

# Independent Review Mechanism

## Overview Report

<b><u>Chapter 1 – Background</u></b>	<b>Page</b>
1.1 Terms of Engagement	2
1.2 Approach Taken	2
1.3 Statutory Basis for Investigation	6
1.4 Statutory and other means of assisting the Minister	8
1.5 Actions or Remedies Unavailable to the Minister	10
1.6 Conflicts of Interest	11
1.7 Duration of the IRM task	12
1.8 The Origin of the IRM files	13
1.9 Generation of Files within the Department of Justice and Equality	13

## **Chapter 2 – An Garda Síochána**

2.1 An Garda Síochána	16
2.2 Communication	16
(a) Victims	16
(b) Witnesses	21
(c) Family Liaison Officers	23
(d) Pulse and Garda Vetting	24
(e) An Garda Síochána and the Judiciary	26
(f) Gardaí as Witnesses in Civil Proceedings	28
2.3 Witness Protection	29

## **Chapter 3 – Garda Síochána Ombudsman Commission (GSOC)**

3.1 Garda Síochána Ombudsman Commission (GSOC)	33
3.2 Appointment of Investigators	36
3.3 Complaints Directed to AGS or the Garda Commissioner	37

## **Chapter 4 - Investigations**

4.1 Investigation of Fatalities and Convening of Inquests	39
---	----

## **Chapter 5 – Political Response**

5.1 Political Response to Complaints	47
--------------------------------------	----

# CHAPTER 1

## BACKGROUND

## **1.1 Terms of Engagement**

The Panel, henceforth referred to as the IRM, was formed in the wake of a public expression of openness on behalf of the Taoiseach and the then Minister for Justice and Equality, to receipt by the Department of Justice and Equality of information or of allegations from members of the public, concerning misconduct by members of An Garda Síochána. Following receipt of the Guerin report, the Minister for Justice and Equality established the IRM Panel. The original appointments to the Panel were two Senior Counsel and five Junior Counsel. A further Junior was appointed to the Panel to replace a member who could no longer serve. The Panel had available to it at all times two Senior Counsel and four Junior Counsel.

That the Department of Justice and Equality has been seen by some, perhaps since the foundation of the State, as an appropriate recipient of representations and petitions is readily demonstrated by a breakdown of those allegations concerning or containing imputations of Garda wrongdoings received prior to these publicly expressed invitations and for those newly made thereafter.

Therefore, the appointment of the IRM was to a degree an enhancement of the function already discharged by the Department of Justice and Equality, whereby Divisions such as “Garda Division” reviews correspondence containing allegations of Garda wrongdoing on a continuing basis.

## **1.2 Approach Taken**

In order to maximise the value of a programme of review, it was considered prudent and appropriate that the IRM provide to the Minister in each instance the following:

- (a) A narrative overview or comprehensive summary of the facts alleged by or on behalf of each complainant, in which Garda misbehaviour or misconduct is said to have taken place.

Ideally, this section was to have sufficient detail and cogency to allow for review by another member of the Panel of any conclusions, recommendations or queries as its author had deemed fit. It was also hoped to enable sufficient resumption of review of the same file in the event that fresh materials were received. This happened on a regular basis and extended the life of the Panel's work.

Further, in the event that files returned to the Department required transmission onward or further review for any reason, it was seen as desirable that each opinion demonstrate on its face a ready grasp of all issues worthy of consideration and stand as valid summaries of the underlying history to each case.

This seemingly simple task proved on occasion to be very time-consuming and difficult. Many of the files under review contained a disjointed sequence of letters and e-mails directed to different State agencies and often with a misplaced assumption that each new correspondent (being another arm of the State) was already well versed in other interaction between the writer and the State in general. Some of the files commenced with letters of complaint more than a decade old, together with fresh material furnished over the ensuing years.

In many instances the plain rendition of a story or narrative had simply never occurred, notwithstanding lengthy and repetitive correspondence. Context, therefore, had to be gleaned from close study of isolated facts drawn from partial versions contained within one file.

- (b) An account of previous actions taken.

While the "narrative" or "account" section (above) of any opinion was likely to contain reference to developments involving litigation or Court determination, to Garda Síochána Ombudsman Commission involvement or access to agencies capable of assisting complainants, most IRM reviews also detailed these under a separate heading.

Once again this was for ready reference in review of such a file and was also seen as helpful in contextualising each recommendation that followed.

As with the task of summarising the background to a complaint, this information was not always clearly or fully stated by complainants seeking the Minister's attention or assistance.

At times references to there being Court proceedings arising from the actions complained of was less than overt. The Department of Justice and Equality itself had entered upon each file, prior to its transmission to the IRM, a note or observation of the existence of civil proceedings only of which it had knowledge, i.e. those referencing the complainant as a plaintiff and naming as a defendant, the Minister for Justice and Equality or the Garda Commissioner.

Establishing whether other proceedings existed concerning the same facts as grounded the complainant's contentions was often not possible, both for practical reasons and lest there be incursion into third party protected information.

In the case of civil proceedings identifiable through the Department of Justice and Equality, the details of these were accessed sparingly and on a case-by-case basis with, at most, recitation of the Indorsement of Claim and, where possible, a report on the progress (if any) of such legal action, e.g. whether dismissed for want of prosecution, whether under appeal, whether finally determined etc. Where determination by the courts included an approved or written judgment, this too was accessed.

Likewise, and understandably, a complainant's reference to the Garda Síochána Ombudsman Commission of the same matters being brought to the Minister's attention was regularly merely implied or mentioned in passing by the relevant complainant.

In order to establish the existence and status of complaints to the Garda Síochána Ombudsman Commission (hereafter GSOC) a conduit through the Department conveyed queries to GSOC from the IRM. These were answered by recitation of the existence of any reference to GSOC by that complainant. If more than one had been made, the number of such references and its or their status before GSOC, e.g. deemed inadmissible, admitted and ongoing and finalised (if the latter, whether any breach of regulations or Garda discipline had been found) was included.

The terms in which any GSOC complaint was couched, its contents and even its subject matter, were not released for reasons of confidentiality as was felt prudent by GSOC. However, it was felt that, save in cases of multiple complaints by a person to GSOC, it was readily apparent from this fairly sparse information whether matters under review had been referred to GSOC. Where a complainant had made clear their consent to GSOC information being transmitted to the IRM or to the Department there was greater freedom of access exercised.

(c) Remit of the IRM.

Many of the stories emerging from the Department's files are complicated and often contain a history of involvement with private entities, Courts, individuals and State Agencies other than An Garda Síochána. Disentangling such elements as were proper to review required this separate heading and in a small number of cases revealed that no part of an otherwise elaborate complaint touched upon Garda misconduct or other perceived Garda shortcoming. The Remit of the Panel was also seen as reduced in those cases from which it was possible to conclude that the complainant was attempting to raise generalised grievances based on little more than his or her assessment of current affairs as conveyed through the media.

Where a complaint was conveyed on behalf of a third party, it had the potential to prove hard to assess. Obviously in the case of a person thus represented, being under a disability or at a disadvantage – be it infancy, infirmity, residence abroad or even difficulty in articulating their own account - the IRM chose to treat such matters as emanating from the aggrieved party himself or herself. Also, where an issue was raised through a self-professed agent, either of an informal variety or such as a Solicitor, the matter was treated as being directed from the party so represented. Difficulty arose in those complaints that included or solely concerned complaint regarding treatment afforded to a person (often a relative) who was evidently an adult and under no disability, yet had no apparent willingness to offer complaint and where it was not expressed that the complaint was made with their authority.

Provided that that party's privacy was unaffected by performance of review, the Panel completed the task in the same manner as had the complaint come direct. Where such a complaint was unconnected to the complainant's own separately voiced grievance and there

was no apparent authority for its inclusion, this was seen as lessening its weight in consideration of the need for action, rather than a reason to exclude it from review.

(d) Recommendation

As the function of the IRM was to advise the Minister as recited in its terms of appointment, it was necessary to have command of any power or authority vested in the Minister to bring about action as a result of complaints made either individually or collectively.

### **1.3 Statutory basis for investigation**

A statutory basis for investigative action lies in three main areas:

- (i) The Garda Síochána (Amendment) Act 2015 (Commencement) Order 2015 commenced the Garda Síochána (Amendment) Act 2015 (No. 3 of 2015) in its entirety on 27 April 2015. One of the amendments included a broadening of the scope for the Minister to refer matters to GSOC for investigation. Section 102(5) of the Garda Síochána Act 2005, is as follows:

*“Section 102(5): The Minister may, if he or she considers it desirable in the public interest to do so, request the Ombudsman Commission to investigate any matter that 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.”*

Sub-section (4) refers to the commission of an offence by a Garda Síochána member or behaviour by such a member that would justify disciplinary proceedings.

This section, in its current form and as enacted prior to 27 April 2015, was not seen as subject to the same limitation with respect to time as the Garda Síochána Ombudsman Commission



might itself impose. It also has the advantage of permitting the Minister to refer matters brought to her attention for GSOC to investigate that are not subject to individual complaints to that body. Finally, it overrides the prospect that an individual Garda member, being notified by GSOC that a complaint is no longer proceeding against him, would be easily permitted to prevent further complaint being revived on foot of this separate power available to the Minister under Section 102(5).

- (ii) Section 42 of the Garda Síochána Act 2005 as amended by the Criminal Justice Act 2007: this reads as follows: <sup>1</sup>

*“42(1) The Minister with respect to any matter considered by him or her to be of public concern, may by order appoint a person to –*

- (a) inquire into any aspect of the administration, operation, practice or procedure of the Garda Síochána, or the conduct of its members, and*  
*(b) make a report to the Minister on the conclusion of the inquiry.”*

This and the following sub-sections, as amended, permit the Minister to appoint, without reference to Government, a person qualified to conduct a special enquiry with ancillary powers, if necessary under High Court guidance, that will extend not alone to Garda members but also to other persons to render them amenable to assist with any such investigation. The terms of reference for reporting, and the allocation of resources applicable to a section 42 Inquiry, lie under the control of the Minister for Justice and Equality and it is, therefore, flexible as to how focussed or broad such an inquiry may be. It does not necessitate that specific orders of Government be made or for provision through other Departments with respect to finance and ancillary powers.

- (iii) Section 3 of the Commissions of Investigation Act 2004.

The Commissions of Investigation Act 2004 specifies the mechanism for the establishment of such Commission by Section 3. The terms of reference are described in Section 4 of the same Act. Section 6 permits an amendment of those terms. Section 7 deals with the membership

---

<sup>1</sup> This Section was amended by the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015 to require consultation with the Policing Authority in relation to inquiries relating to policing services.

of any such Commission. Section 8 with such advice and assistance as may be made available to the chairperson of such Commission. Part III, comprising Section 10 to Section 25 of the Act, indicates all of the necessary matters to be put in place or that pertain to such a Commission inclusive of the offering or according of legal assistance to parties before it, the method of taking evidence, the duty to disclose evidence to potential witnesses, the establishment of rules and procedures, powers directed to the attendance of witnesses and the obtaining of documents, matters relating to costs, the status of any evidence offered to the Commission, privilege or immunities attending on witnesses, appeal rights and matters ancillary to the above. As the very title would suggest, a Commission established under the Act is likely to be a body akin to some of the tribunals with which we have become familiar over the last 20 years. It requires great formality in terms of its terms of reference, its sanctioning and its evidence gathering powers.

As this Act contemplates investigation of a matter “*considered by the Government to be of significant public concern*”, it was perceived as a recommendation unlikely to emanate from the IRM (although not discounted as possible) unless a matter of far-reaching consequence or causing a grievous outrage were to emerge or, alternatively, a pattern of connected events presented from a number of files were considered to warrant the same view. Such a recommendation could only be that the Minister consider making a proposal to Government in line with Section 3 of that Act for its approval for the establishment of any Commission.

#### **1.4 Statutory and other means of assisting the Minister**

(1) Duty to account pursuant to section 40 of the Garda Síochána Act 2005.

This section imposes on the Garda Commissioner a duty to account to the Government and the Minister for Justice and Equality in any aspect of his or her function. It was seen as difficult to consider the terms of this section as the subject of a potential recommendation by the Panel. Cognisance of it was retained, in the event that duties and/or powers of the Garda Commissioner presented themselves in the course of review of all of these files, as requiring clarification or the assistance of the Garda Commissioner.

(2) Report pursuant to section 41(2) of the Garda Síochána Act 2005.

This sub-section states as follows:

*“Whenever required by the Minister, the Garda Commissioner shall submit to the Minister a report on any matters connected with the policing or security of the State or the performance of the Commissioner’s other functions that may be specified in the requirement.”*

*Sub-section (3):*

*“A report under subsection (2) must –*

- (a) address matters of general or specific concern that are specified in the Minister’s requirement, and*
- (b) be made in the form and within the period specified in the requirement.”*

*Sub-section (4):*

*“The Minister may publish all or part of a report submitted under this section.”*

This provision enables targeted queries concerning past investigations to be made by the Minister to the Garda Commissioner. Its use, or that of a less formal request (for which see below), is valuable where expressions of complaint are confused in their chronology or are otherwise incomplete. It is also of great assistance to allow the Department a broader view of allegations made by individuals by comparison being made possible with accounts rendered to the Garda Commissioner, and transmitted onward, of any investigation and subsequent proceedings.

### (3) Informal Report.

It was further noted that the Minister has available to her, by nature of her office, a simple and effective means of communication with the Garda Commissioner. This enables requests directed to clarify the status of an investigation or to seek that liaison be made with another agency or with a member of the public. Such requests are likely to be heeded. It has been universally observed by members of the Panel that all such communications viewed by it refrain from incursion into the field of investigation itself or from applying direction to An Garda Síochána in its investigations. However, in cases in which a member of the public

has voiced disquiet which is likely to have arisen through inadequate communication from An Garda Síochána, this class of informal approach has been seen as beneficial and available as something that can be recommended on review by the Panel.

#### (4) Non-Statutory Reviews.

Without statutory basis or formulation, it has historically been available to the Minister for Justice and Equality to seek her own independent legal advice, generally through Counsel, for the purpose of reviewing investigations that have concluded as well as certain files such as those comprising the IRM's workload.

Instances of this form of action by the Minister include the report into the death of Fr Niall Molloy and the review of an investigation concerning Ms Cynthia Owen. Useful as this informal mechanism must prove to the Minister it was considered improbable that the IRM Panel would include a recommendation for its use, save in the rarest circumstance, due to the fact that the Panel itself is conducting a review similar in format although substantially less far-reaching or detailed.

### **1.5 Actions or Remedies unavailable to the Minister**

The Panel was mindful that issues transmitted to the Minister are regularly touching on areas outside of the Department's functions and its control. Where possible, each individual report composed in respect of a complaint adverted to alternative avenues open to the complainant, such as powers of access to stored information under the Data Protection Acts 1988 and 2003. Where appropriate, the IRM opinion or commentary advised of remedies and complaints procedures available through bodies, such as the Law Society, the Bar Council and the Medical Council and other systems of review when prompted by aspects of a complaint other than Garda alleged misconduct. In one instance, the Pensions Ombudsman was seen as the appropriate recipient of an account of complaint.

Similarly, where circumstances suggested non-directive observation that the complainant should consider seeking access to independent legal advice, this was also included.

While this broader range of commentary fell outside the Panel's remit as first expressed upon its engagement, it was voluntarily undertaken as a means of adding value to the task, and contributing where possible to a sense of finality to any queries made.

## **1.6 Conflicts of Interest**

The initial terms of appointment of each Panel member may have had in mind or intended that the two Senior Counsel controlling the work of the Panel, retain a largely administrative and managerial role, while Junior Counsel undertake the task of making report upon each of the files sent. (Initially there were some 252 files for the Panel's work, this expanded over the duration of the Panel's work to some 320 files).

In light of the time many of the files were likely to take, all members of the Panel undertook the task of compiling reports for the Minister.

The same terms of appointment retained at the Department's discretion the assignment of individual cases to Panel members. However, in practice, Senior Counsel collectively and jointly allocated to themselves and to other members of the Panel individual reports on a near-random basis, attempting to equalise the volume of such files distributed and their number.

For reasons of their appropriate expertise and experience, the membership of the Panel was largely comprised of persons who had a significant portion of their practice in the field of criminal law.

For this reason, it was rightly predicted that certain of the files would disclose persons or factual situations that were known to individual Panel members through their professional engagements. In the event that any Panel member was previously engaged in legal actions or advice concerning any of the matters contained in a complaint, that file was the subject of an allocation to an alternative Panel member. It was also ensured by the internal method of allocation, that the conflicted person would remain unaware of the identity of the Panel

member having responsibility for assessing or reviewing the complaint. In the event that either Senior Counsel on the Panel had a potential conflict of interest, the remaining Senior Counsel became responsible for the direct allocation of the file to another Panel member or to himself, without revealing the identity of the person responsible for the subsequent review.

Two of the files received by the IRM were the subject of declared conflicts of interest by both Senior Counsel on the Panel. The most senior Junior Counsel on the Panel was given responsibility for allocation of those two files, either to himself or another Junior Counsel on the Panel and the identity of the recipient of that file was not disclosed.

## **1.7 Duration of the IRM task**

The workload allocated to the IRM expanded during its life-time. This was through the addition of approximately 70 further files, on top of the original 252 allocated at its inception. The last such file was received on the 16<sup>th</sup> June 2015.

Somewhat awkwardly, additional material concerning many files under review was furnished throughout the period in which reports were being composed. This comprised further correspondence from or on behalf of individual complainants, files held elsewhere within the Department relevant to individual complaints, Garda reports previously provided to the Minister and miscellaneous updated information, such as pleadings and GSOC references.

Further correspondence was received from approximately 210 complainants. Such additional material continued to be referred to the Panel up until 31 July 2015.

This in turn caused significant delay in completing the IRM task. In the case of material provided subsequent to a report having been furnished, it was regularly necessary to add a supplemental report taking account of the newly acquired documentation, frequently requiring retrieval of a file and reconsideration of the entirety of it and the conclusions reached or recommendation made.

In excess of 50 such supplements have been furnished by the IRM.

## **1.8 The origin of IRM files**

In order to address any areas of concern made apparent by the Panel's perusal of these files, it should be noted that their value is subject to interpretation. That is to say that by necessity they comprise self-selected complainants who have seen fit to bring their grievances to the Department's attention. As a basis for extrapolation of trends in matters troubling the public at large with regard to Garda activity, this is not statistically meaningful or reliable. Thus, to conclude from the nature of complaint made, if broken down into distinct headings, that recurrent issues have representational value would be dubious. Likewise, the geographic spread or the clustering of complaints would at best raise a signal that a region or Garda Division may require attention, or merely support such a view.

The subjects addressed within this document do not specifically derive their place in it from any analysis based on statistics or frequency. They represent the Panel's observations and reactions of the Panel to their pooled experience of handling these complaints, as informed by a shared practice in the Courts. Given that the basis for comment is formed by self-selected complainants making representation to the Department of Justice and Equality by various means, it is hopefully instructive to set out the manner in which such files as have been viewed, came into being and their general content.

## **1.9 Generation of Files within the Department of Justice and Equality**

The most common mode of entry of complaints to the Minister's Department is by reference through a public representative, nearly always a TD. A written account received by any public representative (be they Government, opposition, back bench or front bench) generally seeks action or advice and results, when touching upon Garda conduct, in reference onward to the Department. This allows for two distinct matters then to take place:

- (i) The representative involved will generally correspond with the complainant to the effect that they have brought his or her issue to the attention of the appropriate Minister.

- (ii) Officials within the Department will acknowledge receipt to the complainant and undertake to make answer.

Depending upon the complexities of the issues raised, the Department's response may be prepared with the assistance of other Divisions within the Department of Justice and Equality. The nature of correspondence received and its volume varies considerably. Some among the 320 files considered comprised three or four volumes Lever-Arch material, others a mere handful of letters or e-mails. Expansion of existing files frequently took place through additional material being sent by the complainant, reports and background material being gained through the Department of Justice and Equality and by internal documentation prepared with a view to framing an adequate and comprehensive response.

Overall, the Panel was of the view that there was a patently careful internal review conducted within the Department of Justice and Equality, frequently one that went through many hands and, depending upon the gravity and complexity of the issues raised, regularly overseen at senior management level up to and inclusive of the Secretary General of the Department and of the Minister himself or herself.

Whether this system is at times wasteful of working hours at public cost is difficult to assess. Tentative suggestions for oversight of the Department's carriage of these representations are intended to be addressed below.

Such areas as are seen to require address in order to give some general amplification to the task of the IRM (apart from the generation of 320 opinions and advice), of necessity concentrate on public interaction with An Garda Síochána. However other general justice issues are addressed where appropriate.



## CHAPTER 2

# AN GARDA SÍOCHÁNA

## **2.1 An Garda Síochána**

For ease of reference, this body will henceforward be designated by the description AGS.

## **2.2 Communication**

### **(a) Victims**

Whilst the expressed subject of discontent in many files concerned possible inaction by AGS, omissions in investigations, premature judgment and similar failings, it was impossible to avoid the conclusion that a significant number of such complaints would have been averted had there been appropriate liaison and informative contact made by members of AGS with members of the public.

With the assistance of the Chief Superintendent, Crime Policy and Administration, the IRM was provided with internal Garda policy documents, known as HQ Directives, as they pertain to victim support, the Charter for Victims of Crime, family liaison officers and the offering of reasons for decisions in the prosecution or non-prosecution of, inter alia, homicides, fatalities in the work place and fatal road traffic accidents.

These Directives are a means of apprising every member of the Force with policy and clear guidelines as to a means of effecting same. Under the headings mentioned above, they comprise some 22 Directives issued since 1995. The discernible evolution of stated policy within these Directives indicates that their composition and dissemination is moved by a high level of consciousness of the benefit to victims and to secondary victims of crime (as well as to the Garda force itself) of careful measures of support and access to information.

The Garda Charter of 2012, something of an expanded mission statement, addresses ten goals related to community interaction, the second of which is as follows:

*“Keeping Victims Updated:*

*If you have been the victim of a crime, we will keep you informed of any progress and outcome of your case. In relation to ongoing investigations we will keep you up-to-date until the conclusion of your case and with your permission put you in contact with an appropriate victim support organisation.”*

Similarly, an earlier Directive, in setting out good reasons for the provision of support to victims of crime, states that such supports:

*“Help prevent feelings of anger, revenge and trauma caused by isolation and misunderstandings, resulting from mis-information or unrealistic expectations.”*

This formulation could hardly be bettered in describing what appears to have befallen many complainants who, in the face of seeming indifference, have resorted to making representations to elected persons and to others.

The class of person most exercised by such a failing is made up of those bereaved by the death of a loved one.

It is a necessary condition of professional policing that Garda members must develop some protections against the situations they daily encounter, both physical and emotional. In this regard, they share mechanisms of defence against intrusive reaction to tragedy or danger as may be unconsciously deployed by others, such as medical personnel and social workers. Possibly as a consequence of this there has been demonstrated among some of the files presented to the IRM a failure to show understanding of the near-endless anguish which close family members of deceased persons go through in rehearsing and questioning the last moments and movements of a deceased person’s life.

If the complaints received are in some measure representative, this failing is not apparent in those cases in which death evidently occurred through an act of criminal violence or intentionally, i.e. a class of homicide. If the absence of complaint can betoken a high standard in conduct, this suggests that the systems in place and individual Garda initiative in dealing with surviving or secondary victims of *violent* crime are truly effective and appropriate.

It is in those cases where the immediate threat to security of the community is *not* apprehended that Garda liaison and communication is demonstrated to be deficient, such deficiency being in a range of shortcomings running from the mildly perfunctory to the highly offensive.

It is trite to observe that in cases of death occurring through the infliction of intentional violence, grief and suffering of the family members is vast – this is seemingly well understood and sensitively handled by An Garda Síochána.

Those for whom an equally random and avoidable death is in issue, resulting from human error, or in circumstances subject to different interpretations, often have added to their profound grief a form of involuntary self-torture, in which the final actions surrounding their loved one's death are revisited constantly and made the subject of intense examination, speculation and hunger for clarity.

It is in these cases that failure in communication appears most marked. It should be pointed out also that not all complaints surrounding such circumstances were borne out or had objective substance, and it is doubtless true that certain complainants, be it in circumstances of gravity or in other matters, would simply never achieve an appreciation that the limits of investigative power had been achieved.

It is worth instancing certain cases (bleached of their identifying characteristics) that are illustrative of this issue.

In one example, the surviving family members of a person who had died under confused circumstances at a public venue became aware of details unknown to them by seeing them in a local newspaper, due to a senior Garda briefing members of the press. Understandably, such insensitivity tends to foster resentment and suspicion of Garda priorities.

In a number of cases people who had offered to members of An Garda Síochána proper statements outlining alleged acts of criminality perpetrated against them, were left unaware of whether or not any form of investigation had been undertaken and, if so, whether prosecution was in prospect, for upwards of one year.

In a number of sensitive cases, the convening of an inquest and its subsequent hearing has occurred with wholly inadequate communication to surviving kin of the deceased. In so far as this has a Garda input, internal and laudable policy guidelines have on occasion proven to be mere unattained aspirations. The preparation for inquests is of itself treated elsewhere in this report.

In pointing out deficiencies in liaison and communication, it should also be indicated that among a small, yet significant number of complainants, evidently genuine attempts to provide information by Garda members to them has resulted in the inclusion of such a member's name in a complaint of what is perceived to be a "*conspiracy*", often described as involving many State agencies attempting to do down the complainant. It is a sad yet compelling observation that some files reveal an obsessional mind-set whereby any view offered or taken that does not agree with the grievance expressed by the complainant, results in an automatic assessment that the holder of such a view (be that a Garda member or other State actor) is actively participating in the perpetration of injustice, or the "*conspiracy*".

If this consequence inhibits adequate communication to victims or secondary victims of crime or an accident, it is nonetheless inadequate reason for circumspection in communicating with members of the public who have suffered bereavement. Indeed, it can be surmised that in certain instances, an initial mis-step or failure in communication between Gardaí and complainants, has led to the onset of suspicion of any subsequent attempts to liaise, no matter how well intended they are.

It has proven very difficult among so many narratives to isolate particular grievances attending each complainant. Many are multi-faceted but it is safe to assert that the absence of proper communication from investigating Gardaí is the most recurrent issue running through the complaints as received.

Despite this, it is surprisingly difficult to make a concrete proposal as to improvement. In part, this is because the existing stated appointment of Family Liaison Officers with responsibility for informing secondary victims in particular of aspects attending an investigation, appears by its text to regulate what is necessary to avoid disaffection. Yet, demonstrably, this is not pursued consistently among Garda divisions. Therefore, any addition to existing HQ Directives on this issue would be a tautology.

Internal Garda Directives provide for the structured appointment of Family Liaison Officers (FLOs) together with coordinators of such officers for deployment in appropriate circumstances. Similarly, it is elsewhere directed that:

*“It is incumbent on every member taking a complaint or report to give an adequate explanation to the person making the complaint or report, as to the procedures to be employed in the processing of that complaint or report.”*

Were the spirit of these policies to be uniformly observed, many persons offering complaint would have been diverted from their sense of grievance.

If internal Garda policy documents are not evidently lacking, it is very possible that the consequence of failure to abide such policy is negligible. Statutory Instrument no. 214 of 2007 (Garda Síochána (Discipline) Regulations 2007) contains, in its schedule under 29 articles, a list of all acts or conduct constituting breach of discipline by a member of An Garda Síochána. Most of these describe actions that are self-evidently unsuited to the conduct of a member of a law enforcing agency, such as the commission of various criminal offences, many versions of insubordination, corruption, abuse of authority and prejudicial or discreditable conduct.

It is solely on the basis of potential breach of discipline being disclosed to GSOC that admission to investigation is permitted. This statutorily mandated tie-in is separately addressed below. However, as currently constituted, a damaging failure to communicate with either a direct victim of alleged criminal behaviour or a secondary victim (such as a next-of-kin or a guardian of an infant victim) might not be embraced by regulations defining misbehaviour, and can be (at best) shoehorned into the rather general provision at Article 4 of the Schedule outlining the acts or conduct constituting breaches of discipline:

*“Neglect of duty: that is to say without good or sufficient cause –*

*(a) Failing or neglecting –*

*(i) properly to account for any money or property received by him or her in his or her capacity as a member, or*

- (ii) *promptly to carry out any lawful order or to do any other thing which it is his or her duty to do, or*
- (b) *Doing anything mentioned in sub-paragraph (a)(ii) in a negligent manner.”*

As a description of a duty to inform appropriate members of the public of the status of investigations and other necessary information this is at best vague. Therefore, it is unsurprising that to date GSOC has tended to characterise complaints concerning Garda liaison as inadmissible on grounds of failing to disclose conduct constituting a breach of discipline. Similarly, alleged omissions by Garda members or other failings, coming in the wake of criminal or suspect events, perhaps during investigation, have regularly been deemed by GSOC as “*out of time*”. This is despite the difficulty in ascertaining when such “*time*” may be calculated as commencing.

#### **Recommendation 1**

**It is considered necessary that, if a patent failure to make appropriate communication with an alleged victim of crime or a secondary victim of alleged crime or sudden death occurs, the description of such an act among those constituting a breach of discipline and misconduct should be made explicit or more specific, and that such failings be rendered admissible to GSOC investigation as well as capable of giving rise to disciplining.**

Since the drafting of this entry to the IRM review, the Minister for Justice and Equality has published the proposed heads of a Bill designed to bring about compliance with the Victims Directive (2012/29/EU). As published, some of the concerns raised and addressed above will diminish in importance. The Bill will generally confer a right to information to victims of crime and therefore the corollary of a Garda obligation to afford such rights and ancillary matters must follow. Thus the requirements of this legal change are likely to cause some of the reforms needed to address communication deficits as are noted above.

#### (b) **Witnesses**

An entirely incidental feature of certain files includes adverse comment upon failure of Garda communication with witnesses required for prosecutions. Understandably, any such failure is of a lesser order than failure to communicate with, or clumsy communication with, victims of

crime. However, in certain instances, failure to notify witnesses of a Court date has resulted in dismissal of proceedings due to the unavailability of witnesses. Those aggrieved by this are generally the alleged victims of the event being prosecuted. This problem brings into play various areas of interest to the IRM.

Firstly, there is seeming rejection by GSOC of complaints arising from this failure as being inadmissible due to lapse of time. As has been mentioned before, and will be again, this can be based on a rather mechanical and rigid view that time is calculable from the original criminal event alleged. Whereas, in fact, the complaint is directed towards subsequent failings by members of An Garda Síochána and the discovery of their wrongdoing may long post-date the time calculated by GSOC as running against a potential complainant.

Secondly, Garda preparation for the presentation of prosecutions, in particular at District Court level where the vast majority of offending is prosecuted, is variable from district to district. It takes its lead from the “*form*” demonstrated by the sitting judge who regularly presides. This can lead to unexpected failure to gain adjournments or otherwise gain an expected flexibility, in particular when judges are temporarily replaced within their district.

Likewise, the necessary and appropriate communication with witnesses is very hard to gauge from the experience of the IRM task, as rarely is a witness moved to feel sufficiently invested in the matter involving them as to raise complaint. Where a prosecution founders through failure to notify witnesses in adequate time of a hearing date, some loosening of GSOC rigidity in the calculation of time for admission of such complaint is not merely justified but probably mandated.

### **Recommendation 2**

**In summary, it is recommended that the existing Garda Síochána (Discipline) Regulations be expanded and amended so as to include behaviour or conduct by a Garda member comprising failure to inform victims of crime, families of such victims (where appropriate) and prosecution witnesses under certain circumstances, of the status of an investigation, the convening of an inquest, relevant court dates and possibly other matters. It is considered inappropriate to attempt to frame such an addition or its full parameters in the body of this report.**



(c) **Family Liaison Officers**

In the appointment of Family Liaison Officers and in the discharge of their function, their role or status should be enhanced and their position secured. That is to say, a Garda member discharging such a role should be empowered to advocate on behalf of family members and other victims and not merely explain Garda action to them. In the event of this causing conflict with superior officers or peers, such FLOs should stand protected from adverse consequences of this duty. While the IRM has no full access to the training afforded such officers and their coordinators, the view is nonetheless available from the files under its care that this role has frequently not resulted in meeting the aspirations of the policies and directives issued on behalf of successive Garda Commissioners. Being a non-investigative role, it has perhaps lacked the attention at divisional-level that it deserves.

**Recommendation 3**

**Therefore, it is recommended that the training, appointment and function of family liaison officers be reviewed and enhanced. This should include enabling such an officer to be included in briefings concerning investigations of fatalities and the preparations for inquests.**

**Recommendation 4**

**Separately the express policy and directive recited previously “*It is incumbent upon every member taking a complaint or report to give an adequate explanation to the person making the complaint or report as to the procedures to be employed in the processing of that complaint or report*”, should have added to it a duty that such a Garda advise a person making complaint of the opportunity, if any, for them to learn as to the investigation’s progress or the prospects that a communication from AGS may not occur.**

Lastly, it should be noted, both under this heading and that further dealing with GSOC itself, that among the articles (numbered 1 to 29) detailing the acts or conducts constituting

breaches of discipline, set out in the schedule to the 2007 Garda Síochána (Discipline) Regulations 2007, Article 19 includes the following:

*“ – Failure to comply with any specified provision of any code of ethics established under Section 17 of the Act” – [for this purpose Act being the Garda Síochána Act 2005]*

Section 17 of the Garda Síochána Act 2005 indicates, inter alia, the following:

*“17(1) – the Minister shall by regulation establish a code of ethics that includes standards of conduct and practice for members of the Garda Síochána.”*<sup>2</sup>

Notwithstanding that this section was commenced by Statutory Instrument on the 10<sup>th</sup> of March 2006, it appears that at no stage since has there been any code of ethics established. This makes understandable that there is a lacuna in possible disciplining for misbehaviour that falls short of precise descriptions contained in the remainder of the existing regulations.

#### **Recommendation 5**

**It is understood that in the context of predicted reform in relation to policing and in particular the establishment of a policing authority, that the establishment of a code of ethics is expected to be presided over by that authority in the near future. This is overdue and its implementation is recommended.**

#### **(d) PULSE and Garda Vetting**

These areas, possibly in combination, are likely to be addressed elsewhere by bodies more versed in their uses and maintenance.

Record keeping, even of trivial or unsubstantiated reports concerning individuals, is no doubt a necessary feature of a well-equipped police force. Its misuse or inaccuracy would stand as a

---

<sup>2</sup> Section 17 was amended by the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015. The amended Section 17 gives the power to establish a code of ethics to the Policing Authority.

weakness. Likewise, inaccuracy and misuse can lead to potential for harm to individuals who may be subject thereafter to unwarranted attention or inaccurate vetting.

The reason it is considered appropriate to consider these areas jointly is to lend weight to the prospect that any future reform concerning them be performed in tandem. It is probable that the PULSE record from time to time will include third-hand information, observations of a tenuous nature and matters of suspicion. How these may be protected from misuse or misapplication when it comes to the vetting of an individual (for instance in preparation for the acceptance of a job offer) may prove difficult and require balance. Notwithstanding the public policy behind the maintenance of a full PULSE record of benefit to AGS in all of its tasks there remains a constitutional duty on the State to vindicate the good name of its citizens. Therefore, immunities granted or declared in respect of mistakes contained on the PULSE system having consequences for an individual may not be such an effective vindication of that person's good name. Yet, it would be an unintended inhibition were the PULSE record to be maintained without the benefit of "soft" information. From the perspective of the task undertaken by the IRM, a mere handful of files made references to problems concerning complainants with the maintenance of the PULSE record, yet they can have or could have far reaching effect.

In one instance, a party to domestic dispute encountered allegations of criminal conduct as alleged against her stored on the PULSE system and proposed to be advanced as evidence in family law proceedings. However, there had never been any investigation commenced of such complaints as found their way on to the system nor was there any allegation ever put to her, the impugned party.

In other cases complainants who attempted to set right what they understood to be a mistaken entry under their name on the PULSE system were met with no available or known system to correct same or to establish the true state of the record.

As now maintained, the PULSE system may require re-balance. It appears an entry to the system is readily achieved yet removal from it, or correction of it, is either very difficult or impossible. The possible consequences are many; for instance, the wrongful denial of "*station bail*", due to mistaken entries on PULSE, the inaccurate outcome of Garda vetting

and the mistaken targeting for Garda attention of persons inaccurately classed as worthy of same.

For the purposes of this review, it is sufficient to say that at present both the IRM and, by extension, the Minister are somewhat ill-equipped to assist persons whose cogent account of probable inaccuracies recorded against their name on the PULSE system requires attention.

**(e) An Garda Síochána and the Judiciary**

While there were very few complainants who alleged misbehaviour concerning Garda influence over members of the judiciary, many complaints had inherent in them, or direct reference to, some cynicism about or despair of access to local justice in matters in which members of AGS either presented a case or had an interest.

It should be remarked that in one respect at least, the office of District Judge is the most important of judicial offices. The vast majority of cases occur before such an office holder, particularly in the prosecution of offences. The sole interaction between ordinary members of the community and a judicial office holder is likely to take place in the forum of the District Court. Likewise, the grounding and on-the-job training of Gardaí in presenting evidence is largely formed before their local District Judge.

There is, understandably, a variation in conduct and approach as between members of the judiciary, as unavoidable as are variations in human character. History suggests, and this is not drawn from knowledge obtained from the files under review, that where a District Judge has been perceived as forgiving of Garda oversight and readily willing to prefer Garda evidence to any other, that standards of Garda vigilance in the recording of evidence and the observations of regulations have shown a decline.

While the recent and welcome innovations in external investigation of AGS through the establishment of GSOC, together with various initiatives to enquire into aspects of Garda practices and structure, all contribute to a more transparent and answerable police service. The greatest bulwark against Garda malpractice lies in District Court experience whereby shortcomings in Garda procedures or evidence result in immediate consequence adverse to

the aims of Garda-led prosecutions. In colloquial terms, a local District Judge may prove, over time, more instrumental in keeping members of AGS “*honest*” than all of the safeguards and oversight put in place by regulation and legislation.

It is in this context that the interaction between District Judges and AGS is of great importance. Doubtless, the efficient running of statutory courts of limited jurisdiction relies in part on Garda cooperation and some interaction and familiarity as between a local District Judge and Garda members frequently presenting cases or offering evidence is unavoidable.

However, it is clear that a perception has formed in certain instances that this interaction is unhealthy. It is not known whether ongoing judicial training or the professional development of court presenters (members of AGS designated to manage and present District Court prosecutions in busier District Courts) or Garda Superintendents has adequately adverted to the perception of bias that may result from informality as between District Judges and such members of the force.

In the past, unrecorded and informal discussion by judges with counsel in chambers took place with a view to unofficial and unregulated plea bargaining. This was much deprecated and had serious consequences for office holders and others, arising out of the prosecution of one Philip Sheedy in or about 1997.

By close analogy, a District Judge’s interaction with local Garda members, superintendents and court presenters, must be exercised with a degree of caution and balance.

**Recommendation 6**

**It is recommended that serious consideration be given to the Minister employing the terms of Section 106 of the Garda Síochána Act 2005 which inter alia states as follows:**

***“106 – (i) 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, the Minister may request the Ombudsman Commission to -***

- (a) examine the practice, policy or procedure,***
- (b) report to the Minister within such period as he or she may specify on the results of the examination, and***

(c) *include in the report the Commission's recommendations for achieving that purpose.*"<sup>3</sup>

**It would be predictable that such an investigation, not carrying with it the prospect of disciplining or criticism of Garda practice to date, would be free to establish variation in practice or policy with regard to interaction with local judicial figures and give rise to a review of such education and guidelines as are offered to members of the force who of necessity either present cases or otherwise have cause to interact with judicial office holders.**

**In deference to the guaranteed independence of the judiciary it is requested merely that any report received be considered as suitable for distribution to the President of the District Court.**

**(f) Gardaí as Witnesses in Civil Proceedings**

Somewhat related to the previous heading is a small number of cases that have come to the IRM's attention whereby members of the public have been party to civil litigation or quasi-civil litigation in the District Court in which there is no apparent Garda interest but despite which members of the force, both in uniform or without uniform, have presented as witness for one or other side and in some cases have been criticised as partaking in the proceedings to an influential or inappropriate degree.

There is little doubt that in the eyes of certain members of the public a witness who is also a Garda member may be viewed as an authoritative source from which to derive evidence, in part due to the respect that may be accorded him/her and in part due to her/him being well versed in the ways of courtroom procedures. In a small number of cases an account, if accurate, was troubling; in that Gardaí appeared on occasion to assist in the presentation of minor cases of a non-criminal nature and where their participation had not evolved from an investigation undertaken by them.

It must be acknowledged that Garda witnesses are essential in many simple road traffic cases in which civil claims in damages are being made. This is for the reason that the said Gardaí had presented at the scene shortly thereafter and have relevant evidence available to them, necessary for the Court to receive.

---

<sup>3</sup> This Section has been amended by the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015 to permit the Policing Authority, as well as the Minister, to request GSOC to examine a practice, policy or procedure of the Gardaí.

### **Recommendation 7**

**However, in all other cases that are not criminal prosecutions but are civil in nature, it is advised and recommended that the code of conduct within An Garda Síochána and indeed the regulations reflecting discipline for its breach now incorporate that a form of notification be made by any Garda who is intending to offer evidence in a civil case that does not arise from an investigation conducted by him, such notification to be recorded and made to an appropriate senior officer of the division. In order to have meaning, it will be necessary that a failure to record such an attendance have consequences in terms of discipline. As this is a feature of discipline within the ranks of AGS it may be beyond the Minister to bring about its immediate effect. However, this recommendation should be brought to the attention of the Garda Commissioner.**

## **2.3 Witness Protection**

A very small number of complaints that were referred to the Minister concerned the Witness Protection Programme (hereafter referred to as WPP). Some representations made to her have referenced claims by persons that they were to be protected witnesses or expected to be placed on such a programme. However, examination of the background of many complaints of this nature readily revealed a possible misapprehension on their part or misnomer as to such protection as they were to be afforded.

In the wake of the investigation into the death of Veronica Guerin and subsequent proceedings, the need for a programme to organise the protection of witnesses from real threat of intimidation and possibly death was recognised – belatedly compared to other jurisdictions.

This programme is necessarily subject to very restricted access or visibility. The requirement for secrecy needs no explanation.

It was therefore difficult to assess accounts of practice or conduct within the WPP, as they were of their very nature highly insulated from supporting information or background detail. The few that concerned the running of the WPP centred upon alleged misuse of authority by a former member of AGS. Thankfully (if correct) this misuse was directed towards the diversion of persons in the WPP to a named professional person for reward, rather than in a

direct compromise of anonymity or security within the scheme. Despite the gravity of the allegations, it was apparent that litigation concerning this was at a very advanced stage and possibly not amenable to or suitable for Ministerial action.

The WPP has no statutory basis and such foundation as it possesses is through internal Garda directive. Despite the ad hoc development of its structures and practice since 1997 there is the appearance of a strong organisational approach. However, operational divisions are too remote from the administrative centre, both physically and in their practice, which may account for a complaint of a “*maverick*” in past ranks.

A Security Review Group does enable oversight of administration of the scheme but the extent of access by it to protected person’s grievances is far from certain.

Due to the dangers attending a revelation leading to the identities of any person in the programme becoming known, as well as the confined nature of the IRM function, it was considered not prudent or possible to gain more than a generalised and somewhat superficial view of the structure and performance of the WPP.

However, there is sufficient to suggest that the programme would benefit from being placed on a statutory basis and that its structure should be streamlined to enable real traffic or communication between the administrative and the operative branches.

Any person accepted into and signing up to the WPP can be in no doubt as to their condition and status, due to elaborate vetting and contractual and pre-contractual arrangements.

However, there are a number of persons among the files reviewed who wrongfully characterise themselves as being in the Witness Protection Programme. This typically stems from a belief that warnings by AGS concerning their personal security place them within this category or that perceived inducements or assurances concerning their cooperation as witnesses in prosecutions has similar effect.



**Recommendation 8**

**It is recommended that in the conduct of prosecutions of gangland or subversive crime that civilian witnesses be disabused of any conception that they are in the WPP or, that they be otherwise educated that, despite being offered assistance or temporary protection, they are not in a situation of being rewarded, compensated or maintained.**

**It is recommended that such review as does take place to enable statutory framing of the structure, administration, financing, operation and liabilities of the WPP also contemplates the inclusion of accountability and review, for instance through judicial involvement.**

**The IRM would fall short of recommending the appropriate mechanism for review or other preparation for statutory establishment of the programme due to the status and task of the WPP.**

## CHAPTER 3

# GARDA SÍOCHÁNA OMBUDSMAN COMMISSION (GSOC)

### **3.1 Garda Síochána Ombudsman Commission (GSOC)**

GSOC was brought into being against a background of general dissatisfaction and lack of faith in the independence and rigour of the Garda Síochána Complaints Board. Its establishment was by means of Parts III and IV of the Garda Síochána Act 2005 in which its functions and procedures were provided. Due to the level of confidentiality ensured under the provisions governing the operation of GSOC, the IRM Panel had only limited access to materials passing between complainants and GSOC.

There was no part or task in the Review to subject GSOC to any independent form of examination. However, their role in many cases had preceded that of examination of individual files as conducted by the Panel and certain issues worthy of attention became apparent.

A very common ground upon which an investigation was not entertained by GSOC is that the application to it was out of time. The time limit for such an application was six months from the date of the event giving rise to the complaint. This has been expanded to twelve months. There is allowance under the current legislation for an extension of time to admit a complaint, provided the complainant can show good cause or reason for the time to be extended or that, in the view of the Commission, public interest is best served by extending the time.

There appears to be inconsistency in the application by GSOC of both the calculation of the commencement of time running against a complainant and of the principles under which or by which a complaint should be deemed sufficiently excused in its lateness to allow for admission.

#### **(i) Time Limits**

Section 84(1) of the Garda Síochána Act 2005, as amended, states as follows: “*A complaint must be made within the period of twelve months beginning on the date of the conduct giving rise to the complaint or within any extension of that period allowed under subsection (2)*”.

Notwithstanding the clear wording of this sub-section, it is apparent that in denying the admission of certain complaints, GSOC has appeared to calculate the commencement of the time to run against a complainant as being the initial criminal event or activity giving rise to Garda interaction, rather than discerning occasions upon which the event complained of in fact post-dates the initial complaint to or activity of An Garda Síochána and frequently has involved failure in investigative action by An Garda Síochána, which on one reading can be deemed a continuous activity or lack thereof, up to the date of making an official complaint to GSOC.

Likewise, there is at least one case among those reviewed in which a complaint mounted on behalf of an infant has not had the benefit of an extension of time that was appropriate.

**Recommendation 9**

**In order to strengthen the role of GSOC and its profile among those who seek to complain of Garda misconduct or inactivity it would be advisable that GSOC, in corresponding with such complainants who are at risk of being excluded from its process through a lapse of time, indicates the period from which it is calculated by GSOC that time has started to run as against the complainant.**

**Further, it is advised that invitations extended to complainants to provide good reason to permit of extension of the time limit expressed in the Act, should also bear sufficient information to enable such complainants (generally acting without assistance or advice) to know the grounds or reasons likely to find favour in the consideration of the extension of time. For instance, that the person has been under a disability or incapable of mounting complaint for some of the period of reckoning. Alternatively, that the complaint is being made by or on behalf of a person incapable of bringing the claim forward themselves or that the misconduct alleged has only come to the attention of the complainant within a period such as to bring it within the calculable time under the Act.**

It should be noted that documents passing from GSOC to the Department have indicated a stance on behalf of GSOC whereby it is stated policy to calculate the time in a manner favourable to the complainant and to extend same when there are reasonable grounds for viewing the complainant as being under a disability or otherwise in ignorance of the events giving rise to the complaint. Despite these policy statements, this has not been consistently apparent from review of the files before the IRM.

In the context of time limits, recent amendment has seen the time within which complaint may be made to GSOC doubled to a twelve month period. This is to be welcomed. The flexibility allowing for extension of the time for admission, and to the calculation of the commencement of time running against a complainant appears also to require consistent application into the future.

(ii) Potential problem with the mechanism for deciding admissibility

As has been stated before, an investigation mounted by GSOC into Garda activity is predicated on its potential for uncovering a breach of discipline or misconduct. This has led to a perceptible gap or problem with the mechanism for deciding admissibility of a complaint. Firstly, in the event that GSOC suspects or has reason to suspect misconduct by a member of AGS but, whether through obstruction or lack of evidence, is incapable of assessing that a particular or named member of AGS has responsibility for such misbehaviour or misconduct, the result has been abandonment of an investigation either through its being deemed inadmissible for that reason or alternatively that a finding cannot be made as a result of any such investigation. There are a few instances among the files where it is credible that the complainant has revealed sufficient to indicate the existence of a breach of duty on behalf of AGS but in the absence of a culprit or responsible person within the force GSOC has appeared toothless. It is therefore advised that any future amendment to the Garda Síochána Act 2005 incorporates a power within GSOC to declare the existence of a breach arising from a complainant's complaint, despite there being no responsible person being uncovered or disclosed. While such an unattached admonition may have less significance than cases in which disciplinary action follows upon a GSOC finding, it would nonetheless allow for some satisfaction on behalf of members of the public that their complaint has been followed through to such conclusion as is allowed and any declaration forthcoming can only be of assistance in any amendment of Garda practice following on from such a declaration and of value to the division to which it relates.

**Recommendation 10**

**During the IRM deliberations, the above course has been adopted by legislation (the Garda Síochána (Amendment) Act 2015), but it requires Ministerial intervention, or the intervention of GSOC itself, to achieve. It is recommended that the expansion of**

**GSOC's ability to report on Garda failings of a systemic nature or by an untraceable member be further expanded to include complaints emanating from members of the public and the Garda Commissioner.**

### **3.2 Appointment of Investigators**

Among the more disillusioned complainants with regard to GSOC activity it is common to encounter a jaundiced view of “Gardaí investigating Gardaí”. It is doubtless the case that the structure of GSOC and its practice as formulated in the Garda Síochána Act 2005 necessitates serving Garda members garnering the evidence and running the investigation in the vast majority of cases admitted for GSOC investigation.

It appears to be normal international practice that members of the existing law enforcement agencies conduct interviews and take statements and examine situations in order to investigate complaints against their own members. This practice is not per se one that is to be criticised in this document. However, it is noteworthy that the structure of appointment of investigators under the Act calls for the investigators to be designated by the Garda Commissioner. However, any such investigator appears to be answerable to GSOC and not to the Commissioner who has made that appointment. The result in certain instances has been one of lengthy delay without explanation in the conduct of GSOC investigations. It is easy to imagine that a person appointed by the Garda Commissioner is answerable to her, yet the Garda Commissioner has no place in following up GSOC enquiries in order to ascertain the current position.

#### **Recommendation 11**

**This manner of appointment should be altered to enable GSOC itself to undertake the appointment of existing Garda members to undertake investigations. Whether this be through setting up of panels of Garda members from which such investigators may be drawn at the choice of GSOC, or otherwise, is a matter that should be considered in consultation with the Garda Commissioner and GSOC itself.**

**Recommendation 12**

**Furthermore, culpable delay in pursuing GSOC investigations should be specifically included as a matter of potential breach of discipline or misconduct, in the disciplinary regulations of an Garda Síochána.**

### **3.3 Complaints Directed to An Garda Síochána or the Garda Commissioner**

The means of mounting a complaint to GSOC rightly includes the ability to do so through a local Garda station or any member of An Garda Síochána. However, the Act as currently drafted, calls for such complaints when received by members of An Garda Síochána to be transmitted provided they are “*for forwarding to GSOC*”. In a small number of files under review it is noteworthy that Gardaí who have received complaints concerning fellow members intended to be transmitted to the Garda Commissioner or in the eyes of the complainant worthy of investigation actively by AGS, have nonetheless submitted such complaints to GSOC.

**Recommendation 13**

**This requires clarification as it has the appearance in a number of files of being a means of AGS avoiding its duty to investigate crime when same is said to have been perpetrated by its members. If a member of the public considers that a complaint they are making is one of a criminal nature but happens to implicate a member of AGS such a person is entitled to bring such complaint to AGS for its own investigation and the forwarding of complaints to GSOC should be at the instance of the complainant alone.**

## CHAPTER 4

# INVESTIGATION OF FATALITIES & CONVENING OF INQUESTS



## 4.1 Investigation of Fatalities and Convening of Inquests

It is not the function of this document to provide an overview in relation to investigations generally regarding suspicious deaths or those occurring through road traffic, workplace and other accident. Nor is it intended to add to the considerable documentation concerning the need for restructuring and proper resourcing of the Coroner's service.

It should be noted in the latter context that a well prepared Coroners' Bill was presented on behalf of the then Minister for Justice and the Government of the day in 2007 but has never been passed or brought into force. This had its origin in the perception that the existing structure had potential to be found wanting under the provision of Article 2 of the European Convention on Human Rights as interpreted by the European Court of Human Rights on an evolving basis.

The Bill reflected significant review of the Coroner Service which had resulted in a report of the working group in a review of the Coroners' Service published in or about the year 2000.

Although it is but a small minority of cases among the 320 examined by the IRM that had their genesis in fatalities of a questionable origin or through accident, it is no surprise that these house the most cogent, consistent and understandable sense of grievance among complainants, as well as persistently attracting public attention and concern.

The vindication of the right to life protected under Article 2 of the European Convention on Human Rights has been interpreted as imposing procedural obligations on State agents in the wake of death. The purpose behind such procedural obligation is best expressed in the words of Lord Bingham in the case of *R (Amin) –v- Home Secretary* [2004] 1 AC 653:

*“The purposes of such an investigation are clear; to ensure so far as possible that the full facts are brought to light; that culpable and discernible conduct is exposed and brought to public notice; that suspicion of deliberate wrong doing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who*

*have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.”*

It appears clear now that the obligations implied under Article 2 extend not alone to deaths in which State agents are implicated as having responsibility but, beyond that, to the holding of effective investigations where the right to life has been violated.

While the legal systems in the many states that are parties to the Convention vary greatly, in this jurisdiction these obligations are said to be discharged normally by Garda investigation (and prosecution if suitable) and where appropriate through inquests conducted at Coroners Courts.

In general, there are some 1500 inquests per annum. They do not concern all deaths that occur in the jurisdiction and are divided as between those that are automatically the subject of inquest and those in which, at the discretion of a Coroner, an inquest is convened. Of these, many are non-contentious and it is likely that the experience of next-of-kin by and large is one of satisfaction that the passing of their loved one has given rise to full exposition of the surrounding circumstances and the cause of death and that such lessons as can be derived therefrom are made available.

Under the relatively primitive structure remaining in force, the 1962 Coroners Act, Coroners in each district are currently somewhat in thrall to those investigating the deaths that come to their attention. As an example, fatalities the subject of ongoing investigation and awaiting a decision as to whether prosecution take place, remain solely under the management of the Garda Commissioner. Unless and until a decision not to prosecute arising from the circumstance of death is made there is no ability in the Coroner's Office to gain disclosure of an investigation as it unfolds or to seek that certain avenues of investigation be undertaken.

In some of the more historic cases reviewed by the Panel it would appear (and in particular in locations in which Coroners' inquests were infrequent) that statements provided by AGS to the presiding Coroner were selectively chosen and less than full in their disclosure.

While this may have been motivated by efficiency and a judgment that the cause of death and the surrounding circumstances were readily apparent from such information as was furnished,

it has left AGS open to charges of preventing any public scrutiny of their investigation, in particular when same is vulnerable to accusations of being inadequate.

When this is perceived by members of the public it has the effect of enforcing and underlining suspicion, rather than allaying it.

Experience suggests that different investigative agencies interact inconsistently with the Coroners Court. The Health and Safety Authority is reported as remaining rather aloof from the Coroner's concerns and less than forthcoming in disclosure of materials at its disposal. An Garda Síochána, who themselves retain control over access to information by the Coroner, until a point of its being known that no prosecution will ensue, while being more forthcoming, remain in control of such information as is disclosed and therefore open to suspicion that material is selectively offered to a Coroner. Medical agencies are viewed as amenable to Coroners' needs.

This arrangement renders powerless any Coroner in preparation of inquests to command interview of witnesses overlooked by an investigation team and the directing of potential avenues of investigation as yet unexplored and may be counted as a weakness.

There is consistent among complainants aggrieved at the management of both investigations into, and inquests arising from, suspicious and accidental death a sense of their being kept in the dark and denied information necessary for an informed input to an inquest. Some of this may emanate from a paternalistic and diffident approach towards them but some simply arise from inadequate care in communication with families and next-of-kin, both by AGS and to a lesser degree by the Coroner's Office.

The Supreme Court, in the case of *Ramseyer –v- Mahon* in June 2005, enhanced the rights of access by the next-of-kin to statements obtained in the course of investigation and available for the convening of a Coroner's inquest. Despite this judgment, access to such documents has proven less than automatic to concerned family members and next-of-kin and particularly those who have not availed of legal advice.

Since 2013 there has been instituted a means of access to either legal assistance or full legal aid for the next-of-kin for the preparation of a Coroner's inquest. The means whereby this is

achieved is very cumbersome and requires some insight and knowledge on behalf of next-of-kin in order to make application for same.

Given the relatively low numbers of inquests convened annually and, in particular, the small subset of same that may reasonably call for legal representation (as opposed to legal assistance) together with any independent expertise that may be sought on behalf of next-of-kin, it is desirable that legal assistance in the first instance be provided to a member of the deceased's family or one among the next-of-kin sufficiently interested in the deceased's affairs as of right and automatically. This would enable any person providing such assistance to make further application for full legal aid on behalf of the next-of-kin and would enable the voicing in an articulate fashion of possible suspicions held by the family of a deceased person, so that same can be allayed properly and dealt with respectfully.

Likewise, such a step would enhance the prospects of the next-of-kin or bereaved members of a deceased's family feeling included in the preparation for an inquest and adequately informed prior to it.

It is commonly and persistently the case among these files that such persons have felt entirely excluded from any choices made as to witness selection, questioning or advocacy in the setting of a Coroners' inquests.

The practical remedy of a Coroner's inquest can vary greatly. In those areas in which the acting Coroner may convene relatively few inquests per annum, it is the frequent practice that a local Garda member conducts the inquest as though he were acting counsel to the Coroner. In utterly non-contentious cases this can be a great service to all parties. In cases in which there is family resentment or suspicion with regard to the adequacy of Garda involvement in the investigation, it has a very deleterious consequence and gives rise to understandable, persistent and near unshakeable suspicion that the inquest has been hijacked by AGS for its own end and conducted so as to exclude any matters of embarrassment to AGS.

Adequate legal assistance in advance of such an inquest and more educated or proactive involvement by the Coroner's Office through disclosure and consultation in advance of inquests, should at least contribute to the elimination of these perceptions.

As things currently stand, there is no structured communication with next-of-kin and others bereaved, prior to the convening of inquests. The files reveal a haphazard level of notification of the sitting dates for an inquest together with a persistent failure to make understood the parameters and limits of a Coroner's inquest, its investigations and the meaning of its verdict. There is a very effective charity in the UK that discharges this function of liaison and explanation. In this jurisdiction next-of-kin are at the hazard of the willingness of the Coroner's office to proactively engage and educate – a task for which they are not resourced.

One cogent account of an inquest convened in the wake of a tragic road traffic incident revealed that the family of one deceased were informed of a hearing date only two days before it and offered no explanation for the absence of witnesses who were both relevant and necessary.

There is at least one file among those reviewed in which evident systemic failure by AGS may have accidentally contributed to an opportunity for a distressed and medically unfit adult to die by overdosing. For reasons addressed elsewhere, GSOC was unable to advance to a point of making a finding of wrongdoing, as it was impossible to pinpoint a potential named individual within An Garda Síochána responsible for any possible breach of duty. The jury for this inquest, as is common among many inquests, added a “rider” to their verdict that indicated an intelligent assessment of the evidence and had a potential application into the future.

The addition of riders by inquest juries can vary from specific points of recommendation as to improvement in safety in the workplace, prescribing of medicines and other matters wherein a risk appears to have been exposed by the facts under review. Distant as these matters are from the function of the IRM, it is noteworthy that even the most focussed and worthy of riders and recommendations voiced by such a jury is, at best, passed on to such State agency, authority or body as may have an interest in the subject matter without any accountability or monitoring as to its effectiveness or the institution of any amended practice in the wake thereof.

It should also be noted that the ramshackle structuring of the office of the Coroner in its means of appointment, selection of jurors, investigative resources and access to assistance or aid in representation for and on behalf of the Coroner himself or herself, remains in need of

attention, not alone to fulfil obligations as appear to be expanding and evolving in the European Court of Human Rights but also the well expressed needs of our own community as reviewed through a number of these files.

#### **Recommendation 14**

**In short, in the absence of the overhaul as first initiated in the Review Group Report of 2000 and the Bill of 2007, the following short term recommendations would at least enhance the position of next-of-kin and others interested in a death or fatality, the subject of an inquest:**

- (a) An automatic right to early legal assistance for a suitable next-of-kin or bereaved, with the ability for a legal representative to make application for further legal aid;**
- (b) Automatic and full disclosure of all statements to be made available to the Coroner by AGS, the Health Service Executive, the Health and Safety Authority, and any other relevant investigating agency; exceptions to this may be predictable, where a persons security may be placed at risk etc.**
- (c) Failure by AGS to provide full disclosure to the Coroner or to have in place effective Family Liaison Officers in preparation for an inquest ought to have the potential to constitute a breach of discipline or a systemic breach capable of investigation and declaration by GSOC.**
- (d) That a Coroner be explicitly empowered, on a case by case basis, to appoint their own court-presenter or legal officer to nominate and examine witnesses and otherwise undertake organisation of an inquest, as judged appropriate, in place of default control of such matters by Gardai or others.**
- (e) That Riders or recommendations made by juries be the subject of a centralised annual assessment or review.**

#### **Recommendation 15**

**It is further recommended that, should all or any of the above be instituted, there be incorporated into a simple informative document or leaflet a plain explanation of any assistance available to next-of-kin/family, both in the wake of any sudden and unexpected death and in preparation for an inquest, together with adequate measures to disseminate same.**

As an aside, it is noted with approval that complaints concerning the immediate forensic response of Garda authorities to fatal and other serious road traffic collisions have abated to near zero since an overhaul of the national response to these was instituted some years ago, resulting in a significant allocation of training and resource.

There remains an anomaly in the retention of a document, known as a CT68, from disclosure to interested parties. This is an accident report form transmitted to the Road Safety Authority on behalf of AGS. It has no particular legal status and, given its use, is presumably intended to enable the body receiving it to draw lessons from the occurrences notified. Despite a declared public policy interest said to ground its non-disclosure to family of persons killed in collisions, no rationale has been offered for this. Its retention may have some basis in enabling comment or opinion to be expressed on the document but this is to hazard a guess. In the event that part of such a document does refer to a subjective viewpoint or impression held by a Garda at the scene, this can be redacted from the form prior to its release.

**Recommendation 16**

**It is apparent from a particularly sad case under review by the Panel that refusal to part with such a document is, quite understandably, received as an indication of there being failings in the investigation or other impure reason to hide the notation contained in the form. It is recommended that this form be no longer subject to policy-driven non-disclosure.**

## CHAPTER 5

# POLITICAL RESPONSE TO COMPLAINTS



## **5.1 Political Response to Complaints**

As was observed earlier in this document, most if not all of the files that have found their way to the Department of Justice and Equality for attention had done so through a political intermediary, namely a TD. In many instances this has been the representative of a constituent intending to mount a complaint. In a surprising number of cases it has been a member who has found him or herself to be something of a conduit in general for persons both within and outside of their own constituency. Many initial references commencing these files had their origin some years ago and it is noteworthy that politicians of all parties while in opposition consistently pass on issues regarding alleged Garda misconduct and other related matters to the Department, either through a simple covering letter passing on the grievance for the attention of the Minister or alternatively in no more than a paragraph indicating that it is their wish on behalf of the constituent or complainant that some form of enquiry or action be put in train.

There are very few instances whereby any public representative demonstrates by letter or otherwise that they have applied their mind to the substance of what is complained of or by their own input sought to rationalise or refine any complaint being made.

In considering the difficult and multifaceted task of a public representative, it is little surprise that backbench TDs and opposition representatives do not have available to them resources and expertise sufficient to give rise to an analysis of some of the more complex files that come to their attention and must simply pass them to the Department for its analysis.

Thus, the unfiltered transmission of complainants' grievances is likely to remain. It is noteworthy, however, that among those who have raised complaints and who have subsequently attained power or the responsibility of office the appetite to institute commissions of inquiry or alternative investigations into their constituents and other persons' grievances diminishes vastly.

It should be recognised that but for the intervention at political level of various then opposition parliamentarians concerning issues regarding policing in Donegal, that the

benefits of the Morris Tribunal in terms of its improvement to police practices might never have occurred and many acts of appalling misconduct and wrongdoing would have gone unmarked and perhaps persisted.

At the other end of the spectrum, there is a minority of files (but healthy in number) that must suggest to any reader that the complaint being offered is fanciful, not amenable to investigation and in many instances the likely product of unfounded feelings of persecution. Despite this they are transmitted by TDs as requiring Ministerial attention.

A difficulty for the Minister and her Department in perusing such files is to avoid (as they appear to do) too readily reading such a meaning into a badly articulated and somewhat extraordinary account. It is quite feasible that persons who are the subject of wrongdoing at the hands of public servants and who subsequently gain nothing but a deaf ear to their protest can increasingly, in their agitation, add unnecessary layers to their account so as to make it difficult to perceive that at its core a true or disturbing allegation requiring attention may lie.

There is another class of file in which certain complainants have sought of the Minister that she displace or bring about the overturning of judicial determinations or alternatively halt or otherwise prohibit existing investigations or prosecutions that are in being. Notwithstanding such impossibilities being expressed in plain terms these have been habitually passed on to the Department through public representatives who must be aware of the misplaced nature of any such request.

With the lessons obtained through the Morris Tribunal Report, the benefit in value of political agitation with regard to individual cases and Garda conduct therein must remain. There is also a danger that complainants capable of generating the greatest “noise” may obscure more worthy cases or alternatively diminish the process whereby political engagement can convert into beneficial action.

It is very likely that the IRM owes its very existence to the justifiable clamour that emerged in the wake of revelations offered by certain members of AGS well known to the public. It is also easy to speculate that publicly voiced concern with regard to the death of Fr Niall Molloy and the allegations raised through Cynthia Owen in part propelled the appointment of

senior counsel to review the investigations in each case and the documentation generated by same.

For each single case in which Ministerial action has been taken of a statutory nature or otherwise there must be hundreds for which none is recommended. Many of these give rise to substantial correspondence over many years engaging the time of Department officials over many hours. It has been observed, in passing, that GSOC has a process whereby complainants of a repetitive and diverse nature may find themselves and their complaints subject to a designation as “persistent complainant”. Whether this allocation results in their being accorded less time or lower priority is unclear.

**Recommendation 17**

**It may be appropriate for the Department to create a similar category provided certain safeguards exist so as to prevent such a downgrading or reduced priority being accorded to either a file of great difficulty in itself or, alternatively, one worthy of greater attention. A possible remedy for this would be the lodging of certain of the papers associated with the file (sufficient to render the subject matter clear) with a relevant Dáil Committee to enable vetting of that process through a balanced political source.**

In review of these files it is apparent to the Panel that those advising within the Department of Justice and Equality and formulating responses to individual complainants are well aware and cognisant of the limit of the Minister’s powers, the meaning and place of judicial determination, the independence of the DPP and of GSOC. While correspondence emanating from the Department is necessarily cautious in its terms, its expressions of the Minister’s inabilities to make the interventions requested are unimpeachable. Insofar as the exercise conducted by Panel members has value, this is likely to prove impossible to judge save over time and is certainly no function of the IRM itself to assess. It is not recommended that there be any permanence attached to the role of the Panel whereby functions discharged by the Department are to be “contracted out”.

### **Recommendation 18**

However, should it prove that, through this Panel, advance has been made with some of the more intractable files or that solutions proposed deriving from a more general expertise than that within the Department have proved effective – it may be worthwhile for the Minister and her successors to consider the occasional retention of counsel or other expert both to allay fears that matters worthy of action have been overlooked or to devise appropriate systems enabling closure being brought to long standing matters giving rise to public disquiet. To date, and in the examples referred to above, these have concerned lengthy reports, requiring perusal of many boxes of investigative material. It is likewise possible that a more refined version of review on a lesser scale and with lesser resources, in line with the individual reporting undertaken by the Panel in this mechanism, can be contemplated on a selective basis into the future.

There is demonstrated value in public representatives urging or voicing concern on behalf of members of the public (including “whistleblowers”). This may require balancing against the risk of using the absolute freedom of Dáil expression in instances where to do so must be futile or wrongfully raise expectation in members of the public that action will ensue, when it must be known that this is, at best, highly unlikely.

### **Recommendation 19**

It is a matter for consideration by Dáil members in the organisation of their affairs, as well as for the Minister for Justice and Equality of the day, whether it is desirable that some refinement is brought to the raising of individual cases through Parliamentary Questions. Members who wish to raise a concern should never be prevented from so doing. However, where such Member is part of a grouping resourced with a spokesperson on Justice and Equality, it may be pertinent that the Minister of the day be free to seek in writing any proposal of such spokesperson, with regard to the issue raised. In the event that certain repeated questions have their origin in a particular known case or cause, it is prudent to ascertain that the airing of same has a purpose, rather than be an occasion to demonstrate fidelity to a constituent and possibly compound their grievances by apparent support, yet advance no concrete or recommended course of action.

### **Recommendation 20**

It should assist the Department of Justice and Equality in possible reduction of tax-funded “man-hours” in handling such complaints, that it adapt some of the process or reasoning contained under the introductory heading “Remit of the IRM”, so that in future it actively clarifies the authority of any named complainant to advocate on behalf of a third-party or to demonstrate their means of knowledge and standing.

These latter reflections fall well outside the terms of engagement of each member of this Review, they are intended to relieve the Department of a needless burden in certain cases that are exhausted in their remedies or not amenable to any step within Ministerial or Government control, while keeping fluid the ability in public representatives to advance grievances and concerns touching on Policing and related areas.