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An Comhchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas

Tuarascáil maidir leis an Athbhreithniú ar Acht an Gharda Síochána, 2005

Deireadh Fómhair 2014

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**Houses of the Oireachtas**

Joint Committee on Justice, Defence and Equality

Report on the Review of An Garda Síochána Act 2005

October 2014

## **Introduction**

Earlier this year, the Committee undertook a process to assess the suitability of the present oversight mechanisms, codified under An Garda Síochána Act 2005, and make recommendations for reform to compliment the proposed reforms from the Government.

The Committee invited written submissions from the public and various stakeholders and a number of these were invited to hearings held on this subject. The evidence provided over the course of this process serves as the foundation for the recommendations outlined in this report. Also, the Committee reviewed processes currently in use in both Northern Ireland and Scotland. The overall aim is to ensure a Police Service, as opposed to a Police Force, that is fully adapted to the demands of the 21<sup>st</sup> century.

The Committee acknowledges the publication of a number of Heads of Bills for the upcoming reform legislation in July 2014. At this time, the Committee prepared an interim report for the Minister, outlining what it viewed as the most important recommendations at that stage of the process. These recommendations are further included in this report, along with other issues identified over the course of the review.

The Committee agrees that reform of An Garda Síochána oversight mechanisms is a matter of the highest importance, and should be addressed carefully. The Committee recommends that the Minister considers the suggested solutions detailed in this report.

This report begins with a brief summary of the review process and the relevant areas of the Act which came under the review's scrutiny. The report then details the recommendations of the Committee, as well as the rationale for each recommendation and the practical elements that can be enacted or addressed.

Finally, on behalf of the Committee, we would like to thank all who engaged in the review process and assisted us in compiling this report.



A handwritten signature in black ink, appearing to read 'D. Stanton', written over a horizontal line.

David G. Stanton, T.D.  
Chairman  
October 2014

## **Process of the Review**

In light of the issues raised concerning the effectiveness of the 2005 Act, the Committee undertook a review of its effectiveness and considered submissions on the potential reform of present oversight mechanisms. The oversight of An Garda Síochána is governed by An Garda Síochána Act 2005 (hereinafter the 2005 Act). Following this, a number of hearings were held with stakeholders in May 2014. The Committee, on initial consideration of the oral and written evidence submitted, published an interim report on June 30<sup>th</sup> 2014.

A number of stakeholders were invited to address the Committee and field questions on their submissions and relevant issues to the review. The evidence presented to the Committee was invaluable in formulating an understanding of the issues at work on the ground, and presenting a report that considers these issues and potential solutions. The stakeholders who addressed the Committee were as follows:

Mr. David Joyce	Irish Human Rights Commission
Dr. Des Hogan	Irish Human Rights Commission
Mr. Mark Kelly	Irish Council for Civil Liberties
Mr. Walter Jayawardene	Irish Council for Civil Liberties
Mr. John Devitt	Transparency International Ireland
Ms. Susheela Math	Transparency International Ireland
Ms. Brigid Quilligan	Irish Traveller Movement
Mr. Damien Walshe	Irish Traveller Movement
Ms. Fiona Crowley	Amnesty International Ireland
Mr. Simon O'Brien	Garda Síochána Ombudsman Commission
Mr. Kieran Fitzgerald	Garda Síochána Ombudsman Commission
Ms. Carmel Foley	Garda Síochána Ombudsman Commission
Mr. Tim Galvin	Association of Garda Sergeants and Inspectors
Mr. John Redmond	Association of Garda Sergeants and Inspectors
Mr. Tony McGillicuddy	Bar Council of Ireland
Mr. Robert Olsen	Garda Inspectorate
Mr. Mark Toland	Garda Inspectorate
Ms. Debra Kirby	Garda Inspectorate
Ms. Maura Butler	Association for Criminal Justice Research and Development
Dr. Richard O'Flaherty	Member of the Public
Baroness Nuala O'Loan	Member of the Public
Ms. Noirín O'Sullivan	An Garda Síochána
Mr. Ronan Brady	Griffith College / National Union of Journalists

The table above relates to those who appeared at a public meeting of the Committee. The Committee also considered written submissions in compiling this report and these along with a transcript of discussions are available electronically on the Oireachtas website [[www.oireachtas.ie](http://www.oireachtas.ie)].

## **THE 2005 ACT**

### **Part 3 of the Act: Garda Síochána Ombudsman Commission (GSOC)**

Part 3 of the 2005 Act provides for the establishment of an Ombudsman Commission, tasked with the investigation and oversight of An Garda Síochána. The Committee has made the following recommendations for the reform of GSOC:

#### **Recommendations**

- 1. The Committee recommends the amendment of section 65(1) of the 2005 Act to change the structure of the Commission, so that instead of three people, there is a single Garda Ombudsman.**

A single Ombudsman would ensure a greater degree of accountability and ensure that there is no possibility of dissenting opinions or divergence in the Ombudsman's findings.

- 2. The Committee recommends that sections 26(3), 40 and 41 of the Act be amended, in order that all members of An Garda Síochána, including the Garda Commissioner, is accountable to the Garda Síochána Ombudsman (GSO).**

Section 26(3) of the Act provides that the Garda Commissioner is accountable to the Minister, while sections 40 and 41 detail the Commissioner's duty to account and provide information to the Minister and Secretary General of the Department of Justice and Equality. Amending this to make the Commissioner accountable to the GSO would help ensure proper and complete oversight and accountability of An Garda Síochána.

- 3. The Committee recommends that the GSO should have the power to conduct investigations on his/her own initiative.**

The ability of the GSO to initiate investigations and inspections would encourage An Garda Síochána to maintain more effective practices and eliminate cultures which impede this.

## **Part 4 of the Act: Complaints and Investigations**

Part 4 of the 2005 Act provides for complaints, investigations and procedures. The Committee suggests the following recommendations in reforming and optimising the complaints and investigations process.

The Complaints Process itself was a matter that drew the particular interest of the Committee. As reiterated in the recommendations below, the role of the Garda Ombudsman is to investigate complaints by members of the public concerning the operation of An Garda Síochána. The Committee submits that a complaints arm would serve to investigate individual cases, highlight poor practices and identify systemic issues.

The Committee suggests that a distinction is made between a complaint and matters that relate to customer service. While customer service should also be treated seriously, in the course of hearings, the Committee heard that such complaints may not be appropriate for the Garda Ombudsman and should be classed as internal disciplinary issues. One of the recommendations of the Committee is to strengthen the Customer Charter and Code of Conduct to help address the particular issues that prompted this review.

### **Recommendations**

- 4. The Committee recommends that sections 67(1) and s.67(2) of the Act are amended so that the GSO is responsible for the investigation of all complaints against Gardaí at all ranks.**

This would serve to enhance the robustness of the GSO and ensure that a fully independent body oversees and investigates all complaints against members of An Garda Síochána. This would also ensure the maintenance of a single, publicly defined standard for the investigation of complaints against law enforcement services.

- 5. The Committee recommends that any citizen, members of the public, bodies corporate and members of An Garda Síochána should be entitled to raise a genuine concern or complaint to an appropriate complaints body without fear of reproach.**

The Committee suggests the formulation of guidelines for dealing with complaints from Gardaí. The Committee recommends that provision is made in the Act to ensure adequate safeguards for complainants from within an Garda Síochána, and further assure that there is no fear of reproach among members of An Garda Síochána who wish to report internal wrongdoing.

- 6. The Committee recommends that access to the PULSE system by the GSO is given on a statutory footing and not by way of protocols.**

The access to Garda systems is of integral importance to the operation of effective oversight of An Garda Síochána. While in practice, this process is already in operation

between An Garda Síochána, GSO and the Garda Inspectorate, it is only by means of protocols which have been put in place. The Committee submits that this needs to be placed on a statutory footing in order to ensure that no party can opt out of a protocol.

**7. The Committee recommends the reform of mediation and complaints procedures in order that the resources allocated to the GSO may be utilised for the investigation of serious complaints (such as allegations of offences or malpractice).**

The Committee acknowledges from the evidence it was provided with that the complaints process itself requires a more extensive review. The Committee makes the following suggestions and recommendations:

**a. The Committee recommends that there is an ongoing review of section 84 of the Act concerning the time limit for complaints, with a view to extending this time limit.**

This could apply to cases where the complainant may not realise that they have a cause for complaint, or even allowing the time limit to run from the date upon which the complainant knew or ought reasonably to have known about the conduct precipitating the complaint.

**b. The Committee recommends that a proper differentiation is made between what constitutes an appropriate complaint for investigation by the GSO.**

To assist the efficiency of the complaints process, the Committee suggests that consideration is given to the establishment of an independent “help line” to determine if a complaint is warranted and a separate “hot line” to progress the complaint.

**c. The Committee recommends that consideration be given to amending section 17 and section 123 of the Act to ensure a defined and robust disciplinary procedure and the promotion of a clear and expanded customer charter and code of conduct.**

The Committee acknowledges that breaches of discipline should not go unaddressed, and heard that in many cases the complainant just wants an issue resolved. The Committee suggests that the GSO may not be the appropriate avenue for some complaints, such as discourtesy and rudeness from members of An Garda Síochána, which may be better handled by referral to a disciplinary procedure managed by the proposed Garda Authority.

- d. The Committee recommends that consideration is given to amending section 91(1) of the Act to include stated actions which constitute “serious harm”, including an expansion of the definition of “serious harm”.**

The Committee submits that the definition of “serious harm” in the present Act is too vague and suggests that any amendment of the Act includes an expanded definition of “serious harm”.

- e. The Committee recommends the provision of resources to put in place measures which aim to prevent the development of any systemic problems or negative cultures within An Garda Síochána which may reduce the level of complaints.**

The Committee noted from many of the submissions that much of the focus of the complaints process concerned the apportionment of blame. It heard that this focus represents a significant drain on resources. The length of the process and current suspension arrangements were also noted. Furthermore, the Committee observed that it would be disproportionate to initiate a full GSO investigation and potentially damage an individual Garda’s career over a minor disciplinary issue, such as rudeness to a member of the public.

- f. The Committee recommends that section 110(1) is amended to ensure that no sanction, criminal or otherwise, should apply where it is shown that no malice was intended when making a complaint.**

Presently, it is an offence to provide information that is “false or misleading”. The Committee believes this does not account for situations where the complainant may genuinely believe the complaint to be true, so submits that an additional criterion of malice must be shown.

- 8. The Committee also recommends that sections 73, 74 and 91 *inter alia* of the Act are appropriately amended to permit the GSO and the Garda Inspectorate, through the proposed Garda Authority or otherwise, to recruit a pool of independent investigators in place of designated officers.**

The issue of investigations by the oversight bodies was raised in the course of hearings. This recommendation suggests that it becomes the standard practice for the GSO and the Garda Inspectorate to employ their own pool of investigators. That is, the pool is recruited, perhaps by the Authority, to work for either the complaints arm (GSO) or the administration / standards arm (Inspectorate), as required. The Committee suggests that this system replaces the current system of designated officers.

## **Part 5 of the Act: The Garda Inspectorate**

Part 5 of the 2005 Act provides for the establishment of the Garda Inspectorate. Being a public organisation, the Inspectorate may receive comments and views from members of the public concerning the operation of An Garda Síochána. However, the work of the Inspectorate is stimulated by requests from the Minister as well as its own initiative. The Inspectorate is independent in the performance of its functions, save in accordance with the Act.

### **Recommendations**

- 9. The Committee recommends the formation of a Criminal Justice Inspectorate to oversee and supervise the administration of all aspects of the criminal justice system.**

This organisation would have powers to oversee a number of bodies, which may include An Garda Síochána, the Courts Service, the Director of Public Prosecutions, the Legal Aid Board, the Probation Service and the Ombudsman Commission. Other organisations such as the State Pathologist, the Forensic Science Laboratory and Prison Governors could also fall within the remit of an expanded authority. The organisation will only focus on the administration of the system (as opposed to the administration of justice). This organisation could be developed from expanding the role of the Garda Inspectorate.

- 10. The Committee recommends the removal, by amending section 117 of the Act or otherwise, of any protocol requiring advance notice of inspections, thus allowing for “cold calling” or “on the spot inspections”.**

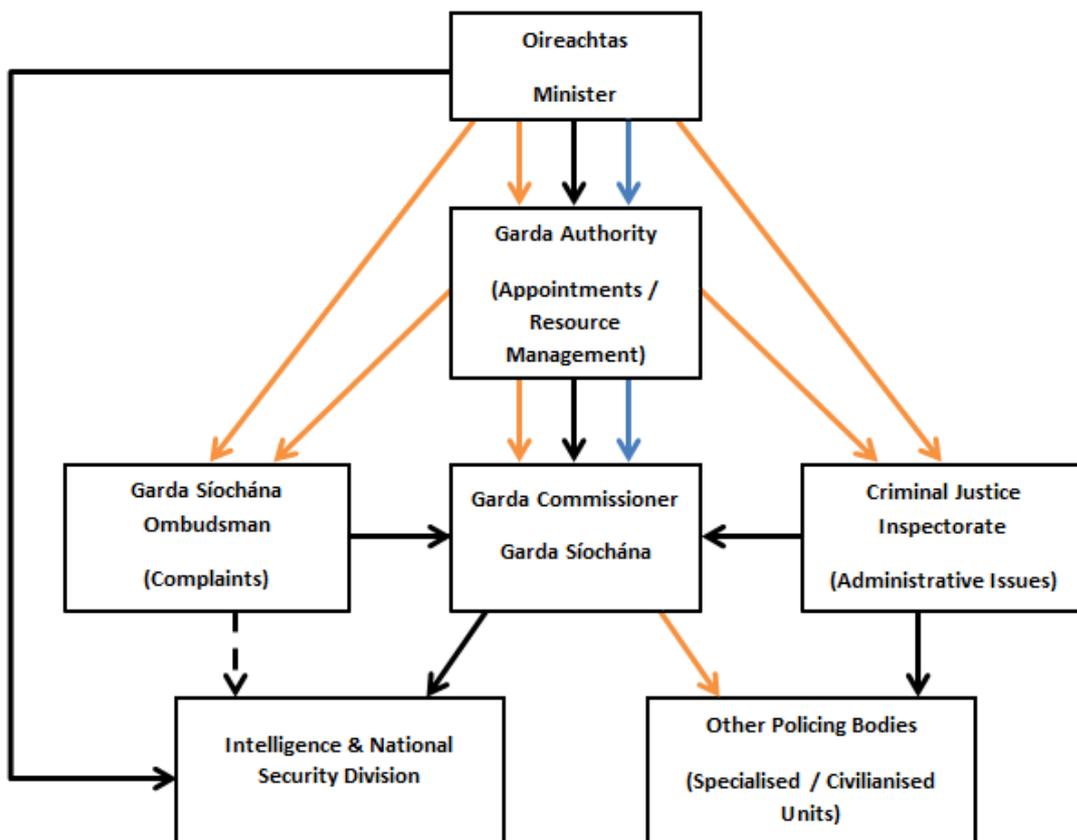
The possibility of unplanned visits could greatly enhance the operational effectiveness of how An Garda Síochána undertakes its functions.

- 11. The Committee recommends that section 117(2) of the Act is amended to allow the Garda Inspectorate to carry out inspections and investigations on its own initiative.**

Similar to the GSO, the Committee believes that in order to ensure effective oversight, the Inspectorate should not require Ministerial approval to conduct an investigation if it deems it necessary.

## The Proposed Garda Authority and Oversight Structure

The Committee acknowledges present proposals to establish a Garda Authority as a new oversight structure, possibly assuming many of the responsibilities of the Minister as defined under the Act. The Committee, from the perspective of ensuring effective oversight, has identified a number of possible recommendations and considerations on this proposal. The Committee has put forward a number of recommendations concerning the selection, appointment and oversight of the Authority, senior members of the Gardaí and the present oversight bodies.



The above diagram illustrates the possible structure of a revised oversight body. The Minister considers nominees from the Public Appointments Service for appointment to the Garda Authority, while the Garda Authority considers nominees from PAS for appointment to senior ranks of An Garda Síochána (represented by blue arrows). The Committee envisages a number of areas where the Minister and Garda Authority could provide an input into policy and procedures, while the Garda Síochána could undertake this role for Other Policing Bodies (represented by orange arrows). Direct oversight relationships are shown with black arrows, with any checked arrows representing a requirement for Ministerial approval for GSOC investigations in the proposed intelligence division.

The relationship between the Garda Authority and the oversight mechanisms of the GSO and the Criminal Justice Inspectorate may define how effective the new authority is. Setting up a “shadow organisation” would help establish clear networks and lines of contact, aimed at ensuring little to no administrative difficulties. The structure the Committee envisages is one where the Authority acts as the head, setting standards, policies and procedures, while the GSO and the Inspectorate act as the arms, investigating and enforcing standards, policies and procedures.

## **Recommendations**

### **12. The Committee recommends that the proposed Garda Authority would initially operate in “shadow format”.**

This is to ensure that the right administrative structures and procedures are in place before the Authority assumes any real investigative and administrative powers. The Committee submits that there should be a set date for the transferring powers and responsibilities to the proposed Authority. Furthermore, the Committee was particularly impressed with the 13 member structure of the Scottish Policing Authority, and suggests a similar model is adopted in Ireland initially.

### **13. The Committee recommends that the selection of nominees to the Garda Authority becomes the responsibility of the Public Appointments Service, with their consideration and appointment reserved for the Minister and Government.**

This would ensure that the people selected for this extremely important and vital role are properly scrutinised as part of a competitive application process, thus ensuring that the most qualified and suitable people are nominated oversee Garda services. The Minister, as the person holding political responsibility, would have the final decision on each appointment following his or her consideration and may further scrutinise or veto the appointment of a nominated candidate if there is a stated reason for doing so, including the maintenance of an appropriate gender balance and reflecting the nature of Irish society.

### **14. The Committee recommends that members of the proposed Garda Authority may be removed for stated reasons.**

The Committee recommends this to allow for scenarios where a member of the Garda Authority could become guilty of stated misbehaviour or be deemed unsuitable for the role. The Committee suggests that the removal of a member of the Authority can only occur as a result of a Government resolution being passed by both Houses of the Oireachtas.

### **15. The Committee recommends that section 41(2) *inter alia* of the Act is expanded to establish a separate intelligence division within An Garda Síochána, with respect to sections 23(5), 96(6) and 117(5), for the purposes of managing sensitive information.**

The Committee acknowledges that certain information should be restricted, such as where its release to an oversight authority may threaten or compromise the security of the State. The Committee submits that if a specialised division within An Garda Síochána is formed, there must be a clear demarcation between this division and the rest of the Police Service. Such a division could be responsible to the Minister, with any oversight or sharing of information only occurring either at the request of, or with the permission of, the Minister.

**16. The Committee recommends the amendment of sections 9, 10 and 13 of the Act, so that the appointment of senior officers within An Garda Síochána becomes the responsibility of the Garda Authority.**

By placing the appointment of senior staff under the remit of an independent body, it minimises the scope for political interference and ensures an equally effective scrutiny of applicants for senior positions within An Garda Síochána. It is recommended the appointment of vacancies from the rank of Chief Superintendent and upwards will fall within the remit of the Garda Authority.

**17. The Committee recommends that that the proposed Garda Authority is required to report to both Houses of the Oireachtas, detailing all aspects of their work, and be required to appear before the relevant Oireachtas Committee on specific issues if requested to do so.**

This would present an opportunity for the Committee to be made aware of issues affecting local communities which interested groups feel need to be addressed as a priority. This forum would facilitate the issues being brought to the attention of the Authority and the Committee at the same time allowing the Committee to monitor the progress of any initiatives aimed at addressing the issues.

**18. The Committee makes a recommendation that consideration is given to the inclusion of groups representing current societal issues on the new Garda Authority, insofar as is practicable.**

This may be achieved by stipulating that such groups are included either as members of the Garda Authority, or as part of an advisory Committee made up entirely of such groups. The Committee was told of the benefits of ensuring such membership to the Garda Authority, particularly in enhancing trust and developing productive relationships with ethnic minorities and general interest groups such as business groups or Chambers of Commerce. The Committee suggests that consideration be given to inserting a provision similar to that in section 13(13) of the Irish Human Rights and Equality Commission Act 2014 which would require the Garda Authority to ensure the broad reflection of Irish society in its membership. The operation of Joint Policing Committees under sections 35 and 36 of the Act may serve as a model complimenting this, allowing for issues to be raised at local as well as national level.

**19. The Committee recommends that the Garda Authority has the power to refer matters to the GSO and the Inspectorate for investigation and maintains a role in developing and coordinating best practices within these organisations.**

The Committee submits that the Garda Authority would be most effective through coordinating and developing best practices with the two existing bodies. As mentioned below, the Committee believes the GSO and the Inspectorate may operate as “arms” for the Garda Authority, allowing for the enforcement of best practices and policy as may be determined by the policy setting body, whether this is the Authority itself or the Authority in collaboration with the Minister / Government.

**Training & Resourcing of Gardaí**

The Committee recommends the reforming of the present training structures of An Garda Síochána, from reserves and trainee Gardaí, right through to continuing professional development for long-serving and senior Gardaí.

The Committee identified a number of possible reforms over the course of the hearings and submissions process, relating to the instilment of standards within An Garda Síochána. This would involve ensuring that correct and appropriate guidelines are maintained to prevent cases of serious harm and gross misconduct from Gardaí.

**Recommendations**

**20. The Committee recommends that consideration is given to the amendment of section 14 of the Act to allow for the establishment of an officer rank.**

Such a model is currently operated by the Metropolitan Police in London, where in addition to standard recruitment, the Metropolitan Police offers a Direct Entry scheme for new entrants at the rank of superintendent. This model operates alongside a series of Transfer Schemes for members of other police services and Graduate Training Programmes. The Metropolitan Police also recruits people with specific skills, such as engineers and forensic scientists and recruits Police Community Support Officers (PCSOs) who interact directly with the community.

**21. The Committee recommends that adequate supervision of the activities of probationer Gardaí be made a requirement.**

The Committee noted the importance of preventing complaints that relate to mistakes made due to lack of experience or unfamiliarity with procedure. As outlined above, the Committee acknowledges that many complaints may fall under the ambit of indiscipline, rather than serious misconduct. Putting an adequate supervisory structure in place would help ensure that cases of indiscipline are minimalised, which would in turn help reduce the number of complaints to the GSO for indiscipline.

- 22. The Committee recommends that consideration is given to the inclusion in Garda training and continuing professional development courses, of programmes that focus specifically on dealing with current societal issues.**

The Committee believes that Gardaí be required to undertake courses which educate as to the community, cultural, ethnic and societal issues they may encounter in the course of their work.

### **Other Recommendations for Reform**

- 23. The Committee recommends that section 6(1) of the Act is amended so that the name of “the Garda Síochána” is changed to “An Garda Síochána”.**

The Committee heard that the name “The Garda Síochána” should be changed to “An Garda Síochána”, in the interests of consistency.

- 24. The Committee recommends that consideration is given to extending the scope of Freedom of Information legislation to include An Garda Síochána.**

The Committee heard that this is the norm in other European democracies and was given particular evidence of how it applies in the United Kingdom.

- 25. The Committee recommends that consideration be given, either by amending sections 30, 35 and 36 of the Act or otherwise, to allow the more widespread utilisation of local services and specialist organisations for elements of the work of An Garda Síochána which can be delegated.**

While not directly related to oversight, consideration could also be given to establishing local divisions of An Garda Síochána to allow for the national police service to focus on serious crime. This would allow for a wider and more effective use of resources. Presently there is the Garda Reserve, which could focus on community policing and sporting events. Policing responsibilities for some areas could be transferred to separate organisations, such as Customs or the Airport Police. The Committee also sees a role for the Joint Policing Committees involving local authorities in managing these areas, as well as a possible expansion to current proposals to civilianise certain areas.

## CONCLUSION

The Committee makes these recommendations after a thorough review of the present Act. These recommendations are made with the aim of reforming GSOC into the GSO, reforming the complaints process, expanding and improving the inspection mechanisms in place, the formation of the proposed Garda authority, the training of Gardaí and addressing circumstances which may lead to complaints.

To sum up the recommendations, the Committee overall recommends a Garda Authority, where the candidates are selected by the Public Appointments Service (PAS) and approved, either by formal appointment or otherwise, by the Minister. Furthermore, the Committee suggests a similar system for the Gardaí, where senior officers are selected by the PAS and the Authority makes the appointment, which may be ratified by the Minister.

In terms of operation, the Authority should operate as the head, with the GSO and the Inspectorate operating as the arms. The Authority would be concerned with appointing senior Gardaí, adding input to policy, strategy and planning, including budgets, managing the effectiveness of the complaints procedures through operating a help-line and referring matters to the GSO and overseeing inspections of the administration, presentation and efficiency of An Garda Síochána. The GSO itself should be primarily concerned with serious complaints and systemic problems, supported by the Inspectorate in cases where there is no specific complaint against a named or identifiable individual. The Committee recommends an expanded role for both the GSO and the Inspectorate under the auspices of the Garda Authority.

All Gardaí up to and including the Commissioner and should be accountable to the GSO. The GSO should be empowered to investigate any section of An Garda Síochána. It is the Committee's view that the role of the Garda Inspectorate should be expanded resulting in a body similar to the one that operates in Northern Ireland. The Committee suggests that the Garda Inspectorate be transformed into a Criminal Justice Inspectorate, tasked with a wider scope to inspect other aspects of the Criminal Justice system apart from An Garda Síochána.

The review focused on the main initiative of the Act, which is the oversight of An Garda Síochána, and explored how this can be achieved in the most effective and efficient way.

Finally, the Committee would like to sincerely thank all those who took the time to make submissions on this very important issue and those who appeared before the Committee to field questions on their ideas and suggestions. All the evidence presented to the Committee was most useful, and it is pleased to complete this report as a conclusion to a very insightful and worthwhile process.