review of our ICT systems and their recommendations

were adopted, to improve security. Other improvements made to our ICT infrastructure included increasing the capacity of our internal network and setting up a secondary ICT site and infrastructure, to mitigate risk of loss of HQ facilities.

- Risk management processes were improved, allowing for greater participation from all staff in managing risk.
- Information requests processed under the Data Protection Acts and the Freedom of Information Act were incorporated into the same unit, with a view to improving

internal efficiency and customer service. (See Appendix 6 for volumes of information requests processed in 2016.)

- A project group was set up during the course of the year to prepare our ICT systems and data processes for the implementation of the European General Data Protection Regulation (Regulation (EU) 2016/679), which must be implemented by national governments by May 2018.

## SECTION 7: INFORMING GARDA SÍOCHÁNA POLICY AND POLICING PRACTICE

Some investigations highlighted systemic or management issues. With a view to reducing or eliminating the incidence of similar situations in the future, 36 recommendations in relation to policies and practices, made on foot of investigation findings, were sent to the Garda Commissioner in 2016. 12 of them concerned Crime Investigation, three concerned Custody Records, two Road Traffic Incidents, four Search and 15 Treatment of Detained Persons.

The Ombudsman Commission believes that highlighting systemic or management issues when they arise, and making recommendations

to avoid the recurrence of similar incidents, is an important element of oversight. The Commission believes that there would be a benefit in giving this function a statutory basis and had conversations about this with the Minister for Justice and Equality in the course of 2016. It is something that we hope will be addressed by legislative change in 2017.

Note: Table 5 lists only recommendations transmitted across 2016. However, it includes feedback received in relation to these during the first two months of 2017.

**Table 5:** Recommendations Made to the Garda Síochána in 2016

General subject matter	Specific subject matter	Context	Recommendation(s)	Date issued	Garda Síochána response
Crime Investigation	Seizure of Cash	A public interest investigation was carried out by GSOC into historic allegations of theft of quantities of money seized from a person.	<p>A recommendation was made to the Garda Síochána to formalise the procedures around the seizure of cash and provide clear guidance on what actions a member must follow when coming into possession of quantities of cash, either found, or seized for investigative purposes. The guidelines could include, but should not necessarily be limited to:</p> <ul style="list-style-type: none"> <li>• Immediately notifying a supervisor (level to depend on the quantity of cash).</li> <li>• Counting the cash in the presence of the supervisor and the person from whom it was seized/ found.</li> <li>• Itemising all denominations of cash.</li> <li>• Filling in a form, which should be signed and dated by the member finding/ seizing the cash, the supervisor overseeing the seizure and the person from whom found / seized.</li> <li>• Issuing a receipt to the person from whom the cash is taken, signed by the member finding / seizing the cash and the supervisor overseeing the seizure.</li> </ul>	05/12/2016	Letter received from the Garda Síochána dated 8 December 2016 stating that the issues and recommendations made in the report have prompted a review of procedures around the seizure of cash to be conducted as a priority, under the stewardship of Assistant Commissioner Special Crime Operations.

General subject matter	Specific subject matter	Context	Recommendation(s)	Date issued	Garda Síochána response
Crime Investigation	Record-keeping  Supervision	During an investigation carried out by GSOC concerning the conduct of a Garda investigation into historic sexual abuse allegations, it transpired that the investigating garda recorded no notes of any interactions with the injured parties, witnesses or suspect, nor any record of negative enquiries.  No records were made of any supervisory meetings, to indicate supervision or management of the Garda investigation.	GSOC recommended that: <ul style="list-style-type: none"> <li>• Gardaí fully document all enquiries carried out in the investigation of crime, including negative enquiries and contacts with members of the public in relation to those enquiries. The use of a notebook or investigation diary would enable the member to make direct reference from the document when giving evidence.</li> <li>• Supervisory sergeants be held responsible for checking notebooks and taking appropriate action if proper notes are not being maintained.</li> <li>• Supervisory members be held responsible for conducting regular case review meetings with investigating gardaí and creating a record of the review meeting, particularly in the context of serious crime investigations and in lengthy, protracted or complex cases.</li> </ul>	09/02/2016	No reply has yet been received from the Garda Síochána.
Crime Investigation	Dealing with Youth Offenders	GSOC investigated two separate complaints made by the parents of two different children, allegedly sexually assaulted by the same teenager. The parents complained that gardaí had neglected their duty in relation to the cases. There was a long delay in prosecuting and the suspect sought a judicial review of the charges in the High Court as a result of the delay, arguing that his rights as a child had been infringed. This was upheld and the prosecution was prohibited from proceeding.	GSOC reiterated actions put forward by the Garda Inspectorate in Part 10/5 Offender Management section of their Crime Investigation report and further recommended that: <ul style="list-style-type: none"> <li>• Staffing levels at the Garda Youth Diversion Office be continually assessed to take account of workload.</li> <li>• Divisional Juvenile Liaison Officers report directly to the Director of the Diversion Programme in all matters relevant to the Diversion Programme.</li> <li>• Regulations under section 47 of the Children's Act 2001 be sought from the Minister for Justice and Equality.</li> <li>• Relevant training be provided to members of An Garda Síochána who act as Juvenile Liaison Officers to ensure they can discharge their duties in a proper and effective manner.</li> <li>• A guidance document made available to this investigation, "General guidelines for JLO's when dealing with Youth Sexual Offenders", be updated and become an official Garda policy.</li> <li>• A dedicated file tracking system be employed, with the capacity to track the movement of files and set reminders, to ensure directions issue in a timely manner.</li> <li>• A fast track system be put in place in cases involving serious offences, to allow the prosecuting authorities to carry out their special duty to deal expeditiously with cases against children.</li> <li>• Methods be put in place to clarify responsibilities and facilitate communications between colleagues in relation to cases.</li> </ul>	21/04/2016	No feedback received regarding any of the specific actions recommended. However, following publication of the report, at a public meeting of the Policing Authority the Garda Commissioner described as "unacceptable" the Garda failures that led to this outcome. She said that safeguards have been put in place to prevent a repeat of the mistakes, and to identify and fix any failings as soon as possible.

General subject matter	Specific subject matter	Context	Recommendation(s)	Date issued	Garda Síochána response
Custody Records	Seizure of Property	A criminal investigation carried out by GSOC indicated that property was lawfully retained by a garda. However, the custody record did not record that a phone was seized or, indeed that any property was taken whilst in custody, nor was there any mention of any items being returned.	GSOC recommended that: <ul style="list-style-type: none"> <li>All property taken from a prisoner is detailed within the custody record.</li> <li>Comprehensive reporting and documentation of any use of force to be made, both by the members concerned and by the member in charge upon arrival of the person in custody. Including use of force on the custody record could assist a member in charge in the conduct of any risk assessment on a prisoner.</li> </ul>	02/02/2016	Acknowledgement letter received from the Garda Síochána dated 15/02/2016 stating issues raised in correspondence have been brought to the attention of Divisional Officers Garda College and DMR North Central.
	Use of Force	Furthermore the level of detail in the custody record appeared not to be consistent with the terms of Garda Directive 58/08, in terms of recording use of force.	<ul style="list-style-type: none"> <li>If a prisoner refuses to sign for his/her rights this should be recorded on the custody record.</li> </ul>		
	Signing of Rights	In the course of the same investigation, it was alleged that a detainee was not informed of their rights whilst in custody and that when the detainee refused to sign to say that they were informed of their rights, this was not recorded.			
Road Traffic Incidents		An investigation was undertaken following a referral, made after a high speed pursuit resulted in a vehicle colliding with an embankment, sustaining serious damage.	GSOC recommended that: <ul style="list-style-type: none"> <li>Members of the Garda Síochána be instructed that photographs of the collision scene and the vehicle involved should be taken, as a minimum standard of investigation after an incident of this nature.</li> </ul>	20/06/2016	Letter received from the Garda Síochána dated 28/10/2016, stating that the Chief Superintendent Legal and Compliance has advised that a reminder will issue by way of corporate notice on the Garda Portal, informing members of their obligations relating to this matter.
	Preservation of Scene	During the investigation GSOC investigators requested photographs of the vehicle to assess the damage caused by the collision and were informed that no photographs were taken of the scene or vehicle involved. We were also informed that the vehicle was now destroyed.	<ul style="list-style-type: none"> <li>An early medical assessment by a doctor be conducted on any person detained in Garda custody who suffered injury following a high speed collision; and that in the event of the immediate unavailability of a doctor, the prisoner should be immediately removed to a hospital for medical assessment/treatment.</li> </ul>		
	Treatment of Detained Persons	The investigation established that gardaí arrested the driver and transported him to a Garda Station. CCTV evidence showed the main with a fresh cut to his head. He was seen by a doctor several hours later and, on the doctor's recommendation, was taken by ambulance to hospital under Garda escort.			

General subject matter	Specific subject matter	Context	Recommendation(s)	Date issued	Garda Síochána response
Search	Timing of Search	A man complained to GSOC that gardaí executed a search warrant at 03:15 hrs in the morning, disturbing his family. GSOC's investigation showed that gardaí had received a report of stolen alloy wheels, which the owner had identified on another person's car. Gardaí tracked down the address of this person, obtained a search warrant, went to the address at 03:15 hrs in the morning and seized the car outside the property, then woke the inhabitants up to execute the warrant.	While in some cases it may be necessary to execute a search warrant at this hour, GSOC considered the timing of this search was not necessary or reasonable in the circumstances. We highlighted the recommendations of the Law Reform Commission regarding the proposed Code of Practice for executing search warrants, which includes a requirement that a search warrant is executed at a reasonable time. It was suggested that the Garda Síochána adopt this Code of Practice as a best practice measure in advance of the proposed legislative changes being enacted, to ensure that complaints of this nature do not arise again.	19/04/2016	Letter received dated 26/4/2016 stating issues raised in correspondence have been brought to the attention of the members concerned
Search	Documentation and Record-keeping	GSOC received a complaint from a man in relation to his house being searched. He stated that he was shown no warrant and, although he asked repeatedly, he was not told whether a warrant had been obtained. The man also stated that gardaí told him to write down details himself of what they had taken. The investigation showed that a warrant was in fact issued for this search, so the complaint could possibly have been avoided by giving a copy of this to the man.	<p>GSOC recommended:</p> <ul style="list-style-type: none"> <li>• Provision of a copy of a search warrant to the occupier.</li> <li>• Adoption of the use of search logs across the Garda Síochána.</li> <li>• Issue of receipts for property seized during a search.</li> </ul> <p>We highlighted that the first point about search logs had been the subject of recommendations following previous investigations in December 2013, July 2014 and March 2015.</p> <p>The last two points had been recommended by the Law Reform Commission in its December 2015 report on Search Warrants and Bench Warrants.</p>	21/06/2016	In August 2014, following previous recommendations, the former Chief Superintendent Internal Affairs advised that a revised instruction by way of HQ Directive had been prepared and forwarded to the Commissioner for approval, and that the Directive would include search log requirements. We have not been able to find any record of a Directive having been enacted, nor have we had an update in relation to it from the Garda Síochána.

General subject matter	Specific subject matter	Context	Recommendation(s)	Date issued	Garda Síochána response
Treatment of Detained Persons	Notebooks, Custody Records  Custody Facilities and Equipment  First Aid	GSOC conducted an investigation following a referral received from the Garda Síochána, following the arrest and detention of a person who later died. Our investigators were unable to establish an accurate timeline of events leading up to the fatality because gardaí had not made a contemporaneous record of the time of arrest and instead estimated the time; and CCTV at the Garda Station was incorrect.  The investigation revealed that the gardaí who dealt with the person who died had no specific training. The person's family questioned whether they should have being brought to a hospital for immediate medical attention, rather than being brought to a Garda Station.	GSOC recommended that the Garda Síochána: <ul style="list-style-type: none"> <li>Impress upon all members the need to accurately record timings, both in notebooks and custody records.</li> <li>Consider installing a digital clock in all station custody areas.</li> <li>Periodically check Garda Stations' CCTV systems and ensure timings are accurate and synchronised with station digital clock.</li> <li>Consider amending the guidance to the Custody Regulations, asking that additional consideration should be given to obtaining a formal medical opinion as to whether treatment is required, where the person has been arrested solely for Section 4 of the Criminal Justice (Public Order) Act 1994 and Section 25 of the Licensing (Ireland) Act 1874.</li> <li>Give all gardaí refresher first aid training, and specific training in dealing with heavily intoxicated people.</li> </ul> <p>Previous investigations completed by GSOC had resulted in similar recommendations in April 2011, February 2013 and May 2013 respectively.</p>	30/03/2016	Letter dated 27/05/2016 acknowledging that the recommendations made in the report have been raised as part of previous investigations and stating that they are currently receiving attention.
Treatment of Detained Persons	Record-keeping  Custody facilities and equipment	A public interest inquiry carried out by GSOC, following an anonymous complaint regarding the suicide attempt of a young offender while in Garda custody, showed that the gardaí who found the juvenile failed to flag the incident with line management and the matter went undetected by Garda management.	GSOC recommended that the Garda Commissioner give consideration to issuing an instruction to all Garda members directing them to: <ul style="list-style-type: none"> <li>Record incidents of this nature on the PULSE system, or in some other format readily available to any member of the Garda Síochána who may have to deal with the detention of the same person at a future date (to assist with risk assessment).</li> <li>Immediately inform their supervisor of any effort to self-harm by a person in contact with the Garda Síochána.</li> </ul> <p>GSOC also recommended that cells where juveniles are routinely detained should be monitored by video and audio recording equipment; and that it may be prudent to review the policy of detaining juveniles in stations which do not have CCTV installed.</p>	13/05/2016	Letter dated 31/05/2016 stating correspondence forwarded for consideration to Offices of Chief Superintendent Crime Policy and Administration and Chief Superintendent Strategic Transformation, where a Custody Management Services initiative is currently in progress.
Treatment of Detained Persons	Medical Examination	GSOC conducted an investigation following referral, after a death in custody.	GSOC recommended that the Garda Síochána consider obtaining legal advice about whether the inability to perform an examination, as defined under section 2(1) of the Mental Health Act 2001, is tantamount to a refusal of an application, thus requiring the immediate release of the person from custody, or whether custody can be prolonged until such a time as the examination can be performed. GSOC also recommended that:	05/12/2016	Letter dated 08/12/16 stating that the recommendations have been forwarded to Chief Superintendent, Strategic Transformation Office, for consideration and any action deemed appropriate.

General subject matter	Specific subject matter	Context	Recommendation(s)	Date issued	Garda Síochána response
			<ul style="list-style-type: none"> <li>• The post of a dedicated Custody Officer should be created, to be performed by an experienced member, with a specific training course.</li> <li>• All Garda custody areas and public office areas be supplied with a defibrillator.</li> <li>• All Garda members should receive First Aid training.</li> <li>• All Garda members should receive training on section 12 of the Mental Health Act 2001. (It was suggested that the Garda Síochána could liaise with the Mental Health Commission to make the e-learning tools on the Act which they have created readily accessible to Garda members.) In particular, all gardaí should be reminded of the legal requirement to complete statutory forms when taking persons into custody under the provisions of section 12 of the Mental Health Act 2001; and of the requirement to properly document the relevant circumstances so that they can properly inform medical practitioners of previous applications made for involuntary detention under the Mental Health Act.</li> <li>• Guidance to Garda members be reviewed with consideration given to including the following: <ul style="list-style-type: none"> <li>o When a person in the care or custody of gardaí at a Garda Station is unable to stand or walk unaided, an ambulance and/or doctor should be contacted immediately.</li> <li>o When a doctor attends a Garda Station to conduct an examination under section 12 of the Mental Health Act 2001, gardaí should obtain confirmation from the doctor whether an examination as defined under the Act has actually been conducted or not.</li> <li>o When requesting the attendance of a doctor to perform an examination of a person taken into custody under section 12 of the Mental Health Act 2001, the doctor should be informed if there is a suspicion that the person is also intoxicated and/ or suffering from any injury. The information supplied to a doctor should be recorded in the custody record.</li> <li>o When a person is seen by a doctor whilst in custody, a copy of the doctor's notes should be attached to the custody record, and any instructions given by the doctor recorded in the custody record.</li> <li>o Where a doctor has recommended a course of action, and gardaí are unable to implement it, gardaí should contact the doctor again and seek further advice.</li> </ul> </li> </ul>		

General subject matter	Specific subject matter	Context	Recommendation(s)	Date issued	Garda Síochána response
Treatment of Detained Persons	Medical Examination	In the course of a criminal investigation into an allegation of sexual assault made during Garda custody, it transpired that gardaí made no record of the complaint and took no action in relation to it. The detainee was examined by a medical professional a number of days later.	GSOC recommended to impress upon members the importance of ensuring that an immediate medical examination be conducted on any person who makes an allegation of sexual assault whilst in Garda custody. An immediate medical examination will ensure that all available evidence is collected, to assist with proving or disproving any such allegations made against members of the Garda Síochána, in the interest of public confidence.	08/10/2016	No response received.
Treatment of Detained Persons	Searches while in Garda custody	<p>Following a referral under section 102(1), an investigation was conducted into an alleged sexual assault during an intimate drug search. (The allegation was later withdrawn.)</p> <p>GSOC's investigation found no evidence of an offence being committed by the Garda member. The investigation did find that it was not unusual for a female Garda to search a female prisoner on a one-on-one basis because the availability of another female Garda member to assist varied according to the time of the day. Intimate searches of prisoners alone appears to be a regular occurrence and an accepted practice. If a prisoner was compliant and did not object to a search, including removing underclothing, then it is managed by one Garda.</p>	<p>GSOC highlighted to the Garda Síochána that searching alone, even where there is video and audio recording, presents the following risks to Garda members:</p> <ul style="list-style-type: none"> <li>• A risk to their safety should the prisoner become non-compliant.</li> <li>• No evidential corroboration in relation to items found during the search.</li> <li>• Member is vulnerable to vexatious allegations in relation to their own conduct during the search.</li> </ul> <p>It was recommended that this accepted practice be reviewed with a view to changing policy, practice and procedure in relation to it. Comparisons were provided to other jurisdictions where two police officers are required to conduct such searches.</p>	06/07/2016	Letter dated 14/07/2016 which acknowledged receipt of correspondence.

## SECTION 8: STAFFING

At 31 December 2016, the Garda Síochána Ombudsman Commission had 77 staff of which 21 were employed in its Administration Directorate and 56 in the Operations Directorate. The organisation also had 10 vacancies to be filled. In addition, GSOC had three Commissioners, a Superintendent seconded from An Garda Síochána and two ICT contractors.

The term of the outgoing Ombudsman Commission expired in December 2016. Ms Justice Mary Ellen Ring of the High Court, who had already been at the head of the organisation for over a year, was nominated by government for re-appointment as Chairperson for a new term. An open competition process was run by the Public Appointments Service (PAS) and, following this process, Dr Kieran FitzGerald and Mr Mark Toland were nominated to join Judge Ring as Commissioners. The Houses of the Oireachtas approved the nominations and the three members of the new Garda Síochána Ombudsman Commission were appointed on 12 December 2016.

Dr FitzGerald has been with GSOC since its establishment and has played a significant role in its development over this first decade, serving first as Head of Communications and, since 2011, as Commissioner. Mr Toland brings to GSOC four years of experience in the area of police oversight,

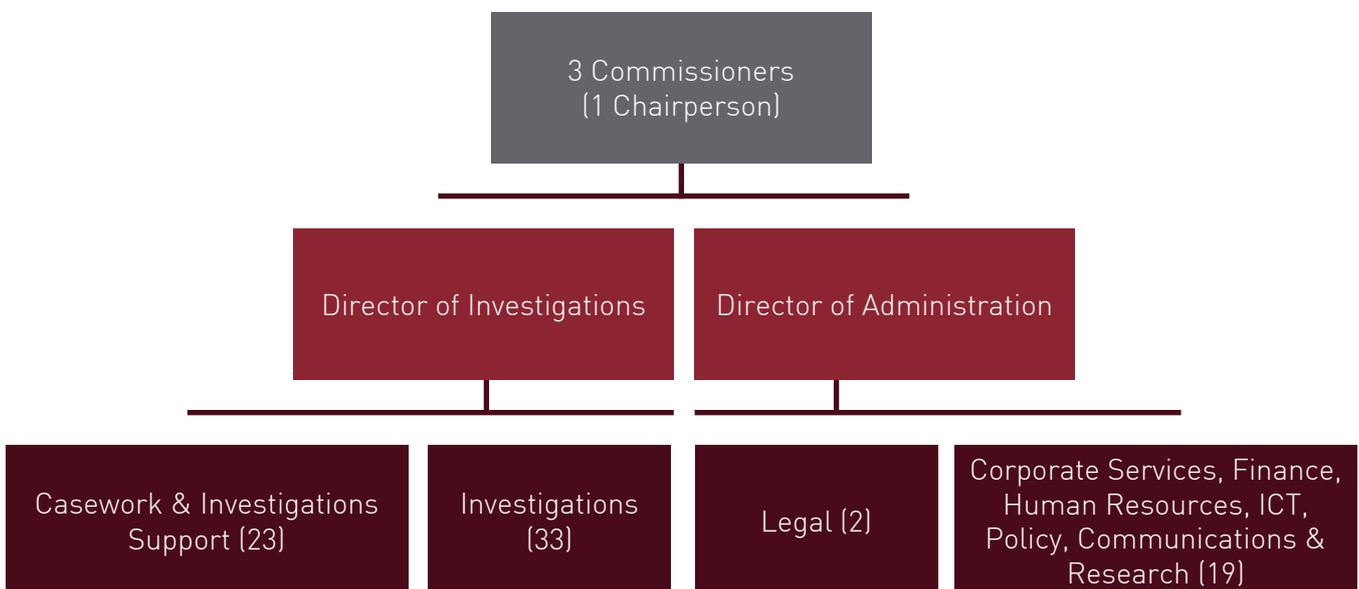
from his role as Deputy Chief Inspector of the Garda Inspectorate, as well as a wealth of policing experience, from a distinguished 30 year career with the Metropolitan Police Service in the UK.

A number of other recruitment campaigns were successfully conducted by PAS on behalf of GSOC in 2016 to fill vacancies in key positions, including Director of Investigations, Senior Legal Advisor and Analyst. New staff were recruited from open PAS panels to fill vacancies within Investigations and Casework. A number of existing GSOC staff were also promoted during 2016, following internal competitions, to fill the position of Head of Policy, as well as administrative vacancies in the organisation.

Appendix 5 details staff training and development undertaken in 2016, listing the conferences, courses and workshops attended by staff, as well as further education pursued with the assistance of the Refund of Fees Scheme.

During 2016, we established policy and procedures for GSOC staff to make disclosures under the Protected Disclosures Act 2014. These were communicated to all staff during a training day and via our intranet. No internal disclosures were received in 2016, nor had any been received during 2014 or 2015.

**Chart 9: Human Resource Allocation and Organisation Structure**



## CONCLUSION

The Ombudsman Commission saw 2016 as a year to move towards where they want GSOC to be at its tenth anniversary in May 2017: an organisation which has embraced what it has learned over its first decade of operation and is ready to change and improve, facing its second decade. We believe a lot was achieved during the year to move towards this goal.

Some of the achievements of GSOC and its staff during 2016 are:

- We commenced a record number of investigations in the public interest.
- We commenced and completed the bulk of the work on examinations of Garda practice, policy and procedure into two important matters.
- We engaged with the first inquiry under section 109 of the Act and took action on recommendations made following this inquiry.
- We made progress on developing bespoke processes and procedures to effectively fulfil our responsibilities related to the Protected Disclosures Act 2014.
- We published a comprehensive set of materials, providing clear and understandable information for members of the public and of the Garda Síochána.
- We delivered information workshops to record numbers of gardaí, in collaboration with the Garda College.
- We built on our relationships with key stakeholders, including the Department of Justice, the new Policing Authority and the Garda Inspectorate, in order to deliver more cohesive oversight together.
- We made submissions to, and had constructive conversations with, both the Joint Oireachtas Committee and the Minister for Justice and Equality, activity which we firmly believe will help to deliver the fundamental changes needed to make the oversight system work more effectively.

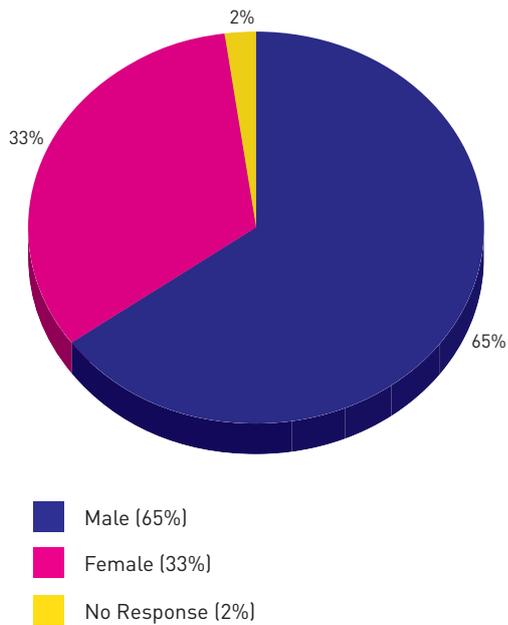
Alongside all of the above activity, we continued to improve our efficiency in dealing with complaints and investigations.

We look towards 2017 with great optimism.

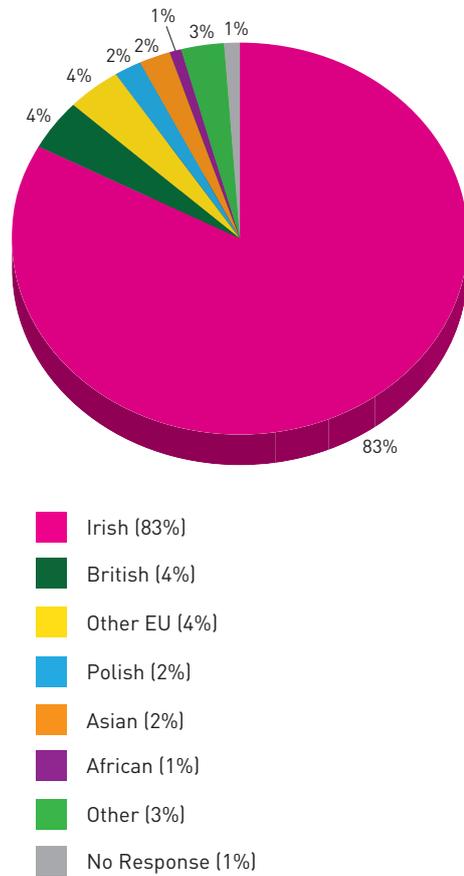
# APPENDIX 1: PROFILE OF PEOPLE WHO COMPLAINED IN 2016

The below charts illustrate the profile of complainants to GSOC in 2016. This is based on a survey which is distributed to all complainants when their complaint is first opened. 27% of complainants (506) responded in 2016. Responses are anonymous.

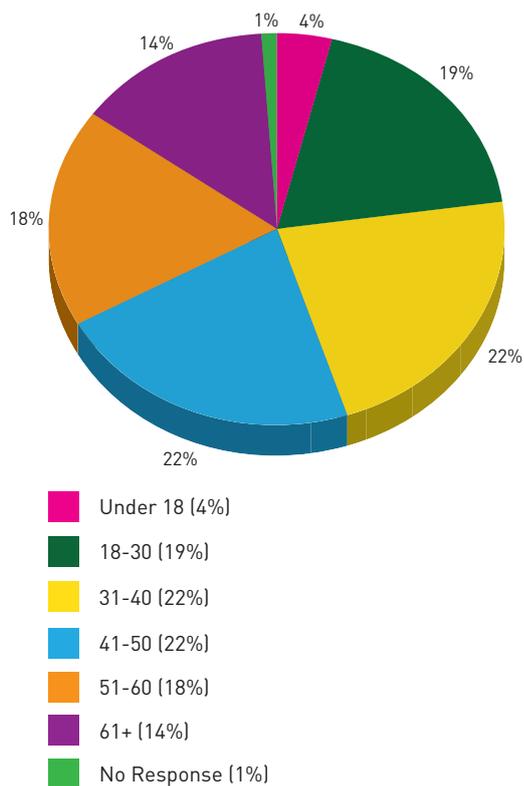
**Chart 10: Gender**



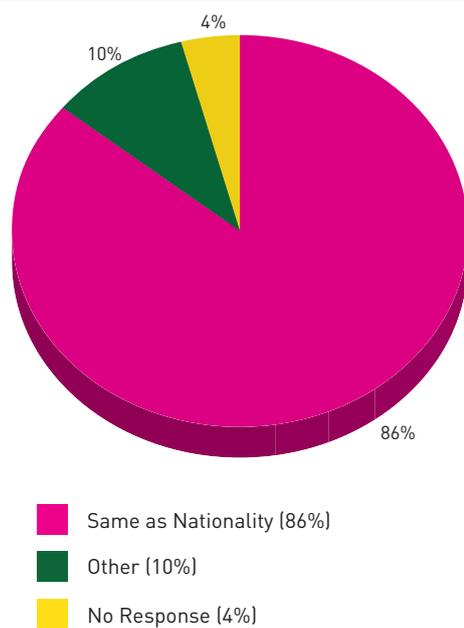
**Chart 12: Nationality**



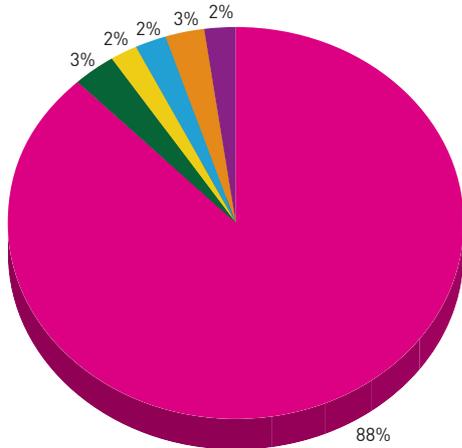
**Chart 11: Age**



**Chart 13: Country of birth**

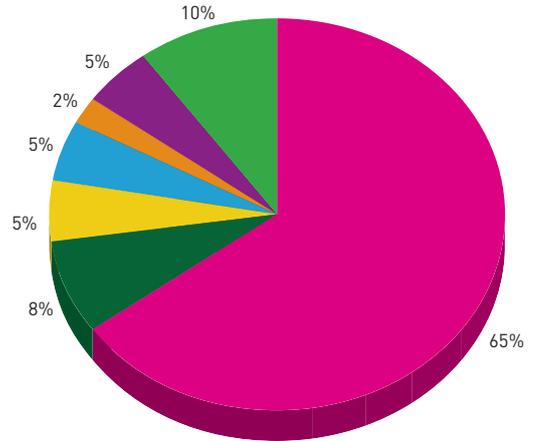


**Chart 14: Ethnicity**



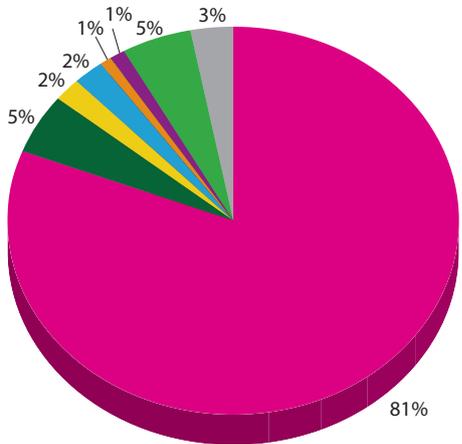
- White (88%)
- Traveller (3%)
- Black (2%)
- Asian (2%)
- Other (3%)
- No Response (2%)

**Chart 16: Disability**



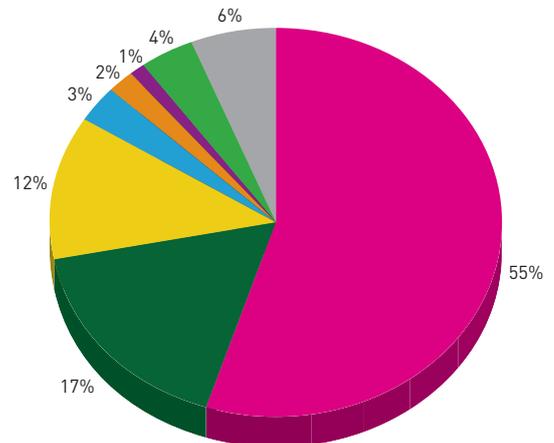
- None (65%)
- Several Types (8%)
- Physical (5%)
- Psychological (5%)
- Intellectual (2%)
- Other (5%)
- No Response (10%)

**Chart 15: Language**



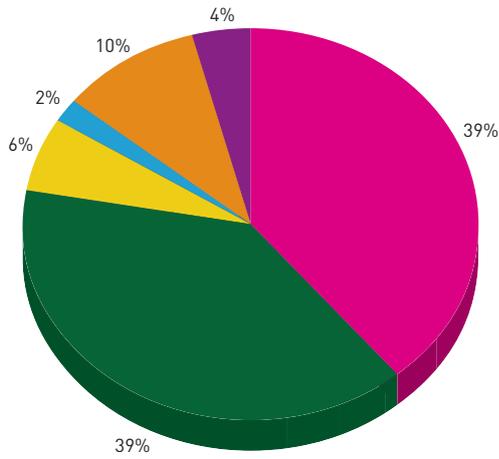
- English (81%)
- Irish (5%)
- Polish (2%)
- Russian (2%)
- Romanian (1%)
- French (1%)
- Other (5%)
- No Response (3%)

**Chart 17: Religion**



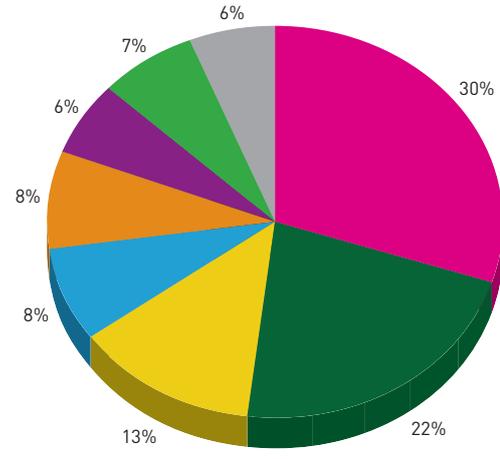
- Catholic (55%)
- Christian (17%)
- None (12%)
- Muslim (3%)
- Orthodox (2%)
- Buddhist (1%)
- Other (4%)
- No Response (6%)

**Chart 18: Housing**



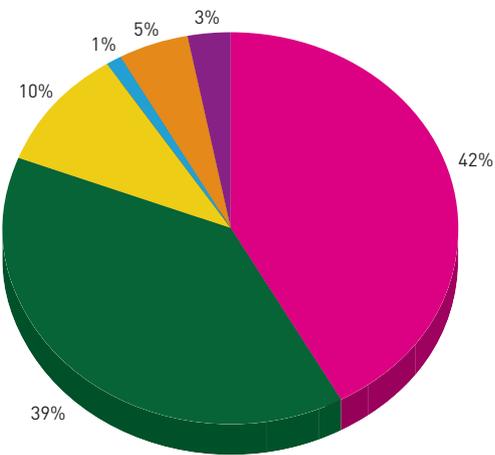
- Owner (39%)
- Renting (39%)
- Guest (6%)
- Homeless (2%)
- Other (10%)
- No Response (4%)

**Chart 20: Employment**



- Employed (30%)
- Unemployed (22%)
- Self-Employed (13%)
- Retired (8%)
- Unavailable (8%)
- Trainee/Student (6%)
- Other (7%)
- No Response (6%)

**Chart 19: Highest Level of Education**

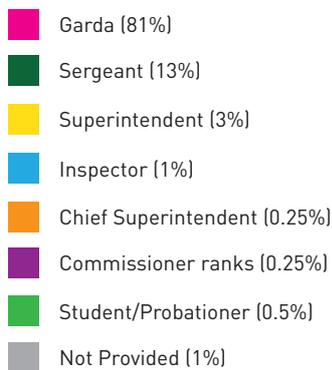
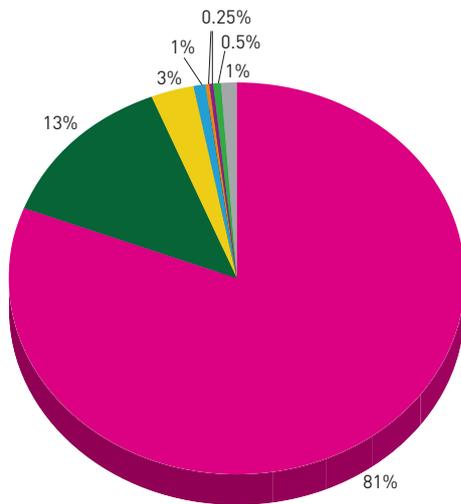


- Third Level (42%)
- Secondary (39%)
- Primary (10%)
- No Formal (1%)
- Other (5%)
- No Response (3%)

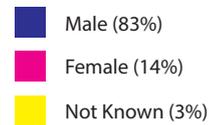
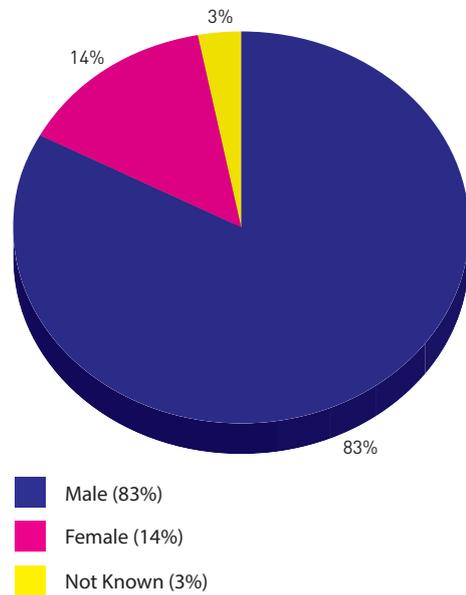
## APPENDIX 2: PROFILE OF GARDAÍ COMPLAINED OF IN 2016

The below charts show the profile of gardaí complained of in allegations which were admitted in 2016, where identities of gardaí complained of where known.

**Chart 21:** Rank of members of the Garda Síochána in allegations admitted in 2016



**Chart 22:** Gender of members of the Garda Síochána in allegations admitted in 2016



## APPENDIX 3: LEGAL ACTIVITY IN 2016, FOLLOWING CRIMINAL INVESTIGATIONS

### CASES REFERRED TO THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP) IN 2016

Five cases were referred to the DPP. These included investigations resulting from complaints and from referrals from the Garda Síochána.

- The DPP directed prosecution in one of the cases.
- The DPP directed no prosecution in two of the cases.
- Two were awaiting direction at the end of 2016.

### CASES BEFORE THE CRIMINAL COURTS IN 2016 ON FOOT OF GSOC INVESTIGATIONS

Five cases, involving three gardaí and four others, came before the courts in 2016.

- One case was withdrawn by the DPP.
- Four trials have concluded. Their outcomes were as follows:
  - o Judicial review proceedings instituted against GSOC by two separate gardaí came to court in 2016 and were concluded, with decisions that GSOC's investigations into each case could continue.

- o One garda and one member of the public were convicted of an offence contrary to section 110 of the Garda Síochána Act 2005 – knowingly providing false and misleading information to GSOC. Both are appealing their convictions.
- o The DPP entered a “nolle prosequi” during the prosecution of a further two members of the public for an offence contrary to section 110 of the Garda Síochána Act 2005 – that is, they discontinued the prosecution.

### TRIALS PENDING

At the end of 2016, four matters on foot of GSOC investigations remained before the courts. These related to three members of the Garda Síochána and one member of the public.

## APPENDIX 4: EXPENDITURE IN 2016

The table below shows a considerable underspend by GSOC in 2016. At the beginning of 2015, GSOC was allocated an additional €1 million to undertake an investigation into allegations of wrongful cancellation of Fixed Charge Penalty Notices. A first tender for investigation support was supported and facilitated by the Office of Government Procurement in 2015, with no suitable responses. A second, EU-wide tender was undertaken in 2016 and a highest scoring tender was identified, but GSOC had not awarded the tender, for various reasons, at end 2016. As a result, the unspent allocation remained in 2016 budget.

With regard to general expenditure, GSOC had continuing engagement with the O'Higgins Commission and the Clarke Inquiry (under section 109 of the Garda Síochána Act 2005) during the year. Both required GSOC to obtain legal advice and for the attendance of witnesses. GSOC also made significant investments in ICT in 2016, with the introduction of a Sharepoint intranet and document management system and improvements to our case management system. Notwithstanding this, GSOC underspent by just under €160,000 (1.7% of the overall budget) in 2016.

**Table 6:** Expenditure in 2016

Category	Original Budget	Expenditure	
Salaries, Wages & Allowances	€6,242,000	<b>A01 - Pay &amp; Allowances</b>	<b>€5,026,035</b>
Non-Pay	€3,304,000	A02 - Travel & Subsistence	€88,767
		A03 - Incidental Expenses	€691,520
		A04 - Postal & Telecommunication Services	€86,936
		A05 - Office Machinery & Other Office Supplies	€964,615
		A06 - Office & Premises Expenses	€1,518,616
		A07 - Consultancy	€0
		A08 - Research Expenditure	€9,840
Total Budget Allocation 2016	€9,546,000	<b>Total Pay &amp; Non-pay Expenditure in 2016</b>	<b>€8,386,329</b>
<b>TOTAL UNDERSPEND IN 2016:</b>			<b>€1,159,671</b>

### Notes:

- Figures quoted have not yet been audited by the Comptroller and Auditor General.
- The table above does not include Appropriation in Aid, which was €273,037 in 2016.

## APPENDIX 5: STAFF TRAINING AND DEVELOPMENT IN 2016

### CONFERENCES ATTENDED

- Annual In-House and Public Sector Conference – The Law Society
- Defence Forces Information Day – Defence Forces
- EDiscovery Conference – La Touche Training
- Freedom of Information Annual Conference – Allone Ltd.
- Irish Ombudsman Staff Conference – Ombudsman Association
- Legal practice and challenge of Data Protection – Law Society of Ireland
- Mediator’s Institute of Ireland Annual Conference – Mediators’ Institute of Ireland
- National Discussion Day on Juvenile Justice – University College Cork
- Northern Ireland Ombudsman and Northern Ireland Human Rights Commission Conference – Office of the Northern Ireland Ombudsman
- Silver Counter Corruption Conference – Association of Chief Police Officers

### COURSES AND WORKSHOPS ATTENDED

- Certificate in Data Protection – Law Society of Ireland
- Certified Mediation Training – Hibernian Training
- Code of Ethics and Practice Training – Mediators’ Institute of Ireland
- Conflict Management – Central Law Training
- Courtroom Skills – GSOC internal training
- Data, Information & the Law Forum – Griffith College
- Defibrillator Training – Medivent
- EProbation Training – Department of Public Expenditure and Reform
- European Law Enforcement Analysts’ Seminar – Middlesex University
- Facilities Management – Advanced Workplace Solutions
- Family Liaison Co Coordinator Training – GSOC internal training
- Financial Reporting – Institute of Public Administration
- Freedom of Information Training – Arcline Training Ltd
- Improving Juvenile Justice – University College Cork
- Internal Appeals Officer Training – Department of Public Expenditure and Reform
- Introduction to Data Protection – Institute for Public Administration
- Investigative Interview Training (Level 1) – An Garda Síochána
- Mental Health Awareness Training – Police Ombudsman for Northern Ireland (PONI)
- Regulatory Investigations and Prosecutions Update 2016 – Central Law Training
- Researcher Course – Research and Intelligence Support Centre
- Working with Victim Support Agencies – GSOC internal training

### FURTHER EDUCATION PURSUED WITH THE ASSISTANCE OF THE REFUND OF FEES SCHEME

- Certificate in Public Procurement – Institute of Public Administration
- Diploma in Legal Studies and Practice – Griffith College
- Doctorate in Governance – Institute of Public Administration & University College Dublin
- International Masters in Conflict Resolution – United Nations Institute for Training (distance learning)
- Masters in Criminology – Dublin Institute of Technology
- PhD Forensic Computing and Cybercrime Investigation – University College Dublin

## APPENDIX 6: INFORMATION REQUESTS PROCESSED IN 2016

During 2016, the Garda Síochána Ombudsman Commission dealt with over 600 data and information requests. These came from gardaí, academics and students, government representatives, the media and members of the public. They came in the form of requests under the Data Protection Acts 1988 and 2003 or the Freedom of Information Act 2014, or simply via e-mail, phone call or letter.

In addition to the above activity, there was ongoing engagement throughout 2016 with our major stakeholders, including the Department of Justice and Equality, the Garda Síochána, the Policing Authority, the Garda Inspectorate, other oversight agencies and Ombudsman bodies, public information and support agencies and others.

**Table 7:** Types and Volumes of Information Requests Processed in 2016

Request Type	Volume
Requests under the Data Protection Acts 1988 and 2003	64
Requests under the Freedom of Information Act 2014	31
Requests from the media	308
Requests from members of the public and others	184
Representations from members of the Oireachtas	12
Submissions in response to Parliamentary Questions	20
<b>TOTAL INFORMATION REQUESTS</b>	<b>619</b>





Garda  
**Ombudsman**  
INQUIRY INDEPENDENCE IMPARTIALITY

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