



REPORT FOLLOWING A PUBLIC INTEREST INVESTIGATION INTO THE ARREST OF A HOMELESS MAN ON HENRY STREET DUBLIN, IN MARCH 2015

1. INTRODUCTION

On the afternoon of Friday 13 March 2015, a homeless man was arrested on Henry Street, Dublin. The incident was recorded by a member of the public and circulated on social media. The video went viral and was viewed widely, generating disquiet among the public, some of whom believed the garda concerned had used excessive force. A public interest investigation was opened¹ with the objective of restoring public confidence by establishing the facts of the incident. This report summarises the investigation and its conclusions.

2. SEQUENCE OF EVENTS ESTABLISHED

2.1 On Friday 13 March 2015, a 34 year old man, who was homeless, spent his morning in the vicinity of Henry Street, Dublin 1. He visited Tesco on Parnell Street on a number of occasions, where he purchased at least five bottles of wine. He drank the wine in a laneway close to Parnell Street.

2.2 At 15:20 hours on 13 March 2015, a garda from Store Street Garda Station, was on his own on uniform foot patrol in his high visibility garda jacket. He approached the man described above on Henry Street, near the GPO building and issued a direction to him under s.8 of the Criminal Justice (Public Order) Act to move on, as he was intoxicated and slouched against the shutters of a shop. The garda did not know the name of the man but was familiar with him, largely because of his height (6'5") and conversations with other gardaí. Following the direction to leave the area, the man got up and gathered his belongings before making off, and the garda continued on his patrol.

¹ pursuant to section 102 (4) of the Garda Síochána Act 2005, which states:

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.

2.3 At 15:25 hours, he was seen on CCTV staggering and appearing to be very intoxicated, loitering around the entrance to an empty shop on Henry Street. It is reported that he had previously slept in the same shop entrance on a number of occasions. The empty shop unit is close to the Spire on O'Connell Street and, at the time, the area was busy with passing shoppers and tourists as it was the weekend prior to St Patrick's Day.

2.4 Shortly before 15:30 hours, the same garda approached the man for a second time outside the empty shop unit, where he had covered himself with a sleeping bag. The garda reminded the man of the direction to leave, as previously issued to him. The garda states that the man became verbally abusive to him. CCTV showed the garda standing beside the man for a few minutes, with the man making no effort to stand up or leave, as directed. CCTV showed the man waving his arms about.

2.5 At 15:30 hours, the garda arrested the man for being drunk, contrary to s.4 of the Criminal Justice (Public Order) Act 1994. When the garda reached for his handcuffs, the man drew his hand up across his chest. The garda, who said that he feared because of this movement that he was going to be assaulted, took his incapacitant spray from his holster and warned the man not to assault him. However, a moment later, the man grabbed the spray canister and pulled it towards himself on the ground. The incapacitant spray canister had been attached to the garda's belt by a safety lanyard and, during this struggle, the lanyard was ripped away from the garda's belt. The garda then deployed his incapacitant spray at the man, which he reported had minimal effect, and attempts were made to kick out and punch at the garda. He sprayed the man for a second time and called for assistance using his radio.

2.6 The above account provided by the garda was supported by CCTV, which did indeed show the man reaching out and grabbing the incapacitant spray and making an effort to punch the garda. The man himself had no real recollection of what occurred, owing to his level of intoxication.

2.7 The garda then handcuffed the man, with the handcuffs applied to the front, and waited for assistance. Someone can be seen on CCTV approaching the incident and holding out a mobile phone or similar device. It is assessed this person was the college student who put his recording of the incident on social media.

2.8 The garda can be seen on the above recording to place his foot on the man's leg while he is lying on the ground, prior to the arrival of other Garda members. During these moments, a small crowd gathered around the incident and, whilst some of the crowd shouted at the garda, things were peaceful generally.

2.9 The garda was assisted by other garda members who arrived at the scene and took the man to Store Street Garda Station, where he was detained and brought to court the following morning on a bench warrant.

3. STEPS UNDERTAKEN DURING THE PUBLIC INTEREST INVESTIGATION

3.1 On 18 March 2015, a public interest investigation was opened to establish the facts of the incident. It followed the receipt of 17 queries to GSOC by members of the public who had watched the video clip on social media and were concerned about the possibility of assault and excessive force being used, and considerable media coverage expressing concern about the incident.

3.2 Enquiries were made with the Garda Síochána and various reports were provided to GSOC, as well as the incapacitant spray canister which had been handed over by the garda concerned, following the incident. The custody record indicated that the man arrived at Store Street Garda Station at 15:52 hours and was very drunk and aggressive. A slight bruise was noted on the custody record under his left eye. There was a bench warrant issued, which resulted in the man being kept in custody to Court 2 at the Criminal Courts of Justice the following morning.

3.3 Enquiries were made by GSOC investigators to trace and speak to any witness and obtain any CCTV material. Business premises on Henry Street were visited by GSOC and a small number of witnesses were identified, who provided accounts. The accounts of staff at the businesses vary, and none of them were close enough to witness the incapacitant spray being used. One witness, working on the day, stated that he saw the garda being punched by the homeless man. On the other hand, some of the witnesses thought the treatment by the garda concerned, and/or the garda members who arrived to the scene to assist in the arrest, to be heavy-handed.

3.4 CCTV from various business premises and from the street was obtained. Of particular significance was footage from a CCTV camera in the vacant shop unit at Unit 1, GPO Buildings, Henry Street, scene of the incident. GSOC investigators contacted the letting agent for the shop, who allowed access to the building and the CCTV was downloaded from a hard-drive. The CCTV material provided comprehensive coverage of the incident and largely supported the account of the garda concerned. The picture quality of the CCTV images was not sharp enough, however, to identify the actual incapacitant spray leaving the spray canister, when it was deployed by the garda.

3.5 On 20 March 2015, the man concerned was interviewed by GSOC staff in the company of two advocates from Focus Ireland and the Father Peter McVerry homeless charity. An interpreter was used as the man had limited English. His memory was poor and he could not remember anything of note concerning the incident, due to his heavy state of intoxication at the time. He made no complaint against Gardaí as a result and reported no physical injuries, other than having a swollen left hand and wrist, but could not explain how it had occurred. He had been taken to the Mater Hospital from the Criminal Courts of Justice on 14 March 2015 after suffering an epileptic type seizure.

3.6 On 30 March 2015, the garda concerned attended GSOC and provided a witness account. He admitted being the garda on the video clip circulated on social media and denied his actions were anything other than proportionate and professional. He produced his incapacitant spray holster and safety lanyard, which had been damaged after being grabbed during the incident. The garda said that he had feared being assaulted and had issued a warning prior to the incapacitant spray being deployed. He stated that the man concerned kicked out and punched in his direction after the first use of the incapacitant spray and continued to strike him in the ankle with his knee. The garda said that he sprayed him a second time and shouted "spray, spray, spray".

3.7 The garda denied using his incapacitant spray on the man after he was restrained by handcuffs. The garda had no physical injuries from the incident.

3.8 The video clip taken by the student and uploaded to social media appeared to suggest that incapacitant spray was used on the man after he was handcuffed. On 16 April 2015, he attended GSOC and provided a witness statement, as well as handing over his mobile phone to GSOC, in order for the video clip of the incident concerned to be analysed. The student believed he saw the garda 'pepper spray' the man, who he claimed was not being aggressive, and was handcuffed and on the ground at the time. He pointed out the specific part on the video clip, at around 24 to 27 seconds from the start, where he believed the garda had used his spray. He said that, after the incident, he had uploaded the video clip to his Facebook page as he felt angry and upset at what he thought was excessive force used by the garda concerned on the homeless male.

3.11 On 15 April 2015, additional material was received by GSOC from the Garda Síochána, which included CCTV material from a camera on Henry Street, at the junction with O'Connell Street. The camera was facing in the direction of the GPO Building at the start of the incident when the garda arrested the man. It was moved towards the incident at the latter stages, when other uniform garda members assisted in the transport of the man to Store Street Garda Station. It does not show any garda member using incapacitant spray. Due to a technical issue with the CCTV system at Store Street Garda Station, no CCTV was available for the GSOC investigation. Additional CCTV material from another business on Henry Street was provided, but it did not provide any actual coverage of the incident under investigation.

3.12 On 16 April 2015, the college student's mobile phone was submitted by GSOC to a Dublin based company that specialises in forensic video analysis, to enhance the video taken by the student.

3.13 On 29 April 2015, this company provided GSOC with enhancement of the video. They had improved the quality of the video using a stabilisation process. The enhanced video was further reviewed, but it was inconclusive as to whether incapacitant spray had indeed been used by the garda when the man was handcuffed on the ground. The audio was examined with the aim of determining whether the sound of incapacitant spray had been captured on the video and whether it could be enhanced to identify when the spray was used, but this was not possible.

4. CONCLUSION

Insufficient evidence of either a criminal or disciplinary nature has been established in this investigation. It appears that any force used by the garda concerned in this incident was justified, lawful and proportionate under the circumstances and no more than absolutely necessary.