



**REPORT OF THE GARDA SÍOCHÁNA OMBUDSMAN
COMMISSION, PURSUANT TO SECTION 103, GARDA
SÍOCHÁNA ACT 2005, FOLLOWING COMPLAINTS
AND AN INVESTIGATION ARISING FROM THE
DEATHS OF ERIC HOPKINS AND COLM GRIFFIN**

REPORT OF THE GARDA SÍOCHÁNA OMBUDSMAN COMMISSION, PURSUANT TO SECTION 103, GARDA SÍOCHÁNA ACT 2005, FOLLOWING COMPLAINTS AND AN INVESTIGATION ARISING FROM THE DEATHS OF ERIC HOPKINS AND COLM GRIFFIN

The Garda Síochána Ombudsman Commission (GSOC) has completed its investigation into a complaint arising from the deaths of Eric HOPKINS and Colm GRIFFIN during an attempted robbery at Lusk Village Store and Post Office, County Dublin on 26th May 2005.

The Commission is conscious that there has been a significant lapse of time between the opening of this investigation and the finalising of this section 103 report. In considerable part this has been due to the Commission's need to consider legal aspects of its responsibilities and to take advice on these.

Acknowledgments

The Commission would like to acknowledge the co-operation and assistance of the Garda authorities and of Gardaí who were involved in the operation at Lusk Village Store and Post Office and in the subsequent investigations by the Garda Síochána. It would also like to acknowledge the co-operation of members of the families of the late Eric HOPKINS and Colm GRIFFIN. It would like to acknowledge the input of Professor William LEWINSKI of the Force Science Institute at Minnesota State University, USA.

The Commission is cognisant of the personal strains that are imposed on participants, witnesses and extended families while an investigation of this nature is in train. The Commission recognises the particular stresses that can be imposed on gardaí whose actions, taken under critical conditions, may subsequently be subjected to intense scrutiny.

The Commission sought the opinion of Senior Counsel as to its duties and competencies in regard to the requirements of the European Convention on Human Rights Act 2003 and Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Commission is satisfied in the light of this opinion that this report, issued in accordance with the requirements of section 103 of the Garda Síochána Act 2005, is in accordance with any relevant requirements of the Act and the Convention.

Background

On 26th May 2005, at approximately 08.00 hrs, Eric HOPKINS and Colm GRIFFIN, accompanied by a third man, Gavin FARRELLY, entered the Village Store and Post Office at Lusk. Colm GRIFFIN was armed with a hand gun. Eric HOPKINS was unarmed. Gavin FARRELLY was armed with a sledge hammer. A large sum of cash had been delivered to the Post Office a short time previously.

Armed, plainclothes gardaí, who were present, challenged the men. In the course of the Garda operation, a garda member (hereafter referred to as Garda A) discharged two rounds from his official semi-automatic pistol at Colm GRIFFIN and one round at Eric HOPKINS. Both men sustained fatal injuries.

Investigations

Two parallel investigations, one into the attempted robbery and one into the fatal shooting, were commenced by the Garda Síochána under the overall direction of a Chief Superintendent.

Two files of evidence were subsequently submitted to the Office of the Director of Public Prosecutions in August and September 2005. As a result, Gavin FARRELLY was prosecuted and subsequently convicted for offences in relation to the robbery.

No prosecutions were directed against any member of the Garda Síochána as a result of their actions.

Inquest

On 20th September 2007 an inquest into the deaths of the two men was opened by the Dublin City Coroner, Dr Brian Farrell.

On 25th September 2007, the 5th day of the inquest, GSOC made an application to the Coroner for an adjournment of the inquest, under section 25 of the Coroners Act 1962. This provides that

a member of the Garda Síochána not below the rank of Inspector may apply for such an adjournment on the ground that proceedings in relation to a death are being considered¹.

GSOC's application was based on the fact that on 30th August 2007 it had received a complaint from Denise HOPKINS, a sister of Eric HOPKINS, alleging *inter alia* that the gardaí had used inappropriate lethal force, leading to the death of Eric Hopkins.

As this complaint met the criteria for admissibility, set down in section 87 of the Garda Síochána Act 2005, a Designated Officer of the Commission had been directed to commence an investigation under section 98 of the Garda Síochána Act 2005.

Counsel for the Commission advised the Coroner that there had been a backlog of complaints in the early weeks and months of GSOC's operations. As Ms. HOPKINS'S complaint had not been lodged within the ordinary time limit prescribed by the Act, it had not been processed earlier. The Commission apologised to the Coroner for this delay.

After hearing legal argument, the Coroner refused the application for an adjournment.

On 3rd October 2007 the jury returned a narrative verdict, concluding that the gardaí had given warning to the men and that Garda A was justified in acting as he did. In particular, the jury concluded that Garda A believed that Eric HOPKINS had armed himself with Colm GRIFFIN'S gun at the time he shot him.

Complaint of Belinda HOPKINS

The complaint of Belinda HOPKINS was as follows:

¹ Section 98 of the Garda Síochána Act 2005, provides that a member of the Garda Ombudsman Commission has the powers, immunities, privileges and duties of a member of the Garda Síochána not below inspector rank.

- (a) The Garda operational plan targeting the robbery and the execution of this plan was flawed in that the incident should never have been allowed to develop to the stage that it did placing the lives of the public, the Gardaí involved and the suspects in danger – essentially that the Gardaí should have intervened much sooner than they did.
- (b) The use of lethal force by the Gardaí against Eric HOPKINS was unlawful.

The complaint of Belinda HOPKINS was outside the time limit provided for by section 84 of the Garda Síochána Act 2005.

However, the complainant argued that there were “good reasons” for the Commission to extend the time limit. The complainant claimed that members of the HOPKINS family had only recently been shown the CCTV footage of the shooting and that this footage appeared to show that Eric HOPKINS was attempting to flee the scene when he was shot. This constituted new evidence that had not been available to the family within the time limits prescribed in the Act.

A complaint by the family of the late Colm GRIFFIN was also received by GSOC but it was determined to be inadmissible as it was outside the time limit and the Commission did not consider that “good reasons” existed for granting any extension.

The GSOC Investigation

A Senior Investigating Officer (SIO) was assigned to investigate the complaint of Belinda HOPKINS. A team comprising the SIO, the Director of Operations and the Deputy Director of Operations, was formed to provide strategic direction and review for the investigation.

It might be noted in relation to this investigation that both the SIO and the Director of Operations have successfully completed the Firearms Command course under the auspices of the Association of Chief Police Officers in the UK (ACPO).

The GSOC investigation reviewed all of the physical and forensic evidence taken from the scene at Lusk Village Store and Post Office, including ballistic tests on Garda A’s official firearm.

The results of the autopsies and toxicology tests on the bodies of Colm GRIFFIN and Eric HOPKINS, undertaken by Professor Marie CASSIDY were reviewed.

Briefing orders issued to the gardaí in the course of the operation were reviewed.

Closed Circuit Television (CCTV) recordings of events on the morning of the incident were reviewed and analysed.

Professor William LEWINSKI of the Force Science Institute at the University of Minnesota was commissioned, as an expert in the field of police officer shootings and lethal force encounters, to provide an independent evaluation of the CCTV footage.

The Commission is satisfied that the investigation by the SIO and his team has been impartial, thorough and complete.

Conclusions and Recommendations of the GSOC Investigation

Conclusions

(a)

Ms. HOPKINS'S complaint alleged that the Garda operational plan and its execution were flawed in that the incident should never have been allowed to develop to the stage that it did, placing lives in danger – essentially that the Gardaí should have intervened much sooner than they did.

The GSOC investigation has identified a number of weaknesses in the planning of the operation.

These had an adverse effect of the command and control of the operation and led to Garda A being put in a position where he was required to make a split-second life and death decision

These conclusions, along with a number of systemic recommendations for future Garda management and control of firearms incidents, were set out in the SIO's report.

(b)

The GSOC investigation concluded that Garda A acted in the honestly held belief that there was an immediate and real risk to life and that the use of lethal force was justified in the circumstances.

The investigation concluded that the level of force used by Garda A in the shooting of Colm GRIFFIN and Eric HOPKINS was proportionate, lawful and no more than absolutely necessary.

Recommendations

The SIO's report makes a number of systemic recommendations which, in the view of the SIO and the Operations directorate of the Commission, could strengthen the operational response of the Garda Síochána to incidents of this nature.

The report acknowledges that work is already under way within the Garda Síochána in reviewing use of force policies, procedures and training. It is hoped that these recommendations can contribute in a positive way to that process.

A copy of the SIO's systemic recommendations has been supplied to the Commissioner of the Garda Síochána.

Commission commentary

The Commission fully supports the conclusion of the investigators that the level of force used by Garda A in the shooting of Colm GRIFFIN and Eric HOPKINS was proportionate, lawful and no more than absolutely necessary.

Notwithstanding the complexity of the operation mounted by the Gardaí and the inherent unpredictability of what they had to deal with, the Commission is of the view that there were certain systemic inadequacies.

The Commission believes that the recommendations set out by the SIO and the Operations directorate can be helpful in the future planning of such operations and is aware that the Garda authorities have already undertaken a review in this area.

The Commission acknowledges that the Garda investigations into this tragic event, under the overall direction of Chief Superintendent (later Assistant Commissioner) Kevin LUDLOW were thorough and proportionate.

The Commission has decided that it will not forward any file to the Office of the Director of Public Prosecutions in respect of this case. The Director of Public Prosecutions has already considered the evidence prepared in the LUDLOW inquiry and the GSOC investigation has revealed nothing to indicate that any garda may have committed a criminal offence.

The Commission has also decided not to forward any disciplinary file to the Garda Commissioner in respect of this case. While the GSOC investigation has revealed certain systemic lapses, the Commission takes the view that these were failures of efficiency rather than instances of misconduct.

The Commission considers it appropriate to acknowledge the courage and professionalism of gardaí on the scene, particularly Garda A, in their actions.

The Commission would like to extend its sympathies to the families of the late Eric HOPKINS and Colm GRIFFIN.

In conclusion, the Commission would like to acknowledge the professionalism and thoroughness of its Designated Officers in carrying out this investigation.

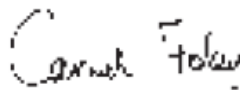
19th October 2011.



Dermot Gallagher, Chairman



Conor Brady, Commissioner



Carmel Foley, Commissioner

Garda Síochána Ombudsman Commission