



**Presentation by the Garda Síochána Ombudsman Commission  
to the  
Joint Oireachtas Committee on Public Service Oversight and Petitions**

**4.15pm on Wednesday 3 July 2013**

Committee Room 3, LH 2000

Leinster House

Kildare Street

Dublin 2

**Commissioner Simon O'Brien, Chairperson of the Ombudsman Commission**

**Commissioner Kieran FitzGerald**

**Commissioner Carmel Foley**

Good afternoon, Chairman and Committee members. We are, as you know, a three member Commission and propose that each of us in turn will present some of our thoughts to you.

We were appointed by the President on 12<sup>th</sup> December, 2011 and last year we published our corporate strategy. Timeliness in completing fair, proportionate, independent and impartial enquiries was at the heart of our approach. We found that many of our investigations were open for far too long. We firmly believed that this situation was not satisfactory in giving redress to the people complaining to us, nor to the gardaí being complained about.

The main reason for delays has been the difficulties encountered in the collection of information and evidence. Requests to the Garda Síochána, for information necessary to advance investigations, were not being completed within a timeframe of 30 days agreed in protocols concluded under the Garda Síochána Act, 2005 (The Act). In one case we waited 548 days for a request to be completed and the vast majority were well over the agreed time limits, often by excessive periods. While some matters were complex, most were routine. We take some responsibility for this; we were conscious that independent oversight is a new experience for the Garda Síochána. We had sought to achieve negotiated cooperation and did not always trigger agreed escalation processes immediately.

There was also another very worrying trend in our interactions with the Garda Síochána. On many occasions, when requesting information, we were being asked to state why it was relevant to our inquiry. That one State body, investigating another, should be asked for the relevance of a request before materials pertinent to an investigation are released is a matter of considerable concern. I doubt that the Garda Síochána would readily accept such demands from parties under investigation by them. No such qualification was ever agreed in the protocols and these types of back and forward communications also added even more delay to an already unsatisfactory process. This Commission addressed all these matters, along with others, robustly and also made sure that overdue requests were correctly escalated. We also made representations at the very highest level of the Garda Síochána and we did begin to make some headway.

The current Commission had been in place for 18 months and had been wrestling with these issues assertively but quietly over that whole period. We had hoped, however, that by the time of publishing our 2012 Annual Report this spring we could have put any comments on these issues in the past tense. Alas, when that date approached, there were still problems. In fact, just prior to publication, we were again being asked to justify the relevance of a request for evidence pertinent to a complex investigation. The Commission was of a clear mind that many of the very important issues were unresolved and as such we decided to make public comment on the issue in our Annual Report. This was in an attempt to unblock these fundamental matters and shed light onto what had been happening. We will, of course, be happy to take questions on our Report and other matters.

I will now hand over to my colleague, Commissioner Carmel Foley.

We would like to acknowledge that there has been improvement in some cases in the timeliness of response by the Garda Síochána to our requests. Routine requests are now channelled through an office set up specifically to deal with GSOC correspondence. More sensitive matters are dealt with in a separate manner. In relation to many of the more minor complaints, and in accordance with the Act, we request the Garda Síochána to investigate. We remain concerned however that, as a result of Garda Síochána delays in completing these investigations, at any given time there is a caseload of about 500 complaint files of a disciplinary nature awaiting completion. Similarly, GSOC investigations of allegations of a criminal nature are awaiting Garda cooperation before they can be completed. These delays place unnecessary strain on complainants and on the Garda members concerned.

Turning to the negotiation of revised protocols between the two organisations, we look forward to their completion. We hope that the new protocols will be operated in a timely manner and in a constructive spirit.

I also wish to refer to this Committee's most recent correspondence to us, enclosing for our consideration:

- (i) the Garda Commissioner's Report, together with the relevant appendices, of the examination into allegations of irregularities in the operation of the Fixed Charge Processing System (FCPS), and

- (ii) the report of the Garda Professional Standards Unit on the examination of the Processes and Systems in place to deal with Cancellations of FCPS Notices by Superintendents and Inspectors acting in that capacity.

The Ombudsman Commission notes the Garda Commissioner's statement that three Garda officers are to be subject to disciplinary procedures arising out of this report. We also note that the Minister for Justice and Equality (the Minister) has referred this matter to the Joint Oireachtas Committee on Justice, Defence and Equality and to the Garda Inspectorate for their consideration.

Last year, the Ombudsman Commission decided against opening an investigation. We were conscious that the whistleblower was a serving garda and, therefore, we could not, under the Act, deem a complaint from him admissible. We were also conscious that the legislation provided a mechanism for him to bring his concerns to other parties and that he was doing so.

My colleague, Commissioner Kieran FitzGerald, will discuss our recent special report.

On the 9th May this year, we sent a report in accordance with section 80(5) of the Act to the Minister. This section allows us to do so when we believe it is appropriate because of the gravity of the matters that have come to our notice. The Minister has since laid the report before the Houses of the Oireachtas. We submitted the report because our findings in an investigation conducted in the public interest led us to have serious concerns regarding the implementation and management of informant handling procedures, both historic and current. For reasons largely to do with the safety of persons, and as outlined in our report, we are not in a position to discuss the details of the particular investigation. However, we make recommendations in our report and would like to refer to some of those for the Committee. Before doing so, we would like to make it clear that we accept that informants are an established part of policing. However, complex issues arise regarding informants' motivations and the provision of any advantages or credit to them. That said, we have no issues with the proper use of informants.

What we found led us to conclude that there were serious deficiencies in the Garda Síochána management procedures regarding informant handling practices. We found

poor record keeping and non-adherence to procedures. We found deficiencies in the implementation and management of the old system, which was replaced, following strong words from the Morris Tribunal, by the current system, known as CHIS. What we found led us to believe that not all the deficiencies identified by the Morris Tribunal were remedied. Our concerns are not historical - they relate to the present day.

The deficiencies point to a culture wherein the formal informant handling systems could be bypassed or ignored. You can have a credible system but the problem is that if a person chooses to bypass that system and run an informant “off the books”, so to speak, there may be no way of ever even knowing that that is going on.

The oversight systems in Ireland do not seem to take account of this. This is not a problem with the CHIS system. The Honourable Mr Justice Thomas Smyth, now retired, reports to the Minister regarding the operation of the CHIS system. His findings have been positive. We have no reason to question Judge Smyth’s findings nor do we. We are saying that the oversight operated by Judge Smyth is not designed to address the possibility that informants might be run outside of the formal system. We are unaware of oversight that might monitor this.

Another major concern relates to the use of informants who may be participating in the criminal activity about which they are providing information, particularly as an individual providing the information could also be charged in relation to the alleged criminal activity. Absence of formal procedures for the management and use of such informants creates significant risks as it is not possible, in particular, to place parameters upon the extent to which such individuals may be authorised to participate in criminality. We recommend that formal procedures be put in place to govern and guide the deployment and management of such informants, the extent to which the gardaí should interact with the Director of Public Prosecutions (DPP) in relation to such informants, including what information the gardaí should bring to the DPP’s attention and, in light of our findings of poor record-keeping, how such interactions should be recorded and filed.

We are concerned that the matters we have raised with you are having a detrimental impact on effective independent oversight of policing.

Thank you.