

DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 8 Bealtaine 2019

Wednesday, 8 May 2019

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

Jack Chambers,	Frances Black.
Clare Daly,	
Jim O'Callaghan.	

I láthair / In attendance: Deputy Donnchadh Ó Laoghaire and Senator Mark Daly.

Teachta / Deputy Caoimhghín Ó Caoláin sa Chathaoir / in the Chair.

8 MAY 2019

Business of Joint Committee

Chairman: As we have a quorum, we will commence in public session. I thank Senator Mark Daly for allowing us to secure a quorum to commence our business. I remind members to switch off their mobile phones as they interfere with the recording equipment. I have not been advised of any apologies. The minutes of the meeting of 17 April 2019 have been circulated. We will now go into private session.

The joint committee went into private session until 9.48 a.m.

Garda Oversight and Accountability: Garda Síochána Ombudsman Commission

Chairman: We are in public session. The purpose of this morning's meeting is to meet with the Garda Síochána Ombudsman Commission for a general update on its work in the area of Garda oversight and accountability and to hear its views generally on issues and developments in the area of policing oversight including, of course, the report and recommendations of the Commission on the Future of Policing in Ireland. I welcome once again before the committee Ms Justice Mary Ellen Ring, chairperson, Mr. Kieran FitzGerald, commissioner and Mr. Patrick Sullivan, commissioner. They are all very welcome here this morning. I will shortly invite them to make their opening statements. Before I do so, I draw the attention of witnesses to the situation on privilege. They are protected by absolute privilege in respect of the evidence they are to give to the committee; however if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members should be aware that under the Salient Rulings of the Chair, they should not comment on, criticise or make charges against a person outside the House or an official by name in such a way as to make him or her identifiable. I invite Ms Justice Mary Ellen Ring to make her opening statement.

Ms Justice Mary Ellen Ring: I thank the Chairman and committee members for giving us the opportunity to meet them. I am joined by my fellow commissioners Mr. Kieran FitzGerald and Mr. Patrick Sullivan. Since we last met the joint committee, Mr. Sullivan joined GSOC last July after a Public Appointments Service open competition.

Representatives of the commission were last before the committee on 28 February 2018. On that date the commission updated the committee on the fact that there had been no statutory changes since we had last met it in September 2016, but we were aware of the work being undertaken by the Commission on the Future of Policing in Ireland which had been established in the interim period in May 2017. In February 2018 we also provided the committee with the business case we had submitted to the Minister for Justice and Equality. In it we sought an increase in our staff numbers to assist in the development of our usual caseload and the provision of a separate protected disclosures unit. As members will have seen in the larger submission we provided for the committee, the business case was met in full. To date, we have taken on 21 of the 42 sanctioned staff, with the remaining staff to be with us in the coming months. For the first time in its history, GSOC's number of staff is in excess of 100. As of 30 April this year,

115 people were working in GSOC.

The report of the Commission on the Future of Policing in Ireland was published on 18 September last year. The recommendations in respect of a complaints oversight body were in keeping with the submissions made by GSOC to the commission. GSOC welcomed the proposals, in particular the recommendation made on page 49 of the report that “all complaints about the police should be routed through IOPO [the tentative name for the new body] to determine what action needs to be taken”. At a briefing meeting that morning with Ms Kathleen O’Toole, the commission chair, she confirmed that “all complaints” meant from whatever source and that the Garda should not be investigating itself. It is important to note at this juncture that in our fuller submission we see the word “complaint” as meaning any allegation, from whatever source, internal or external to the Garda, including from confidential human informants or other police agencies, indicating criminal activity or serious misconduct by a member or members of An Garda Síochána.

We have included in our submission the “police oversight principles” which were adopted in November 2011 by the European Partners Against Corruption, EPAC. Key among them are that the police oversight body be sufficiently separated from the hierarchy of the police, subject to its remit, and that the police oversight body be governed and controlled by persons who are not current serving police officers. These are fundamental oversight principles adopted by the European organisation mentioned. They are in keeping with the proposals made in the report of the Commission on the Future of Policing in Ireland which has been endorsed by the Government.

GSOC recently made a submission to the review group on anti-fraud and anti-corruption measures which is chaired by the former Director of Public Prosecutions Mr. James Hamilton as part of that group’s public consultation process. GSOC reiterated the importance of independent oversight where allegations of corruption by Garda members were concerned. We have had one meeting with the Department of Justice and Equality about the proposed new legislation and made further written submissions to it.

However, as of yet we have not seen any draft for the new complaints oversight body.

GSOC, with the other oversight bodies, the Garda Inspectorate and the Policing Authority, did raise concerns when we became aware that there was no oversight element in the implementation body set up to steer through the various recommendations made in the report of the Commission on the Future of Policing in Ireland. Of particular concern to GSOC is the issue of matching a new remit with resources. In 2018, under the current legislative provisions, in excess of 500 cases were referred back from GSOC to the Garda for investigation. There will have to be some increase in resources for GSOC to deal with this caseload. It must also be noted that the Garda superintendents and inspectors who deal with these cases are spread throughout the country. Consideration will also have to be given to the geographic challenges. It must be remembered that there is a cost to the State under the Garda Síochána Act 2005. Gardaí are diverted from their usual policing duties to carry out these GSOC investigations and this has an effect in terms of their time and the resulting Garda costs. GSOC is conscious that if a new complaints oversight body is to succeed, these are issues that should be dealt with in advance of the new organisation being set up. The concern is that without proper planning, resulting in a delay, erosion of public trust in the new body will set in at an early stage.

GSOC is preparing a new business plan drawing on its experience and information to assist in predicting the type of organisation that will be required to meet the demands of a new leg-

islative framework. We hope to have it completed by the middle of 2019, particularly having regard to the proposed date of 1 January 2021 for when a new legislative structure will commence.

An area of significance in the work of GSOC and of any new body is access to information. A key principle in the European Partners Against Corruption, EPAC, police oversight principles is that “The police oversight body’s investigators must be provided with the full range of police powers to enable them to conduct fair, independent and effective investigations, in particular the power to obtain all the information necessary to conduct an effective investigation”. As I indicated, the principles were delivered in 2011. They are in keeping with the recently adopted Venice Principles, the Principles on the Protection and Promotion of the Ombudsman Institution, adopted in Strasbourg on 15 and 16 March by the Venice Commission, the European Commission for Democracy through Law and the Council of Europe’s advisory body on constitutional matters.

We have noted in our submission to the committee that paragraph 16 of the principles adopted in March reads:

The Ombudsman shall be entitled to request the co-operation of any individuals or organisations who may be able to assist in his or her investigations. The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential.

We have submitted the principles to the Department of Justice and Equality, to which the new legislation should have regard when dealing with the necessary powers required for fair and proportionate independent investigations.

Access to information in the Garda is a matter we raised at our first meeting with the committee in September 2016, at which we highlighted the provisions of section 66 of the Police (Northern Ireland) Act 2000, which includes a statutory requirement on the Chief Constable, the Police Service of Northern Ireland and the Northern Ireland Policing Board to provide documentation and information for the Police Ombudsman for Northern Ireland.

GSOC has noted in its submission to the committee that, with the public, we have become aware through the media of allegations of Garda wrongdoing. We are aware that the Garda continues to conduct criminal investigations of its own members without the knowledge or participation of GSOC. We find this troubling. This practice runs the risk of allegations of cover-up, bias or corruption when it becomes known that such investigations have been carried out internally. It runs the risk that fair and independent investigations are not seen as such by the public because they were not notified outside the organisation. Most importantly, it runs the risk of undermining public trust significantly if such internal investigations go wrong. The practice also flies in the face of the recommendation of the Commission on the Future of Policing in Ireland that all such matters be routed through GSOC or the new oversight organisation.

In our 2016 submission to the committee we highlighted as a priority the need to establish more efficient processes to deal with service issues. We have included in our submission today the work that commenced in February 2018 between GSOC and the Garda on the local intervention initiative. Committee members will see the spread of the initiative throughout the country, with certain exceptions. GSOC has paid tribute to the work done by our former staff member Ms Pamela Howard and Inspector Greg Mekitarian of Pearse Street Garda station in Dublin in promoting and developing the pilot scheme. It is an example of the two organisations co-operatively and collaboratively using their joint experiences to provide the public with a

better police service. GSOC and the Garda see this as an important process for the future. To that end, we will continue to review numbers and satisfaction levels in this area. It meets the needs of the people concerned, both gardaí and the public, to sort out issues without resorting to formal disciplinary investigations.

An issue of great concern to all in the past few years has been the handling of protected disclosures within the Garda organisation. GSOC sought and obtained an increase in its numbers for these important investigations. We have set up a separate unit with separate facilities. The last of the sanctioned investigators joined the unit in the past week. As we have reported, GSOC received 24 new protected disclosures from gardaí in 2018 and they have continued into 2019. GSOC is of the view that the continued growth in the number of protected disclosures made to it indicates one of two things – growing confidence in GSOC to treat the disclosures respectfully or a lack of confidence in An Garda Síochána to investigate such disclosures. We have noted in our submission the contrast as far back as 2017 in the numbers officially reported by the Garda. In that year there were 11 protected disclosures made to the Garda internally, while the number of protected disclosures made to GSOC in the same year was 22, double the Garda number. It seems, as new legislation for both organisations is being planned, that the issue of how protected disclosures are dealt with in the two organisations could be usefully reviewed to provide for Garda staff the best and most efficient way of dealing with the issues that have arisen through the disclosures made during the years. I have provided, belatedly this morning, a diagram workflow which provides a representation of how the current legislation directs us to deal with complaints. As will be noted, it is a maze in terms of what is required. We hope to have produced a better diagram by the next time we appear before the committee.

Chairman: I thank Ms Justice Ring for her opening statement and the difficult to follow diagram. It reminds me of a snakes and ladders game and I thought it might be accompanied by a dice and markers. I now invite questions from Deputies Clare Daly and Jim O’Callaghan, in that order.

Deputy Clare Daly: I thank the witnesses for being here today. It is great that we are discussing this subject again but I get a sense of *déjà vu*. These issues have been talked about more since the commission last appeared before the committee but in terms of structural changes, particularly legislatively, we are no further along the road. That is my view.

My first batch of questions relate to the Commission on the Future of Policing in Ireland and the work of GSOC. The press statement issued by GSOC on publication of that report correctly, as far as I am concerned, pinpointed that a lot of what is said therein echoed what had been already said by GSOC. In other words, there is nothing new in it. This could have been legislatively provided for before now. I am incredibly frustrated about that. Does GSOC expect to get a statutory right to information, in particular? As highlighted, this is an area that has been long lobbied for, including in the 2016 report of this committee. Is GSOC any closer to getting that statutory right to information?

I was concerned to hear in the opening statement that GSOC found out about the implementation group and that the Garda Inspectorate and the Policing Authority have also been excluded from the implementation group around the Commission on the Future of Policing in Ireland. That is news to me, which I do not welcome. I note that when GSOC raised the matter with the Department, the response was that it will consult with GSOC. I do not think that is adequate. Do the witnesses still believe that GSOC should have a seat at the table? I believe it should, and that this committee should do all it can to assist in that regard.

It was also mentioned that the GSOC business plan should be available by the middle of this year. Perhaps the witnesses would elaborate on what that means and on the point regarding what additional resources are required. It is a bit unfair to ask the witnesses to comment on the overlap with the Commission on the Future of Policing but an interpretation of it could be that we could have a lot of what is proposed in place and been well down the road already if we had not had the Commission on the Future of Policing in Ireland. There is no reason much of what is proposed is being delayed. I would welcome the witnesses' responses to those questions before I move to my next batch.

Ms Justice Mary Ellen Ring: Mr. Fitzgerald will respond to the question on the statutory right to information.

Mr. Kieran FitzGerald: With regard to the statutory right to information, we are advised that the Department of Justice and Equality is currently preparing the draft heads of Bill for the new legislation. We have had some preliminary discussions with the Department to that end but we have not had sight of any paperwork at this stage. Whether the statutory right to information will be addressed in the Bill, or not, we cannot say at this time. As the Deputy said, it is a right we have been seeking for a long time. We have put various mechanisms in place with the Garda Síochána to try to expedite and facilitate the exchange of information but, limited success would, perhaps, be the best way to describe that process. As of now, we do not know whether it will be a clear statement of access, such as outlined in the European Partners Against Corruption, EPAC principles and the Northern Ireland legislation. We cannot say with any certainty at this time whether it will be there at all or whether there will be some other version of it.

Ms Justice Mary Ellen Ring: With respect to the implementation group membership, the committee members may be familiar with the publication from the Government relating to the timetable, entitled A Policing Service for the Future. Looking at the membership, it is clear that a significant number of members are Secretaries General from throughout the public service, as well as assistant secretaries general. There is a significant number of cross-departmental representatives and, unsurprisingly, the membership includes the Garda Commissioner. As the legislation is also going to deal with new structures in terms of oversight, I cannot help the committee in saying why it was not thought that there should be some representation from the current oversight bodies. We have had one meeting with the implementation personnel but they continue their work at their rate. Beyond that I am afraid the committee would have to direct questions to them. They have a very ambitious timetable under the supervision of the Department of the Taoiseach and it appears they are anxious to meet a start date for change of 1 January 2021. I wish them the best in that regard. We are anxious for that too.

Deputy Clare Daly: This is incredibly illuminating. I do not want to put the witnesses in the difficult position of having to comment on what the Department is doing but this is a forum to put on the public record some of the issues or to tease out what is going on behind the scenes. Hand on heart and on the basis of what has been said and the information provided, I am very worried about where this is going. The witnesses were before us three years ago and legislation had been drafted at the time. Deputy Wallace had drafted legislation that would have given us what all of us said we needed. It could have been in place by now but the witnesses have not seen any paperwork at all with respect to the draft heads of Bill in this respect. They have no idea what aspects are included. They have put on the public record that the body looking at implementation is heavy on civil servants and gardaí but there is zero involvement from the oversight bodies. That is scary and unhelpful from the Department's perspective. It is not really a question but the witnesses have provided that information and it is an appalling, although

not really a surprising, spectre.

I ask about the current scenario with respect to the handling of protected disclosures. It is clearly a growing area in which the witnesses have been involved. What is the average timescale being looked at for GSOC to assess and come to a conclusion with a protected disclosure? I know they can be broad in range but what is the rough timeline? What kind of co-operation is being received from An Garda Síochána? Has it improved in the past year or two or has there been a noticeable difference? There was mention in the statement of how GSOC has opened investigations despite gardaí not informing the commission about incidents. The commission happens to hear about these in the media, etc. These include matters such as the temporary loss of a firearm and ammunition and so on. I am trying to get my head around how that would happen. I assume the commission would ask the Garda Síochána afterwards why it was not informed directly about such matters. What answer was given, assuming that question was asked? Is there anything that could be done to sanction that? It demonstrates a gap in accountability that is really ridiculous. It would be helpful if there was more information on the matter.

Ms Justice Mary Ellen Ring: On the slightly separate issue of protected disclosures, we now have a full complement of investigators which has clearly assisted in dealing with matters that have been pending, and new matters. The rate at which we have been contacted by gardaí from all around the country is increasing and that puts demands on personnel just visiting with people. We have an initial process in place that assesses the information given to us. Regarding what may be to the person making the disclosure a protected disclosure, we first have to establish what is the basis for saying that and then we have to look at it from a legal point of view. We have found for many people it is a very distressing experience. They have had significant long-term experiences where, for instance, something like bullying has affected their work life and personal life so, in fact, the taking of a statement has had to be done over the course of days as opposed to a one hour session, for instance. These cases are, even from an early stage, quite complex and they can be very difficult for the people making the disclosures.

We have levels of communication, having regard to the protections under the Act, with An Garda Síochána and those are working well enough. Our difficulty in any case whether it is a protected disclosure or not is knowing whether we have all of the relevant information. We may ask for A, B and C and get A, B and C in a reasonable period but it is only when examining A, B and C that we discover D, E and F are relevant so we have to go back and make an application for those pieces of information. We can get what we ask for but we do not always get what is relevant. At the end of the day we have to accept that we have gotten everything. I think I set out in my submission an example of a historical matter going back to the early 1980s where on initial application we were told, perhaps not surprisingly, that they could not find documentation. We went to the Office of the Director of Public Prosecutions and, perhaps not surprisingly, they could find the documentation. Then at a late stage we were told by the person involved that they had, in recent times, made an application under data access and got documentation and we discovered that, indeed, in the data access office was information whereas the official request came back with the answer that there was no documentation. I am not suggesting there was malfeasance on anyone's part but it was clear that a line of inquiry was followed, it revealed nothing so the answer back to us was that there was no documentation yet sitting in An Garda Síochána were indeed documents. We do not know sometimes when we are told we have everything or there is nothing more whether in fact we have everything or there is nothing more, and there is no sanction in that regard. It is an ongoing issue and it may be that something like this will always exist. Short of going in ourselves and going through every press and every file, we may not get everything. One would hope that if better file keeping, computerisation and bet-

ter protection of documentation occurs within An Garda Síochána we will then get everything. In terms of contact with An Garda Síochána on investigations, we have picked up a newspaper and read of a matter or heard about it on “Morning Ireland”, having been, like members of the public, unaware of it.

Deputy Clare Daly: Did GSOC ask An Garda Síochána why it was not told about the issue and, if so, was it given an answer?

Ms Justice Mary Ellen Ring: We have been in contact with An Garda Síochána in that regard and I do not think it sees that there was a need to tell GSOC. The Garda was confident that the force was properly investigating the matter and it did not occur to it that there was a need to inform us.

Deputy Clare Daly: I presume that is linked to the lack of sanction. I believe it is linked to Ms Justice Ring’s statement that it was troubling that An Garda Síochána continued to conduct criminal investigations into its members without the knowledge or involvement of GSOC. Either the Garda does not know it is supposed to do that or it is something more sinister. This is very troubling. Ms Justice Ring referred to the new draft protocol and stated that GSOC had not received a response from the Garda Commissioner about the protocol to date. How long has GSOC been waiting for the Commissioner to provide an answer? Have steps been taken to put the protocol in place?

Ms Justice Mary Ellen Ring: We have an existing protocol that goes back to 2013. There was also one prior to that, which arose on the establishment of GSOC. We raised the issue of reviewing the 2013 protocol and we then added a new proposed protocol to the mix. The Garda Commissioner has acknowledged receipt of the draft protocol and has indicated the matter is receiving attention. I would-----

Deputy Clare Daly: Will Ms Justice Ring indicate roughly when he received it? Was it weeks, months or years ago?

Ms Justice Mary Ellen Ring: There was an acknowledgement in March and I have no reason to believe the Garda is not considering it. The issue is where we are on the list of priorities on the Commissioner’s desk.

Deputy Clare Daly: This is all piecing together to form a very troubling picture. It is even more troubling given that we were discussed the same matters three years ago. At that time, we were a little more upbeat because GSOC had gone to the trouble of detailing the legislative provision that would have sorted out this matter. Now we see not only the lack of change in that respect and its impact on the day-to-day work of GSOC. Ms Justice Ring has put on record that in the protected disclosures incidents, some people have been incredibly damaged by what has happened to them or what they perceive to have happened to them without adequate investigation. Some investigations last for days. Ms Justice Ring stated that GSOC continues to experience major difficulty accessing documentation. It is my guess that when we take these matters together, the process for carrying out investigations into protected disclosures is generally very long. Is that correct? I presume that most of the people in these circumstances are not in work.

What is the level of crossover? I am aware of one protected disclosure involving a very serious case of alleged Garda involvement in the drugs trade on which GSOC has finished its report. In tandem with the GSOC investigation, the Garda carried out an internal investigation which was still not finished after about four years. GSOC, however, is not able to publish its

report until the Garda investigation concludes. Is that not the biggest flaw of all? Does this not stunt the work of GSOC? I presume an obstreperous Garda management - I am not saying that is the issue in this case - could delay the matter if it wished by contending that it is still investigating internally. Does the Garda Síochána Ombudsman Commission, GSOC, have much interaction from a human resources perspective with An Garda Síochána around the gardaí and what for them is quite often a nightmare with regard to their working environment when their complaint is ongoing and in how their complaint is kicked between the two organisations?

Ms Justice Mary Ellen Ring: If we are to look at new legislation for the two bodies, it is perhaps a good time to look at the whole process of protected disclosures. Technically, under the law, we cannot discuss it if it means that identities are in some way disclosed. GSOC may be investigating a complaint that the Garda is investigating, but we may not know that until very late in the day. It may be very far advanced in that regard because it is closer to the information, which then causes problems for our investigation. If we are going to have the structure that allows for two organisations to take protected disclosures from staff then some effort should be made to allow for better management of the protected disclosures. We raised this in the general sense when submissions were sought by the Department of Public Expenditure and Reform in relation to the Protected Disclosures Act 2014, about the fact that we cannot talk to the Department of Justice and Equality, which may have had a letter or a submission, we cannot talk to the Policing Authority, which may also have received a letter or submission, and the Garda. Four bodies, therefore, may have information about the same complaint but there is no mechanism to allow us to disclose information except in a formal investigative way with An Garda Síochána. We raised this with the Department of Public Expenditure and Reform, which is the lead agency on the Protected Disclosures Act, and it decided not to deal with that issue in the review of the Act, which I believe took place in 2017.

There are also many issues arising around welfare. We make it very clear to a discloser that welfare is a matter for An Garda Síochána: we are not a welfare agency. Many of the people who come to us are out sick or have been out, some are working and some allegations include lack of advancement. These are issues over which we have no control. We can only investigate the allegation. The Garda is still responsible for its staff and members and it needs to deal with the employment, health and welfare issues. We make this very clear also.

Deputy Clare Daly: Ms Justice Ring paints an incredibly depressing picture, but for all of that I do not blame the witness. I believe the situation we are in is disgraceful, years on from when many of these issues were flagged. In fairness, Ms Justice Ring has not been shy in spelling out the damage that has been done to some members of An Garda Síochána who made these disclosures, and to some of the members of the public who are not getting answers because the commission's hands are tied. The fact that the Department of Public Expenditure and Reform did not take on board the information of GSOC's lived experience of the shortcomings, and that GSOC is not being consulted in the real sense about the changes that are due, really sums up the Department of Justice and Equality. I appreciate that the commission cannot comment on that but I thank the representatives for coming in to the committee. It has been useful, albeit scary.

I apologise to the Chairman as I must leave now. I will follow up on the debate later. I must be somewhere else now.

Chairman: I thank Deputy Daly for her contribution.

Deputy Jim O'Callaghan: I thank the witnesses for coming in to the committee. The Commission on the Future of Policing in Ireland recommends that all complaints should go to

the independent office of the police ombudsman, IOPO. My understanding is that “all complaints” includes minor complaints. Would the representatives agree with this?

Ms Justice Mary Ellen Ring: Mr. FitzGerald will deal with that.

Mr. Kieran FitzGerald: Yes, it would include minor complaints and at the moment many minor complaints come to us. If I understand the Deputy’s question correctly, the best way to do so is to define how we break up complaints. In the minor complaints area, there are even categories within that. We categorise some as service level complaints where a level of public service, perhaps as simple as common politeness, is allegedly not observed and delivered to a complainant by An Garda Síochána. These are the subject of the local intervention scheme to which Ms Justice Ring was referred in our opening statement. We have tried to establish local intervention and in fairness to An Garda Síochána, it engaged positively with it, especially at pilot stage. The scheme is showing green shoots and An Garda Síochána has looked to roll it out widely, although not fully nationwide.

That would deal with minor complaints on matters such as the non-return of a phone call or simple impoliteness or discourtesy. However, there is another level of complaint that would still be less serious, depending on one’s perspective, involving discourtesies that are not suitable for local intervention and the individual in question feels he or she needs the vindication of bringing a complaint to an oversight body. Such complaints come to us and would continue to come to us in future according to the Commission on the Future of Policing in Ireland. Under the current legislation, we can send many of these complaints back to An Garda Síochána. That would not be the case in the future, however, as we would deal with these complaints ourselves. That is why, for example, Ms Justice Ring referred to the issue of resources for this task because these complaints obviously command a fair amount of Garda resources and would require our resources in future. We have no difficulty with that and it is right that they would come to us.

Where appropriate, local intervention is a very worthwhile initiative and one which we will try to reinforce. We will work positively and closely with An Garda Síochána to implement it. Many of these matters are a basic public service and should not be the subject of complicated investigative mechanisms that are resource heavy, adversarial and confrontational. The whole process is currently structured around finding a garda guilty of misconduct or of a crime. In the new legislation, we are trying to focus on resolving the problem. Resolving the problem is much more significant at the minor level. In respect of more serious complaints where serious misconduct or a crime might be alleged, other sanctions are obviously more appropriate.

Deputy Jim O’Callaghan: I recognise that and I agree with Mr. Fitzgerald that a complaint should be a complaint should be one that is related to serious misconduct or indicating criminal activity. Is Mr. Fitzgerald aware from discussions with the Department or from his reading of the Commission on the Future of Policing in Ireland’s report whether it is intended that GSOC will have to deal with minor issues and will not have an option of referring them back to the Garda if the legislation is drafted in accordance with what appear to be the recommendations of the commission? Was that a concern?

Mr. Kieran FitzGerald: It is not particularly a concern of ours. We have said that all complaints should come to us and the commission says all complaints should come to us. We will devise mechanisms to deal with them. There is no question that it will be a big workload and we are nervous about that in terms of resourcing but-----

Deputy Jim O’Callaghan: Maybe I am wrong but I understand GSOC tried to get rid of

minor level complaints about rudeness and gardaí not giving sufficient attention to members of the public. As Mr. Fitzgerald will understand, these are more related to discipline than to-----

Mr. Kieran FitzGerald: Yes. The reason we instituted the local intervention scheme with An Garda Síochána was to try to ensure those matters did not develop into complaints.

Deputy Jim O'Callaghan: That was a good idea. How will the remit of the new independent office of the police ombudsman differ from the current remit of GSOC? I know that is a difficult question because Mr. Fitzgerald is not drafting the remit of the IOPO. I ask him to answer it based on his reading of the commission's report.

Mr. Kieran FitzGerald: Before my colleagues come in, I refer to the Deputy's earlier question on all complaints coming to us. A definition of a complaint has not been provided in the 2005 Act or any of the amending Acts to it thereafter. Such a definition would be very useful. We refer in our submission to all complaints, as does the Commission on the Future of Policing in Ireland. The question then is what is a complaint? As Ms Justice Ring outlined in our submission, we see it and it is seen internationally as are all complaints of wrongdoing. At the moment, we assume that a member of the public has to walk into our office, go online or walk into a Garda station to make a complaint about Garda conduct. That does not necessarily include information that comes to the attention of An Garda Síochána on criminal activity or misconduct committed by a garda. If a person is in custody and says that he or she has heard that Garda X has done something egregious, that complaint may never reach GSOC but it can be interpreted as a complaint about the conduct of a garda. We have to be very clear about what we deem to be a complaint.

Deputy Jim O'Callaghan: It is the responsibility of the Legislature to precisely define what is considered a complaint.

Mr. Kieran FitzGerald: I absolutely agree; it should not be left to interpretation on the ground.

Deputy Jim O'Callaghan: Looking at the report of the Commission on the Future of Policing in Ireland, will a new remit be given to the ombudsman? What is Ms Justice Ring's view? She is smiling.

Ms Justice Mary Ellen Ring: We are in the dark, to be frank. Ms Kathleen O'Toole laid it out very succinctly and used the phrase "all complaints". However, in response to a question from my colleague, Mr. Patrick O'Sullivan, on what she meant by the word "complaints", she confirmed when we met her that she meant all allegations of misconduct or criminal activity. How that translates into legislation is a question for the drafters in the first instance and, subsequently, for the Deputy and his colleagues when passing the legislation. We are highlighting concerns and saying that if a narrow definition of complaints is included in the Act, the police ombudsman will have a narrow remit. If more clarity is given in terms of what a complaint is, we will be able to work in a broader way. This is a matter to be determined by the Department and the parliamentary draftspersons and, thereafter, the Deputy and his colleagues.

Deputy Jim O'Callaghan: The Oireachtas appreciates the involvement of Ms Justice Ring who has experience of dealing with these issues for a long number of years.

I want to discuss the Venice principles, specifically principle No. 16 which Ms Justice Ring has said should be incorporated. I believe she referred to it and it is highlighted in the opening statement. She states she believes the ombudsman should have a legally enforceable right to

unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential. Those are broad powers to give to a statutory investigative body. What type of legally privileged documents is Ms Justice Ring seeking access to?

Ms Justice Mary Ellen Ring: I did not write these principles. They came about, I suspect, after many contributions and discussions. Insofar as it would have a practical application in this jurisdiction, it is unlikely to get to that extent. However, having said that, if documents relevant to our investigations rested in the legal section of An Garda Síochána, for example, they might be pivotal in terms of what people were advised to do. That might help provide answers to some serious question we might have as to what we see people did.

Deputy Jim O'Callaghan: Is GSOC frequently refused access to documentation by An Garda Síochána or has it previously been refused such access on the grounds of legal privilege?

Ms Justice Mary Ellen Ring: Yes, and that is not unexpected. We might say the same thing, although we have waived legal privilege in instances where we felt it would be helpful to other parties.

Deputy Jim O'Callaghan: Should that be underpinned by statute or is it something that can be achieved within the current legislative mechanism? There will obviously be a row about this, in the same way that there can be rows around legal privilege. Is new legislation required?

Ms Justice Mary Ellen Ring: It should be clear that this is the extent to which access is possible. Whether it is appropriate, proportionate or relevant must be something that can be relied upon on a case-by-case basis. If we want to look at legal advice, we would have to make the argument for why we consider it relevant and proportionate. However, the danger is that if somebody does not want to hand over documentation, a decision might be made to deposit it with the legal section and claim legal privilege. In such circumstances, we might be able to litigate it through the courts and, for instance, a judge might look at it independently and decide it is important to our investigation. However, there will be costs and delays in that process. I am not saying that including such a provision in legislation would mean we would use it in every instance, but it would avoid the resting of documentation that could be relevant in a legal section.

Deputy Jim O'Callaghan: If the ombudsman commission were investigating a garda, would any legal advice he or she had personally received be accessible to the commissioners?

Ms Justice Mary Ellen Ring: Not necessarily. I am not saying we would necessarily resort to that information or that people would not still have the opportunity to rely on legal privilege. However, if we are told in the course of an investigation, particularly a serious investigation, that a person was advised by the Garda legal services that he or she was to do X, Y or Z, how do we measure whether what the person is telling us is truthful if we do not have sight of that?

Deputy Jim O'Callaghan: The next issue was raised already by Deputy Clare Daly and is to do with the Garda continuing to conduct criminal investigations into its own members. The chairperson indicated that she is not informed in such instances. If she hears about such a case on the radio or reads about it in a newspaper, is there anything the commission can do thereafter to investigate the matter, as it probably should do?

Ms Justice Mary Ellen Ring: We can always open a public interest investigation under the current legislation, but that is often well after the horse has bolted. For example, I read recently

about a case where a garda had been returned for trial in the Circuit Court. There would be no point in opening a public interest investigation when the DPP has already directed a prosecution and the matter is before the courts.

Deputy Jim O’Callaghan: Why would such a case not come to GSOC? Was it because the Garda did not refer it or was operating a separate criminal investigation?

Mr. Kieran FitzGerald: There is no statutory obligation or pressure on the Garda to refer such cases to GSOC. When one reads in the newspapers that a garda has been returned for trial, what is worrying is that we do not know how many investigations occurred about which we never heard. They are the ones which are probably the most troubling. If a garda is brought to court on foot of a Garda investigation, it looks like things have been efficiently done. However, we do not know about the investigations that go nowhere.

Deputy Jim O’Callaghan: Does Mr. Fitzgerald consider that a statutory provision is required obliging the Garda to inform the commission automatically of such cases?

Mr. Kieran FitzGerald: Yes, because they fall under what we are talking about, namely, the definition of an allegation of some wrongdoing on the part of a garda, which should be notified to the ombudsman commission.

Deputy Jim O’Callaghan: The last time the witnesses were here, there was an issue about the commission’s business plan being implemented and resources not being given. In fairness to the Minister, he stepped up to the plate and delivered in that regard. How many staff now work in the protected disclosures unit?

Ms Justice Mary Ellen Ring: We have eight investigators and an administrator of executive officer rank. We have sought the services of an analyst and the Civil Service tells us a panel will be appointed for that purpose. We hope by the end of the year to have an analyst and a senior investigating officer in charge.

Mr. Kieran FitzGerald: In an earlier question, the Deputy asked about the remit of the new body. It will not have a substantially different remit but one important line in the report of the Commission on the Future of Policing in Ireland recommends that the new body focus on investigating incidents and not individuals. That will be a significant change and will allow us to look at an event and what it is about, rather than focus in a narrow and restricted way on whether a particular garda has erred in his or her conduct.

Deputy Jim O’Callaghan: That is a good idea.

Mr. Kieran FitzGerald: It will be a significant change in how we do business.

Deputy Jack Chambers: I thank the witnesses for attending and for the comprehensive submission. On previous occasions when they were before the committee, the issue of a deficit in co-operation was discussed. The statement mentions the need for unmitigated and legally enforceable access to information and evidence. Has co-operation improved in recent times? Are there areas in which there has been push-back? It was said that trends were emerging in particular areas. What is the trend around co-operation and engagement with various investigations?

Ms Justice Mary Ellen Ring: We have seen better co-operation and that is because both organisations are recognising the work that each does. I compliment the work of chief superin-

tendent, Margaret Nugent. She is in internal affairs and is our conduit for requests for information, as well as our general contact for investigations into protected disclosures. She and her colleague, Superintendent Helen Deely, have been excellent to work with. They are supported by Assistant Commissioner David Sheahan and, ultimately, the Garda Commissioner. There are people at a high rank who are clearly supportive of the work GSOC does and anxious for us to have co-operation.

We do not just deal with chief superintendents, superintendents and assistant commissioners but it is at those levels we can run into difficulties. When we have looked for information we have found that the people we dealt with acted efficiently and effectively but they then have to make requests to colleagues in particular stations around the country and it is at this point that things can get spotty. The person who asks for the information takes what is supplied to them in good faith and they pass it on to us but the question is whether they got all the information they wanted and whether, in turn, we got what we wanted. There is a sign of change and while this has to come from the top, it also needs to be recognised throughout the organisation. People who are tasked with the job of making documentation available must understand the importance of doing so when it is first asked for, rather than deciding to give certain documentation and information but not other things unless they are specifically asked for them. These individuals play an important role but we would like to see greater co-operation throughout. The local intervention initiative will, hopefully, foster a more co-operative approach in local areas and local Garda stations to dealing with the public and this should feed back to ourselves. Time will tell.

Deputy Jack Chambers: Has Ms Justice Ring seen any geographical trend around resistance, or is it varied?

Ms Justice Mary Ellen Ring: It is varied. I indicated that our annual report would be laid before the Houses of the Oireachtas today, but I understand it has been held back a week. However, the committee should be seeing our annual report for 2018 soon. In it we set out, for instance, where complaints come from in terms of the country. In some instances chief superintendents have come to us to look for further information to dig down in their local area. We have given them that information and we say we have seen a reduction in the following years. I will again name chief superintendent Dominic Hayes in the Kilkenny area, who came to us two years ago and noted that certain figures relating to his district were set out. He wanted further information, and we saw a resulting reduction in the following year. It can be down to people being curious, looking for information, and acting on foot of the information.

Deputy Jack Chambers: I refer to the 500 complaints that were reverted back, and I know we have had discussions with GSOC before. My colleague, Deputy O'Callaghan, mentioned the report from the Commission on the Future of Policing in Ireland, but that is a different arena from where GSOC is at at present. What is the follow through or audit of those cases that are handed back? Does GSOC seek an update on the conclusion of all of them, or are they just handed back? Can Ms Justice Ring provide the governance mechanism for that?

Ms Justice Mary Ellen Ring: The complaint comes to us, we send it out for investigation, and the results of the investigation come back to us. We know what the outcomes are, but we have no involvement in the investigation, unless we are supervising it. In terms of outcomes, superintendents have, in fairness, sanctioned their own colleagues, so it is not that they find no misconduct. In fact, they can find significant misconduct and be quite proactive in dealing with their colleagues. We have indicated in our statistics that because superintendents and inspectors have a lot of things on their plates, some come back to us fairly quickly and others take longer.

Deputy Jack Chambers: Regarding the various trends that were mentioned in the conclusion of the submission, we have a historic issue around supervision and the Garda is trying to improve that with various promotions. That is obviously having a significant impact on the quality of follow-through. Communication was also mentioned. I can see that when stations have haemorrhaged a significant number of staff, and they have not got the communication, whether it is a positive or a negative result, the follow-through can break down confidence in some levels of policing. GSOC has engagement with an Garda Síochána. How does GSOC action the general dissatisfaction that has been highlighted in this trend, in terms of its role, and how are the improvements on that being measured?

Ms Justice Mary Ellen Ring: In terms of the public's dealings with their local Garda, the local intervention initiative will be a positive step, both for the Garda and their local communities. If, as anticipated under this scheme, they deal with the small things, maybe in time they will also properly deal with some of the bigger things, which will reduce complaints coming to us. It has yet to be seen, because it is in its early stages, and is only just over a year in operation. The other, much bigger question, which is an internal one, is how the Garda service deals with misconduct at every level. That is something we have no role in. We may recommend somebody should be subject to discipline but ultimately that is a matter for the Garda Commissioner. If, as Mr. Justice Charleton said at the end of his dealings with the disclosures tribunal, the system is complicated, lengthy and undermined, then discipline is a problem for the Garda and ultimately the community. We may feed it information under our current remit or even into the future. How the organisation deals with that information, in terms of disciplining members, will ultimately be for it to decide. We, like everyone else, will watch that with interest.

Deputy Donnchadh Ó Laoghaire: Gabhaim buíochas chugaibh go léir as teacht isteach. Tá sé an-úsáideach mar léargas ar na riachtanaisí atá ann. I thank the delegation. The meeting has been very useful and insightful in terms of outlining the needs that exist. Deputy Daly has very clearly outlined that many of the requirements have been identified by GSOC and others as having existed for a long time and, unfortunately, they were not acted upon.

Let me pick up on one of the previous questions. Ms Justice Mary Ellen Ring said her feedback is that the independent office of the police ombudsman, or whatever name it will ultimately take, is due to start in 2021. Is this to say the organisation will be up and running? Is it realistic?

Ms Justice Mary Ellen Ring: We are only going on the information of the implementation body and its proposed deadlines. It proposes that the terms of the new legislation will be effective from 1 January 2021. Clearly, there will be transition issues for ourselves and various other agencies, including An Garda Síochána, but it would appear 1 January 2021 is D-day, the start day, for a new organisation as we sit here today.

Deputy Donnchadh Ó Laoghaire: Does Ms Justice Mary Ellen Ring believe that is achievable?

Ms Justice Mary Ellen Ring: There is no legislation yet, even in draft form, so we do not know what is proposed as a result of Ms Kathleen O'Toole's report. There will be the process of getting legislation through the Dáil and Seanad. We have no control over Members in that regard. Inevitably, there will be unforeseen events between now and 1 January 2021, including something like a general election, which could affect all legislative timetables. Therefore, there are many issues. We are planning for 1 January 2021 until we are told otherwise.

Deputy Donnchadh Ó Laoghaire: I want to refer to protected disclosures. There are protected disclosures from gardaí. A recent report outlined that, apart from 13 cases that were discontinued, 36 were still on the books and that there has not been any case from last year that led to a prosecution or recommendation of disciplinary action. This is third report of that kind. The first, covering 2014 to 2016, indicated nine disclosures were undergoing examination or investigation and that two were closed. The 2017 report indicated that, of the 31 cases before GSOC, 25 were being examined or investigated at the end of 2017 and six were closed. With regard to the six, the commission considered that further examination was not necessary or reasonably practicable. It seems that, in most years, the majority of cases are carried over and that the remainder are closed. Am I correct that no garda has faced a sanction from a GSOC investigation following on from a section 7 or section 8 protected disclosure?

Ms Justice Mary Ellen Ring: That is correct. The members will recollect that when we gave the business case last year, one of our main concerns was that we were setting up, for the confidence of the gardaí, a separate unit within GSOC. We started with one investigator, the senior investigating officer. Late in 2018, we were finally given our sanction, and it is only as of Monday, 29 April that the investigator has been in the unit. We have not been able to control the number of people making complaints to GSOC, while we have been able to control the number of people working there only in the past six to eight months. Having achieved a full complement of staff, this is giving us the opportunity to deal with the backlog that has arisen. When people approach us with a complaint, however, we tell them there is a backlog, that we have only recently achieved a full complement of investigators, and that if they are unhappy with the fact that the investigation may take some time, they do not have to stay with us. They have another option. They stay with us despite our telling them that the investigation will take some time. We know we are trying their patience and that there is significant work to be done in the future, but we cannot stop people coming to us. My colleagues and I receive protected disclosures at the initial stage and I pick up the phone and speak to these people. I cannot tell them to go away.

We have a backlog, which we hope the current complement will deal with. If the Deputy or anyone else expects us to clear our books immediately, however, that is just not possible, as we tell the people who approach us.

Deputy Donnchadh Ó Laoghaire: I understand that and I would not for a second suggest that people should be turned away. There is a backlog which, obviously, will take time to address. Nevertheless, not a single case has resulted in a sanction. From Ms Justice Ring's point of view, it is a matter of resources but I imagine there must be cases on the books for in excess of two years. Are cases on the books for in excess of four years?

Ms Justice Mary Ellen Ring: There was a previous system, namely, the confidential recipient process that existed prior to the 2014 legislation. The remnants of that process remain.

Deputy Donnchadh Ó Laoghaire: I appreciate there has been a lack of resources. Notwithstanding the cases that were discontinued because it was not possible to bear them out or because there was insufficient evidence, I find it difficult to understand, even with the limited resources. It has not been possible to bring forward even one of those cases to prosecution or to recommend disciplinary action. I assume that the cases are not vexatious. Does Ms Justice Ring accept that such a situation is disappointing, to say the least?

Ms Justice Mary Ellen Ring: It is disappointing and one will find no three people more disappointed than the commissioners. Under the 2014 Act, it was made clear that protected

disclosures were permitted in respect of wrongdoings in the workplace. The Act protected the identities of people making such disclosures but did not outline how to investigate those disclosures throughout the workplace. I do not refer only to disclosures relating to the Garda. Transparency International Ireland deals with many of these issues. One of the first practical realities that confronted all workplaces was how to investigate an allegation of wrongdoing which requires the protection of the person making the claim of wrongdoing, while at the same time carrying out a fair and proportionate investigation. It was heralded in 2014 and was a very important piece of legislation. In the years that followed, GSOC and many other organisations had to grapple with the practical reality of how to investigate a protected disclosure. Given the complexity around the Garda, we sought legal advice as to how to deal with these cases and it has been a step by step process to move forward on a complaint, gather information and at the same time protect the identity of a person. It has not been easy which is why it is very important when passing legislation to consider also how a legislative proposal will work in practice. We are still grappling. If one goes to Transparency Ireland and talks to its personnel, one will hear that it remains a challenge for every workplace.

Deputy Donnchadh Ó Laoghaire: While that is fair enough, I continue to stand over my view that it is disappointing and poor. However, I hope the additional resources will mean we see things expedited. I have a brief question about the following. When she was before the committee last year, Ms Justice Ring said approximately half of the cases GSOC received could be disposed of within a year. Is that still more or less the case?

Ms Justice Mary Ellen Ring: I think so, yes.

Deputy Donnchadh Ó Laoghaire: Ms Justice Ring will be aware that I put in a freedom of information request on a report on work practices at GSOC's Longford offices. The request was refused on the basis that to grant it would potentially identify somebody. As such, I will be careful in my remarks so as to not identify anyone. It remains my view, however, that there is a public interest in the issues that surround this generally. I will be careful, but I intend to ask these questions all the same. According to the Minister, in reply to a parliamentary question I submitted, there were clearly issues. If there were not, I expect the report would not have been commissioned. According to the Minister's reply, a report was drawn up in 2016 under the direction of GSOC's director of investigations. It related to a review of the workload on hand at the office in Longford. Does Ms Justice Ring accept that, at that point in time, there were issues with the office and that it was not investigating as effectively as it should have been?

Ms Justice Mary Ellen Ring: Just so it is clear, the Deputy is talking about an office at which a limited number of people work. Certainly, there were even fewer people there in 2016. In 2016, GSOC had perhaps one of the lowest staff cohorts at its Longford, Cork and Dublin offices. It had approximately 77 staff across the organisation, which presented challenges in Cork, with which the Deputy will be familiar, Longford and Dublin. I am not going to comment on an office which in 2016 was limited in terms of the number of people working there because the people involved are identifiable. Unless the Deputy is going to say something specific about someone specific who has the right to reply, I am conscious that we are talking about a limited number of people who were working there in 2016.

Deputy Donnchadh Ó Laoghaire: My understanding is that since 2013, the office had six staff. Is that correct?

Ms Justice Mary Ellen Ring: In terms of the Longford office, yes, albeit not at all times.

Deputy Donnchadh Ó Laoghaire: My understanding is that if it departed from that, it was only ever briefly during that period.

Ms Justice Mary Ellen Ring: I would have to go back and literally go through who was working there and when, which I am not anxious to do - not even mentally to go back through it.

Deputy Donnchadh Ó Laoghaire: Very well. Is Ms Justice Ring confident that all files that went through that office were properly investigated and properly managed?

Ms Justice Mary Ellen Ring: Even six is a small identifiable number of people. The Deputy wants me to say something in a broad sense that could affect people unfairly. If he wishes to raise a particular case, he can do so with us directly. I remember that I wrote to him in May last year to invite him to our office to discuss these matters. I accept that he is very busy and has not had an opportunity to take up that invitation, but the matter might be better dealt with in that way.

Deputy Donnchadh Ó Laoghaire: I may well do that concerning the matters about which perhaps I cannot say anything in public. I do not accept, however, that it is not possible for Ms Justice Mary Ellen Ring, as head of the organisation, to express confidence by saying the office is functioning well and that all files which passed through it were properly investigated according to the organisation's procedures. I do not believe that is an unreasonable request to make.

Ms Justice Mary Ellen Ring: I have no reason to say there was anything that caused me to lack confidence in any of my staff, except insofar that at that stage all of our staff were under significant pressures in terms of the resources available to them to investigate. Clearly, that would affect anyone's work rate.

Deputy Donnchadh Ó Laoghaire: Very well. I thank Ms Justice Mary Ellen Ring.

Regarding the report on the death of Shane O'Farrell, his family were disappointed by it. Is Ms Justice Mary Ellen Ring in a position to discuss reports which have been published?

Ms Justice Mary Ellen Ring: Yes. We have completed our investigation. We have sent a file to the Garda Commissioner indicating certain disciplinary issues which arose as a result of our investigation. As matters of discipline rests with him, I do not know where they stand.

Deputy Donnchadh Ó Laoghaire: GSOC is responsible for holding the Garda to account and investigating complaints made against gardaí. One of the concerns the family had about the report was that the assertions of gardaí had been accepted rather than tested or probed. One example is that the Garda asserted to GSOC that it was unaware of events related to the case that had occurred outside the jurisdiction. The family have documentary evidence that the PSNI had, in fact, informed An Garda Síochána of these events. The report took six years to complete and much time went into completing it. Was it beyond the scope of GSOC or its resources to ask the Garda whether it was certain about its assertions and to seek further documentary evidence and contact the PSNI? Why did that not happen? Was it not possible with the resources available to GSOC at the time?

Ms Justice Mary Ellen Ring: They were the years to which I referred in talking about resources. Insofar as communicating with the PSNI is concerned, the Deputy may be aware that the Minister for Justice and Equality is to introduce the Criminal Justice (International Co-operation) Bill to the Dáil, if he has not done so already. Its express purpose is to allow for international co-operation. We have no right to seek information from the PSNI, no more than

a member of the community has such a right. We can contact the PSNI to look for information, but it can decide to give it to us or not. However, we have no protocols, operating procedures or formal arrangements with it. It is anticipated that, perhaps under new a policing Act in this jurisdiction, with the international co-operation provisions, that there may be better communication. If we ask the PSNI for information, no more than if the Deputy asks, it may give it to us but it is not obliged to do so. It is a difficult area.

Deputy Donnchadh Ó Laoghaire: Was the PSNI contacted?

Ms Justice Mary Ellen Ring: I cannot, at this remove, answer that off the top of my head. We had contact with the PSNI about other investigations but I am not going to say whether that formally happened in the matter of Shane O'Farrell because I do not know. We have, on occasion, met the O'Farrell family and they are unhappy about those matters. There is a further aspect being dealt with by a retired judge at the moment and some of those matters may be addressed in that process.

Deputy Donnchadh Ó Laoghaire: I will leave that topic in a moment but GSOC knew about this case for six years and did not find out about this information. The family, without any training, legal background or anything like that, were able to find this out. The document was obviously relevant. The Garda made an assertion that was accepted by GSOC, whereas the family were able to demonstrate that was not the case. That is disappointing.

There was a disturbing report in *The Irish Times* last July about a member of GSOC who was under investigation for allegedly coaching the solicitor of a garda who was due to be interviewed as part of an inquiry. GSOC brought in an external investigator to carry out the inquiry. The allegations reported in the newspaper are very serious. It is also alleged that there was a failure to properly supervise an investigation into the alleged Garda mishandling of a complaint of sexual assault made by a woman. These are very serious matters. Has this malpractice investigation been completed and, if not, when will it be completed?

Ms Justice Mary Ellen Ring: GSOC employees are civil servants in the ordinary way and are covered by many of the Civil Service rules and practices. When a complaint is made to GSOC about any member, it is referred to our human resources, HR, department which follows the Civil Service disciplinary procedures. Those matters are dealt with in the way any civil servant would be dealt with when a complaint is made about his or her work. Those procedures apply across the board.

Not surprisingly, we do not accept everything that is reported in the newspapers. Insofar as an investigation was carried out, it has been completed and no misconduct was found in the terms of what *The Irish Times* reported. Was it *The Irish Times* the Deputy referred to?

Deputy Donnchadh Ó Laoghaire: I think it was but I will check. That investigation has been completed and the matter is settled.

Ms Justice Mary Ellen Ring: Yes.

Deputy Donnchadh Ó Laoghaire: If I understand this flow chart correctly, section 93 deals with the discontinuation of a case if an investigator has a file under section 98. Is it correct that such a case is discontinued under section 93?

Ms Justice Mary Ellen Ring: No, all investigations can be discontinued, whether they are disciplinary or criminal, if an investigator is satisfied that further investigation is either not

necessary or is not reasonably practicable.

Deputy Donnchadh Ó Laoghaire: However, if a case goes from section 98 and is escalated through the directorate to the commission, it becomes a section 101. Is it correct to say that cannot be discontinued under section 93? Is it the case that it would either have to be referred to the Director of Public Prosecutions, DPP, or somewhere else?

Ms Justice Mary Ellen Ring: This is becoming quite technical. For the benefit of non-techies, if a criminal investigation is completed the matter comes to the commission in the form of a report under section 101. Having considered the report the commission can do one of three things: it can decide that the matter should go to the DPP for her consideration as to whether any criminal charges should be proffered; it can decide that no criminality was revealed but possible disciplinary misconduct and move it into a disciplinary investigation; or under section 101(7) it can decide, having read the report, that no misconduct is evident and can just finish the case. Those are three options: DPP, discipline, or, under section 101(7), finding no misconduct and close the case.

Deputy Donnchadh Ó Laoghaire: Therefore, once it has been referred through the section 101, it cannot be discontinued under section 93.

Ms Justice Mary Ellen Ring: It comes to us and we have to make a decision in accordance with what the Act says. It can be discontinued in advance of the section 101 report. For instance, it may be that at a late stage a complainant decides not to proceed, it may be that the person against whom the complaint is made is ill or dies, or something happens to cause a decision to be made to not proceed with the matter. However, once the report is prepared, it comes to the commission and the commission has the three options under the legislation.

Deputy Donnchadh Ó Laoghaire: As far as Ms Justice Ring is aware, there has never been a case where a report has been referred under section 101 and then discontinued under section 93?

Ms Justice Mary Ellen Ring: I have only been there since 2015.

Mr. Kieran FitzGerald: We would be unaware of this having happened. Under the legislation, it would not be the proper path.

Deputy Donnchadh Ó Laoghaire: That is most of my questions. I raised an issue last year on the discharge of firearms. The current approach is that what I think is a strategic information request-----

Ms Justice Mary Ellen Ring: Decision.

Deputy Donnchadh Ó Laoghaire: A strategic information decision is sought from An Garda Síochána. My language may not be quite right but GSOC may ask the gardaí for information, whatever it is called, and then GSOC decides whether it will take a public interest investigation. I raised a particular incident and was concerned that it was not related to a public interest investigation. This related to a discharge of a firearm within a dwelling during the course of a raid in Cabra in Dublin. Video footage was published on some of the newspaper websites. Would Ms Justice Ring agree that an incident such as that would be appropriate for a public interest investigation? Should it not be the case that all discharges of firearms within dwellings require a public interest investigation?

Ms Justice Mary Ellen Ring: Any use of force that involves firearms, Taser, or OC pepper spray as a result of Garda directive 10/10, and further directives in 2012, are notified to GSOC. They should be notified within 48 hours of the discharge of firearm, Taser or the OC spray. We, therefore, receive notifications regularly, albeit not always within the required timeframe. We look very seriously at all firearm and Taser discharges and the circumstances that gave rise to them and consider whether public interest investigations are warranted. Sometimes we open them; sometimes we do not. There is no threshold for where we should and should not. For instance, we opened a public interest investigation when a firearm discharge occurred at Shannon Airport. A plane had landed and been detained and a firearm discharged accidentally into the tarmac. Fortunately, no damage was caused to property or a person. However, because of the proximity of the discharge to aeroplanes and given the nature of the airport as a public place, we thought in that instance that it was important to open an investigation. Perhaps now, with our greater resources, we are in a position to say we should open one in every instance, but we look at discharges on a case by case basis. We have had to do so in many cases owing to the resources we have had available.

Deputy Donnchadh Ó Laoghaire: Ms Justice Ring's preference is to have an investigation in each case, but, as things stand, there is no standard policy.

Ms Justice Mary Ellen Ring: I would prefer if we looked at all firearm discharges because of the nature of the use of firearms generally.

Deputy Donnchadh Ó Laoghaire: I have one final question. Because of a lack of resources and so on, it has been difficult to investigate every complaint and the process has been slow. Has there ever been an incident where, following an investigation, GSOC intended to seek a conviction but the Statute of Limitations of the petty sessions Act meant that was not possible.

Ms Justice Mary Ellen Ring: Under legislation, we only have 18 months in which to deal with summary matters. Whether a matter is indictable does not matter. The 18-month period is longer than normal, as we recognise. We also recognise that the 18-month period runs from the date of the alleged offence. If someone comes to us straightaway, we have 18 months. If someone does not come to us until six months after the offence, we only have 12 months. If he or she comes to us 12 months after it, we have six months. Therefore, a lot depends on when we receive the complaint in the first instance. Our practice is to keep a very close eye on the statute, but it is not always possible at the outset of an investigation to know that what we are investigating is a summary matter. We may not realise until after we have gathered evidence that, despite the seriousness attached to the complaint at the outset, the evidence relates to a more minor matter. We are always conscious of the timeframe. Have we ever gone outside it? Again, I cannot say off the top of my head, but it is possible. There are people who have come to us late and there could have been no investigation within the timeframe. Recently, since the complaint was made towards the end of the 18 month period, the Director of Public Prosecutions considered it immediately and directed that a prosecution be taken because we were both conscious that time was against us.

Deputy Donnchadh Ó Laoghaire: I suppose that neither Ms Justice Ring nor either of her colleagues can confirm whether the 18-month period has ever run out and that the door was closed on a prosecution.

Mr. Kieran FitzGerald: At the risk of repeating the point Ms Justice Ring just made, we often investigate an allegation of a serious offence and, through evidence gathering and the processing the various evidential strands, we might conclude that the serious allegation with

which we started is not actually tenable but that a much more minor offence might have occurred. This will emerge late enough in the investigation. In this context, we certainly come across potential offences which are statute barred but which were not apparent at the beginning of our investigation. This does occur.

Deputy Donnchadh Ó Laoghaire: I recognise the importance of GSOC. We called for a Garda ombudsman long before the position was created. We have seen the value of such an office in the North. We hope the recommendations of the Commission on the Future of Policing in Ireland and additional resources will strengthen the work of GSOC. From what I can see, not every element is satisfactory at this point. The work involved here is very important. I hope that GSOC will continue to do better and that resources will assist it in that regard.

Ms Justice Mary Ellen Ring: I renew the invitation that I made last May for members to visit our offices to look at the work we are doing and to speak to us.

Chairman: Ms Justice Ring stated on a number of occasions that GSOC now has a full complement of investigators. Do I take it that the 21 outstanding appointments do not relate to investigator roles?

Ms Justice Mary Ellen Ring: No.

Chairman: Are they support roles? Will Ms Justice Ring elaborate? Does not having the relevant people in place have a deleterious impact? What is the net effect?

Ms Justice Mary Ellen Ring: Every organisation has front-line personnel and support staff and each is as important as the other. When we made our business case, we were conscious of the need not to end up with too many people doing particular work and not having enough support or administrative staff in the organisation. Increasing the number of personnel puts a strain on the HR department. We have to have regard to the effect increases in staff numbers have on the organisational structure. The other element was that we were working within a financial framework and we had to have regard to how many persons we could hire within that framework. Had we had an unlimited framework, we certainly would have sought more investigators and support staff but we were conscious of the financial realities and taking those realities we constructed a case that fit financially and met our needs. To answer the question as to whether we would like more, yes we would.

Chairman: That came across in the opening statement and, as Chairman of the committee, I support what was said. Ms Justice Ring has made it very clear that one of GSOC's real concerns is matching a new remit with resources. In 2018, in excess of 500 cases went back to the Garda for investigation. If they are to come under GSOC's direct attention once again, there will have to be a significant increase in resources to cope. This is very clear and I am of the view that GSOC would have the support of the committee in its entirety in that regard. It is something we will most definitely do.

In the context of some of our recent reports on community policing and rural crime, Ms Justice Ring highlighted the fact that gardaí are being diverted from their usual policing duties in order to address a plethora of these GSOC investigations. I use that language quite pointedly. We are losing them and their expertise in the context of the front-line duties that they should be performing.

It has been 15 months since representatives from GSOC were last with us. I am still the Chair and, along with the clerk, I deal with all of the correspondence on a week-by-week basis.

I will share with our guests, in an honest and frank way, what I have noted with some disappointment during that period. All that they have shared with us underscores or explains some of this. There has been an increased frequency in expressions of a loss of confidence. We receive a great deal of correspondence relating to matters that do not come within our remit, but people write to us in any event. This is the justice committee, so they tend to vent and share their experiences with us. I am sharing with our guests the fact that there is a lack-of-confidence factor, which is not what we or they want to see. Everyone in political life has a responsibility to help to ensure that this does not become rooted in any way.

Ms Justice Ring referenced the emergence of a proposal to establish an independent office of the police ombudsman. Am I describing that clearly enough?

Ms Justice Mary Ellen Ring: Who knows?

Chairman: She made the point that a resulting erosion of public trust in a new body would set in at an early stage. I must say with some disappointment that it will not just set in at an early stage, it will be carried forward if people do not hear what Ms Justice Ring is saying and what we are reflecting on. It would be of significant concern that the new body would start off not just having to prove itself but that it would also be obliged to carry forward a considerable lack of public confidence. When Deputy Clare Daly referenced damage, I made the note that the damage had been done to GSOC in terms of public confidence by virtue of the fact that the resourcing was not all it should have been.

It was stated that GSOC could not just tell people to go away. In that context, I am familiar with a case that has been submitted to GSOC. I do not know whether it is standard procedure, but the correspondence issuing indicated that GSOC would make an arrangement to meet, interview and explore with the complainant the details initially provided in writing. Some time later, a letter issued stating that GSOC had made a decision, yet there had been no engagement at all with the complainant. How often would this be the case? In the specific instance with which I am familiar, it has had a damaging impact. The case involves very respectable and considered people who would not have made a complaint to GSOC willy-nilly. The complaint had substance and a basis of concern, yet they were never afforded the opportunity that the correspondence from GSOC indicated would be theirs, namely, to be met, have their case heard, answer questions, elaborate and do what they and we all would have expected would have been their opportunity to do. It never happened and they then received correspondence indicating that the matter had been discontinued without explanation. I have copies of those items of correspondence. I do not know what our guests can say to me in respect of this matter. I do not know whether this was unusual or if it is a frequent occurrence that people do not get their day in court, so to speak. It is important at least that people be afforded the opportunity to expand on the information they have provided. Would Ms Justice Ring like to comment?

Ms Justice Mary Ellen Ring: To be honest, I would be alarmed to hear that was the case. Insofar as we deal with, perhaps, 2,000 complaints per annum, I cannot say I know what the Chairman is talking about in terms of the individual case, but it would not be appropriate to comment on it. I am, however, happy to speak to the Chairman about the case following the meeting, but I would be very surprised to hear someone was not given an opportunity to be heard. There are procedures in place. By its nature, an investigation should involve somebody who is making a complaint because we cannot know what to investigate unless we receive the full complaint. The right to be heard of the garda or gardaí, whom it is alleged has or have done something wrong, is also important. It should not be until after these two aspects of a complaint are dealt with that a decision is made about the future of the case. In that sense, I would be very

alarmed.

Chairman: I will speak to Ms Justice Ring about the case following the meeting.

Ms Justice Mary Ellen Ring: Please do.

Chairman: I will ensure she has sight of the respondents I am referencing. In the case I have mentioned a decision, so-called, has issued. I would like to comment on a case that has been referred to GSOC in the relatively recent past, but I am restricted somewhat in how I can reference it. I endeavoured to raise the matter on the floor of the Dáil and ask a question on behalf of my community about a significant Garda deployment that had had an adverse consequence for a resident in the broader community. I do not know the person concerned and have never met them. I know nothing about the nature of the exercise, but I understand it involved a significant number of heavily armed and black-clad members of An Garda Síochána. When the local media raised the matter with the Garda Press Office, they received the short and inaccurate response that the matter had been referred to GSOC and that An Garda Síochána would be offering no further explanation or would not shed further light on the matter. Taking account of international news, etc. which influences people's thought processes, there has been every imaginable, possible explanation for this exercise. That is not appropriate. People living in the community from where the person concerned comes are immediately suspect and labelled as being associated with serious matters with which they - I hope I am correct in saying this - have no association. I am a little fearful because the Minister's response was that as the matter had been referred to GSOC, he could offer no further illumination. Is Ms Justice Ring concerned that GSOC, in the referral to it of certain matters, is being used as a means of holding back critical information? As an elected representative, I have a role and a responsibility to try to elucidate information on what is happening. This has not happened in my memory, living in the community all the many decades I have chalked up at this point. This was so unusual but nobody will offer any explanation whatever. The GSOC referral is the reason, according the Garda press office and the Minister on the floor of the Dáil. That causes me concern. Do the witnesses have any concern about GSOC being employed, used or misused in such a case? Would GSOC's addressing of this matter take on board the wider consideration of what is reasonable? Communities appreciate transparency and having some sense of what this is about. There is a negative or a downside that can arise from the holding back of all information. Others from the person's community have come to me in fear and every suggestion has been put as to what the wider interests might be, not only domestically but internationally and globally. Nothing could be further from the truth, they say, although I do not know. I am not an investigator or a member of An Garda Síochána. On behalf of my community, I am only trying to establish whether this is something that will become a feature of life going forward. How will people address it and why would the Garda Síochána be so tight-lipped on the matter?

I will leave it at that. I am obviously compromised in how I can refer to this. I hope I have been careful enough and I understand the witnesses must also be careful and may perhaps be even more careful in replying to me. My first question is whether GSOC has concerns and the second question is whether it will consider the wider aspect of what is appropriate in deploying 20 or more heavily armed people in this way. What would give rise to such an action? For me it would be a concern that they might be met by a similar weight of force. Nothing could be further from the truth. I will leave it at that.

Ms Justice Mary Ellen Ring: I cannot say what is in the mind of anyone who refers a matter to us except that I hope he or she is following obligations and doing nothing more than that. It is clear from what I have said that in our experience not everything gets referred to us. There

is clearly a differentiation as to what comes to us or does not come to us. It would be our hope that everything would come to us as a matter of course and then we would not have to think about what is in the minds of the referring parties. It has happened that we have got a referral closely followed by a press inquiry. That is a fact that clearly raises questions for us as to how quickly the press discovers that a matter has come to us and why. I cannot speculate on what is in the minds of people who send matters to us. There are matters that come to us with great speed and they can be followed at even greater speed by queries from the media.

We have spoken about our remit and we have set out in our workflow diagram the restrictions we have. The main restriction, which we have already said we would like to see dealt with under new legislation, comes where citizen A complains about garda B or gardaí B, C and D. It is all we can investigate. In some instances we could go beyond that into a public interest investigation but again we would be looking at individuals. As we have no role in operational matters, we cannot tell the Garda how to do its job. We can only look at the outcome of the job and whether it displays misconduct, either criminal or disciplinary. Again, under the current legislation, we are back to looking at the actions of A, B or C. If A, B or C is acting in accordance with directions, for instance, than it is not misconduct. If he or she is in a given place for an operational reason, it is not misconduct. If we can look at an incident from the overview of the individuals involved, that may give us more scope. We know it is frustrating when people make a complaint about an incident to GSOC and we have to extract from them or the Garda information on which individuals were involved. The individuals in question may say they were acting in accordance with what they were told to do. All that GSOC can say in such circumstances is that there was no misconduct. We cannot say we thought it was bad judgment or anything about it operationally. We can make recommendations for the future. However, under the current legislation, we do not have recommendation powers and the Garda can, therefore, ignore our recommendations.

GSOC operates in that maze. This affects the expectations the public have of us. We must follow the steps. We have indicated to the Department of Justice and Equality that we would like to have a legislative framework in place under which a complaint, which can be any kind of allegation, results in an investigation that is fair, proportionate and in accordance with the law. Moreover, it should have one of three outcomes, either the matter goes to the Director of Public Prosecutions or the Garda Commissioner or GSOC finds no misconduct by any party. It would be a three-step process, not what the committee has before it.

Chairman: I believe “proportionate” was the most important word Ms Justice Ring shared with us in her reply. I will take that with me from our exchange today and I thank her for that.

Mr. Sullivan and Mr. FitzGerald are both very welcome to this committee as commissioners with GSOC, alongside Ms Justice Ring, the GSOC chairperson. Mr. Sullivan had an easy day, which is not always the case for the commissioner. I thank the witnesses for their engagement with us and for the opening statement, which has been very helpful.

We are at the end of our business today. The select committee will meet next week, while the joint committee will meet again on Wednesday, 22 May. It will be interesting to see how many members will turn up for that meeting given that it will take place two days before the elections.

The joint committee adjourned at 11.55 a.m. until 9 a.m. on Wednesday, 22 May 2019.