EXTRACT

FROM THE REPORT OF

THE HONOURABLE MR JUSTICE FRANK CLARKE

CONCERNING AN

INQUIRY PURSUANT TO SECTION 109 OF THE GARDA SÍOCHÁNA ACT, 2005

Inquiry Pursuant To Section 109 of The Garda Síochána act, 2005

Chaired by

The Honourable Mr Justice Frank Clarke

FIOSRÚCHÁN FAOI ALT 109 d'ACHT AN GHARDA SÍOCHÁNA 2005
INQUIRY UNDER SECTION 109 GARDA SÍOCHÁNA ACT 2005

An Breithcamh Frank Clarke
Mr Justice Frank Clarke

3rd May 2016

Frances Fitzgerald TD
Minister for Justice & Equality
Dept of Justice and Equality
51 St Stephen's Green
Dublin 2
D02 HK52

Dear Minister,

As you are aware I was appointed, at the invitation of the Chief Justice, to conduct an inquiry under s.109 of the Garda Síochána Act, 2005 into the conduct of certain designated officers of the Garda Síochána Ombudsman Commission. The terms of reference were those specified by you in your request, under s.109(1), to the Chief Justice to invite a judge to conduct the Inquiry.

The inquiry is now complete and this document represents my report on the results of the inquiry in accordance with s.109(6) of that Act.

Yours sincerely

Frank Clarke

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GLOSSARY OF TERMS AND ABBREVIATIONS

AIO	Assistant Investigating Officer
Article 2	Article 2 of the European Convention on Human Rights
Chief Supt	Chief Superintendent
Commissioner/s	Commissioner/s of the Garda Síochána Ombudsman Commission (unless otherwise stated)
D/Gda	Detective Garda
DDI	Deputy Director of Investigations
DI	Director of Investigations
DPP	Director of Public Prosecutions
DO	Divisional Office
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
Gda	Garda
Gearáin	Literal translation "Complaints". Gearáin is the liaison system between An Garda Síochána and GSOC for transmission of requests for documents or materials in the course of an investigation.
GSOC	Garda Síochána Ombudsman Commission
Insp	Inspector
IO	Investigating Officer
PULSE	PULSE (Police Using Leading Systems Effectively) is a computer system used by An Garda Síochána, which contains records in relation to individual members of society and incidents.
Sgt	Sergeant
SIO	Senior Investigating Officer
Supt	Superintendent
The Act / The 2005 Act	The Garda Síochána Act, 2005 (unless otherwise stated)
The Minister	The Minister for Justice and Equality
The Protocol	Memorandum of Understanding, Protocols and Agreement on Operational Matters between The Garda Síochána Ombudsman Commission and An Garda Síochána.

PART I - INTRODUCTION

(1) General Observations

1.1 Great tragedy does not always mean great wrong. But great tragedy creates an imperative for thorough investigation.

1.2 The circumstances into which the Inquiry was required to delve, to a large extent, started and ended with tragedy. In the early hours of New Year's morning 2015 Ms Sheena Stewart was killed in a road traffic accident. In the early hours of the 28th May of that year the body of Sgt Michael Galvin was discovered in Ballyshannon garda station at approximately 7.00am. . In the intervening period GSOC had commenced, conducted and, to a very large extent, completed what turned out to be a criminal investigation into the conduct of members of An Garda Síochána (including Sgt Galvin) in the period immediately prior to the death of Ms Stewart. While the precise status of that investigation at the time of Sgt Galvin's death is a matter that requires to be explored in some detail, it is fair to say that, so far as the carrying out of the investigation itself was concerned, same had largely concluded on the basis of, at a minimum, a clear recommendation that there should be no prosecution either of Sgt Galvin or any other of the gardaí concerned. At least in a colloquial sense it can be said that the gardaí concerned had, in substance, been cleared by the GSOC investigation.

1.3 The death of Ms Stewart was, indeed, a tragedy. That those tragic circumstances required to be investigated can hardly be doubted although there is controversy, which will be addressed in the course of this report, as to whether the form of criminal investigation adopted by GSOC was appropriate in the circumstances. However, after a thorough investigation, a clear decision was made by the investigating officers, supported by in-house legal advice, that no prosecution should follow. There has been no suggestion, nor would the Inquiry feel that there could be any valid suggestion, that the GSOC investigating officers concerned were wrong in reaching the conclusions which they did. In that sense the great tragedy of Ms Stewart's death did lead to thorough investigation but also led to the conclusion that, at least so far as An Garda Síochána

were concerned, nothing inappropriate had occurred. The Inquiry should add that it understands that the question of whether proceedings may result from the road traffic accident itself remains alive and, for that reason, it would be most inappropriate for the Inquiry to make any comment on those questions.

1.4 The death of Sgt Michael Galvin was indeed a further tragedy. It is hoped that this report will demonstrate that the thorough investigation warranted as a result of that tragedy has been conducted. It is important to record, however, that just as was the case with Ms Sheena Stewart, the existence of a great tragedy does not, necessarily and in and of itself, mean that there was great wrong. The purpose of any investigation of this type is to find out whether that was so. It is important that inquiries such as this commence their work with an open mind and do not assume that, because the circumstances being investigated involve a great tragedy, there necessarily was commensurate wrongdoing. It is also important that all who may have an interest in the work of an inquiry such as this recognise that important principle. Adverse findings should be made if they are justified on the evidence. The investigation should be thorough so as to ensure that all possible evidence becomes available so as to form a judgment about whether adverse findings should be made. But any adverse findings should only be those which can be justified on the evidence and such findings should only be expressed in terms justified by the evidence. The Inquiry would hope that it has kept those principles in mind in the conduct and conclusion of its investigation. The Inquiry would also hope that all who may have an interest in those conclusions will recognise the need to adhere to those principles.

1.5 On perhaps a more mundane level it should be recorded that this inquiry was the first established under s.109 of the 2005 Act which provides for a judicial-type inquiry into the conduct of designated GSOC officers arising out of the conduct by those officers of a criminal investigation into members of An Garda Síochána. Some issues relating to the law in respect of an investigation under that section will need to be addressed in the course of this report. It should be recorded that, doubtless because this is the first inquiry of its kind and that, therefore, no issues concerning the precise operation of the legislation have been determined or debated before now, more legal issues arose than might have been the case in the implementation of much used

legislation. The Inquiry would wish to record that it did not consider that any of the issues raised were put forward in anything close to a frivolous or vexatious manner. Indeed, as will be apparent from certain aspects of this report, the Inquiry was of the view that certain aspects of the legislation lacked clarity. This lack of clarity undoubtedly led to legitimate questions being raised as to the precise way in which the legislation should operate and unquestionably added to the complexity and length of the Inquiry's investigation. While this inquiry has expressed its view on the legal issues raised, it is worth recording that, unless and until any of those issues come to be definitively determined by a court of competent jurisdiction, it would remain open to another judge appointed to conduct a different inquiry under this legislation to reach a different conclusion on any of those issues. The Inquiry is of the view that, now that there has been experience in implementing this legislation, a review of the wording of certain parts of the legislation would be welcome so that the issues which arose in this inquiry could be put beyond doubt and would not, therefore, be likely to arise in the event of a further inquiry under this legislation.

1.6 Finally, it would be somewhat naïve for the Inquiry to embark on a consideration of the specific facts and issues which arise under its terms of reference without at least mentioning what many might consider to be an "elephant in the room". One would have had to have lived in a media-free zone for the last decade or so not to be aware that there have, from time to time, been tensions between GSOC and An Garda Síochána both at an organisational, representative and individual level. It is beyond the scope of this inquiry to address the causes of those tensions or to identify the extent to which they may have been alleviated by measures adopted over the years. It would be fair to say that the general impression created by the evidence tendered to this inquiry suggested a wide range of differing attitudes to GSOC within An Garda Síochána. It is, of course, inevitable that there will be tensions between any investigator and those being investigated. But some of those members of An Garda Síochána who gave evidence expressed the view that GSOC were simply doing their job and indicated that they understood, to a greater or lesser extent, why this had to be so. On the other hand, it would be fair to say that some degree of resentment and hostility was also apparent in the views of other witnesses. It must, of course, be recognised that the tragic circumstances

which led to the establishment of this inquiry must have had an effect, and indeed an understandable effect, on the attitudes of many of the colleagues of Sgt Galvin who clearly held him in such high esteem.

1.7 This inquiry will not solve all, or even many, of the remaining difficulties which undoubtedly exist in relation to the investigation of issues relating to An Garda Síochána. But it is clearly very much in the public interest that there be an effective investigation mechanism in place and it is also in the public interest that such mechanism work as well as possible. One of the clear impressions which came over to this inquiry was that at least part of the problem stems from a lack of proper understanding among members of An Garda Síochána as to the way GSOC is required to and does carry out its role. It is outside this inquiry's remit to apportion blame for that state of affairs and it would, indeed, be dangerous for this inquiry to attempt so to do given that its focus has been on a single GSOC investigation albeit one which had such tragic consequences. However, the Inquiry has sought to put forward some recommendations as to a process which, it might be hoped, could lead to a greater understanding all round. As suggested earlier, it would be naïve to believe that all tensions could be removed from any investigative process. But the Inquiry has come to a strong impression that significant improvement is possible.

1.8 The primary purpose, however, of this inquiry was to bring clarity to the facts surrounding the GSOC investigation arising out of the death of Sheena Stewart. The Inquiry was required to do so in the context of assessing the conduct of GSOC designated officers. It is hoped that this report will bring at least some such clarity and will allow a measure of closure for all concerned although it must be recognised that the consequences of tragic events are hard to put behind. But in addition to addressing the specifics of the investigation concerned it is hoped that the recommendations of the Inquiry may be of some assistance in helping to build confidence in what is undoubtedly a vital part of our state's structure being the mechanism by which our guards are themselves guarded.

(2) Preliminary Matters:

(i) Appearances:

Legal representatives appearing at the Inquiry:

Counsel for the Inquiry: Helen-Claire O'Hanlon BL and Sorcha Cristin Whelan BL

For the designated officers of GSOC: Úna Ní Raifeartaigh SC, instructed by Edward Gleeson and Laura Rattigan Solicitors of Mason Hayes & Curran Solicitors;

For An Garda Síochána: Rory Mulcahy SC and, Paul Carroll BL, instructed by Pat Spillane Solicitor of the Chief State Solicitor's Office;

For Collette Galvin: Claire Moran Solicitor of Cathal Flynn Solicitors;

For the extended Galvin family: Rosemary Mallon BL, instructed by Michael Hegarty Solicitor of Smyth O'Brien Hegarty Solicitors.,

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(ii) Witnesses:

Witnesses who gave evidence before the Inquiry, in approximately chronological order, were as follows:

Members / employees of An Garda Síochána: Supt Andrew Archbold, Sgt Stewart Doyle, Supt Michael Finan, Insp Denis Joyce, Chief Supt Terry McGinn, Gda John Clancy, Gda Aidan Mulvihill, Gda Gerry Mullaney, Supt Colm Nevin, Gda Brian Tuohy, Gda Sean Rogers, Gda Yvonne Carolan, Darragh Phelan, Sgt Paul Wallace, Sgt Joe Hannigan, Gda Kevin Garvin, Gda Louise Foy, Gda Paddy Battle, Gda Claire O'Hara, Gda Helen Munnelly, D/Gda Chris O'Neill, Supt Louise Synott.

Legal Representatives: Michael Hegarty (Solicitor), Gerald O'Donnell (Solicitor), Gerry McGovern (Solicitor)

Family members and personal friends of Sgt Michael Galvin: Colette Galvin, Damien Hamill, Matt Feely, Geraldine Gill, John Gill, Helen Rutledge,

Members of GSOC: SIO Nick Harden, SIO Maurice Breen, IO Daniel Gallagher, DI Ken Isaac, DDI Darren Wright, IO Pauline Byrne, SIO Jon Leeman, SIO Rody Butler, SIO Johan Groenewald, SIO Garret Croke, Niamh McKeague (Legal Affairs), Michael O'Neill (Formerly Head of Legal Affairs), Lorna Lee (Head of Communications), Commissioner Kieran Fitzgerald.

(iii) The Terms of Reference:

As set out in accordance with s. 109 of the 2005 Act, in the letter of request from the Minister of for Justice and Equality and the Chief Justice, the terms of reference are as follows:-

> "An inquiry into the conduct of designated officers of the Garda Síochána Ombudsman Commission in performing functions under section 98 or 99 of the 2005 Act in relation to the investigation by the Ombudsman Commission in the matter referred to it by the Garda Commissioner on 1 January 2015 under section 102(1) of the 2005 Act, that matter being the contact which members of the Garda Síochána had with Ms Sheena Stewart in the early hours of 1 January in Ballyshannon, Co. Donegal, shortly prior to Ms Stewart's death in a road traffic collision."

(iv) GSOC Personnel and the GSOC organisational structure:

2.1 The designated Officers of GSOC within the terms of reference of this Inquiry, namely all those officers who played a role in the investigation into Garda contact with Ms Sheena Stewart prior to her death in the fatal road traffic collision on the 1st of January 2015, are as follows:

SIO Nick Harden

IO (now SIO) Maurice Breen

IO Daniel Gallagher

SIO Jon Leeman

IO (Now SIO) Rody Butler

IO Pauline Byrne

SIO Johan Groenewald

SIO Garret Croke

DDI Darren Wright

DI Ken Isaac

2.2 The hierarchy and organisational structure within GSOC was explained by various witnesses as follows:

2.3 An Assistant Investigating Officer is the lowest rank within the investigations unit. Above that level is the rank of Investigating Officer and above that again is that of Senior Investigating Officer. There are several GSOC offices in Ireland, with Headquarters on Upper Abbey Street in Dublin 1. There is a further office in Cork, from where the team covers the Munster region and in Longford which covers the Midlands and Western region.

2.4 An Investigating Officer or Assistant Investigating Officer is connected to, and is part of, an investigation team. At the start of 2015, SIO Nick Harden and IO Maurice Breen were based in the Cork office. IO Daniel Gallagher was working remotely, based in Donegal and reporting to his line manager, SIO Leeman in the Dublin office. During the course of the investigation IO Gallagher transferred to the Longford team and thereafter reported to SIO Johan Groenewald who was based in the Longford office.

2.5 The senior ranks above that of SIO are the Deputy Director of Investigations and the Director of Investigations. Over all of those ranks are the Commissioners of GSOC, being at the relevant time, Commissioner Kieran Fitzgerald and Commissioner Carmel Foley. The current Chair of GSOC, Ms Justice Mary Ellen Ring, was not in office at the time of the events relevant to this inquiry.

(3) Summaries:

(i) Summary Timeline:

3.1 The purpose of this summary is to set out a timeline of the key dates which are of relevance to the remit of the Inquiry. A more detailed account of those facts which are not in dispute is set out in Part III of the Report. Insofar as there are a limited number of facts in relation to which there was conflicting evidence the same are dealt with in the course of the Issues section of this Report (Part IV).

- **01/01/2015 (early hours):** There is some garda interaction with Sheena Stewart who later is killed in a road traffic accident. ("RTA")

- **01/01/2015 (later):** Supt Michael Finan attends at the scene of the fatal RTA and refers the matter to GSOC in accordance with s.102 of the 2005 Act. SIO Nick Harden (the SIO on call) makes a recommendation to DI Ken Isaac of GSOC to designate an investigation under s.98 of the Act (a criminal investigation). DI Isaac

agrees and a s.98 investigation is commenced. Later in the day a meeting takes place in Ballyshannon Garda Station between GSOC officers Harden and Breen and Insp Denis Joyce. Sgt Gerard Mullaney is placed in charge of the RTA investigation.

- **2/1/15:** A document request is given to Insp Joyce by the attending GSOC officers. The s.98 investigation is transferred to IO Daniel Gallagher and IO Gallagher later attends at Ballyshannon garda station and collects the CCTV from Insp Joyce.

- **7/1/15:** Gda John Clancy makes a statement.

- **12/01/15:** IO Gallagher views CCTV footage of the original incident and feels that there is an inconsistency with what has been reported to him.

- **13/1/15:** IO Gallagher makes a request under the Gearáin system for further materials and receives a reply to the effect that no formal notification has been provided to An Garda Síochána of the existence of a s.98 investigation.

- **25/1/15:** Sgt Galvin makes a statement.

- **26/1/15:** IO Gallagher writes to Garda Internal Affairs, formally notifying the existence of the s.98 investigation and identifying the three members under investigation (being Sgt Doyle, Sgt Galvin and Gda Clancy).

- **2/2/15:** IO Gallagher attends Ballyshannon Garda Station and receives a number of documents per the document request of 2/01/15, including the statement from Sgt Galvin.

- **12/2/15:** SIO Leeman reviews the CCTV footage and he and IO Gallagher decide that the accounts of Gda Clancy and Sgt Galvin need to be clarified after caution.

- **25-26/03/15:** Several calls take place between IO Gallagher and Sgt Galvin in relation to a cautioned interview. Sgt Galvin expresses shock and seeks information as to the offence under investigation. IO Gallagher outlines that the

offence is either under s. 110 of the 2005 Act or that of perverting the course of justice contrary to common law.

- **27/4/15:** Gerald O'Donnell, solicitor acting for Sgt Galvin, meets with him and advises that he will write to IO Gallagher. Several consultations and telephone conversations between Sgt Galvin and his solicitors take place in the following weeks.

- **28/4/15:** A letter is sent from Smyth O'Brien Hegarty, solicitors for Sgt Galvin, to IO Gallagher querying a lack of notification and seeking further information.

- **01/05/2015:** Sgt Mullaney sends the completed RTA investigation report to the Supt at Ballyshannon.

- **05/05/15:** IO Gallagher responds to the letter from Smyth O'Brien Hegarty and suggests 15th May 2015 for a cautioned interview of Sgt Galvin. This date does not suit but in further correspondence an interview is arranged for 20th of May 2015.

- **6/5/15:** Gda John Clancy is interviewed by IO Gallagher and IO Butler in the offices of his Solicitors, McGovern Walsh & Co, in Sligo.

- **14/5/15:** Sgt Galvin takes the train to Dublin for a lengthy consultation with his solicitors. He appears to be extremely concerned. It is agreed that a statement will be prepared for submission to GSOC.

- **20/5/15:** The day of the GSOC interview with Sgt Galvin. He and his wife drive to Dublin. He goes alone to his solicitor's office at 12.15pm and he and Gerald O'Donnell walk together to the GSOC offices for the interview at 2pm. The prepared statement is read out, Sgt Galvin indicates that he does not wish to answer questions and the interview concludes very shortly thereafter.

- **21/5/15:** IO Gallagher is of the view that a recommendation of no prosecution should be made; having consulted SIO Groenewald and on his recommendation,

he submits a report to the Legal Affairs department of GSOC seeking their advice.

- **22/5/15:** Sgt Galvin is referred by a peer supporter to the Garda Employee Assistance Service.

- **25/5/15:** Michael O'Neill, at the time Head of GSOC Legal Affairs, emails IO Gallagher saying they will review and revert.

- **27/5/15:** At 4.44pm Niamh McKeague, of GSOC Legal Affairs, emails IO Gallagher concurring with his intended recommendation, to the effect that there was insufficient evidence of any offence but suggests that a file should, nonetheless, be sent to the DPP.

- **27/05/2015:** Gda Brian Tuohy of the Garda Employee Assistance service visits Sgt Galvin in the morning at his home in Manorhamilton. Later that day Sgt Galvin takes up duty in Ballyshannon GS. He is meant to finish at 3.00am but tells others he may finish early. At around midnight Sgt Galvin is last seen by Gda Clare O'Hara, walking in the direction of the Sergeant's Office.

- **28/5/15:** At 00.50am Sgt Galvin phones Gda Paddy Battle. At 5.00am Colette Galvin (the wife of Sg. Galvin) rings the station to say Sgt Galvin has not come home. A search commences. A note is discovered addressed to Collette Galvin. Sgt Galvin's remains are found at approximately 7.00am in the locked detective's room. At 7.30am a s.102 referral in relation to the death of Sgt Galvin is made to GSOC through Command and Control. The Garda Press Office is notified.

- **29/5/15:** A proposed statement from GSOC is prepared by Lorna Lee, GSOC Press Office, to be approved for publication, if necessary.

- **1/6/15:** Journalist Greg Harkin emails Lorna Lee about the investigation. Following this an approach is agreed within GSOC for notification of the Galvin family and the media. DDI Wright is unsuccessful in attempts to contact the family through An Garda Síochána. Lorna Lee speaks to Greg Harkin and provides some information.

- **1/6/15:** DDI Wright is informed by An Garda Síochána that the Galvin family have been contacted by Greg Harkin who has told them the investigation had been discontinued 10 days before Sgt Galvin's death.

- **2/6/15:** Greg Harkin's article is published in the Irish Independent: *"Garda who took his own life didn't know he had been cleared by GSOC".*

- **2/6/15:** A statement is published by GSOC on the incident.

- **4/6/15:** A second statement is published by GSOC, stating that they are bringing their investigation into the death of Sgt Galvin to a close.

(ii) Summary of Conclusions:

3.2 There were few disputes as to the events which actually occurred. A brief timeline in set out in the preceding section of this report. A more detailed account can be found in Part III. The principal questions which the Inquiry was required to consider and on which the Inquiry was required to reach conclusions were, therefore, in the main concerned not so much with what actually happened but whether what happened was appropriate.

3.3 In that context the first set of conclusions relate to the circumstances in which it was decided by GSOC to instigate a criminal investigation into garda contact with the late Ms Sheena Stewart prior to her death. That question brought into focus issues concerning the legal basis on which it is appropriate generally for GSOC to instigate a criminal inquiry together with issues concerning whether the commencement of such an inquiry was justified in the circumstances of this case.

3.4 In that regard the Inquiry has concluded that the 2005 Act lacks clarity as to the circumstances in which a criminal investigation under s.98 can properly be commenced by GSOC. Given that lack of clarity it appears to the Inquiry that the best interpretation which can be placed on the relevant provisions is that, to use a double negative required by the legislation itself, a criminal investigation can be commenced when it does not

appear that the circumstances do not appear to constitute a criminal offence. Nonetheless the Inquiry has concluded that it is not necessary that there be any evidence of potential criminal action present before such an investigation can be commenced.

3.5 In addition the Inquiry has concluded that it is necessary, where a matter arising out of the death or serious injury of a person after garda contact is referred to GSOC by An Garda Síochána in accordance with s.102 of the 2005 Act, that GSOC must first conduct a sufficiently thorough examination of the circumstances to enable a proper conclusion to be reached as to whether the threshold referred to is met.

3.6 The Inquiry has also concluded that GSOC designated officers generally appear to have allowed their perception of their obligation to conduct an inquiry consistent with Article 2 of the ECHR to colour their view as to whether it is appropriate, in particular circumstances, to conduct a criminal investigation and that this consideration also applied to the facts of this case.

3.7 In relation to the designation of the investigation in this case as a criminal investigation it is necessary to consider the possible offence of misconduct in public office as that was the only possible offence considered by the GSOC officers concerned. While accepting that the offence in question has never been the subject of a prosecution in Ireland, the Inquiry is of the view that it was not, in and of itself, inappropriate to commence a criminal investigation into such a possible offence. The Inquiry had regard to the fact that the DPP had indicated to GSOC, at an earlier stage, that a prosecution for such an offence would be considered in appropriate circumstances on the basis of the likelihood that an offence, similar to that which is recognised in the common law of the United Kingdom, would be recognised in this jurisdiction.

3.8 However, the Inquiry also noted that the equivalent offence in the United Kingdom required "wilful and significant" misconduct. In the circumstances of this case, the Inquiry was not satisfied that, as of the time when the designation of an investigation into a criminal offence occurred (which was within 30 minutes after the circumstances were first intimated to GSOC), there was available sufficient information to warrant considering the possibility of the sort of wilful neglect which would be necessary to

constitute the offence of misconduct in public office if such an offence forms part of the law of Ireland. In summary the Inquiry has concluded that it must have been the case that, at the relevant time, the circumstances then known did not appear to constitute a criminal offence.

3.9 On that basis the Inquiry has concluded that the decision, at that time, to instigate a criminal investigation was mistaken. However, the Inquiry also has found that the decision was taken *bona fide* and, in the light of the lack of clarity which is to be found in the legislation itself, the Inquiry has come to the view that it must also conclude that the decisions respectively to recommend and designate the investigation as a criminal investigation, while mistaken, would not justify any action being taken against the individuals concerned.

3.10 Finally, the Inquiry notes that, while it views the decision to instigate a criminal investigation at the time when that decision was taken as having been mistaken, this should not be taken to mean that the Inquiry feels that no criminal investigation at all could properly have been instigated when more information became available.

3.11 As soon as the GSOC investigation commenced, a decision was made at a meeting in Ballyshannon garda station to leave the taking of statements from the three gardaí who had had relevant contact with Ms Stewart (Sgt Doyle, Sgt Galvin and Gda Clancy) to the gardaí themselves, with the collection of those statements being left under the control of Insp Joyce. There were issues as to whether that methodology was appropriate including the question of whether, given that a criminal investigation was in being and that the three gardaí concerned had been identified as being the subject of the investigation in question, it was appropriate to procure uncautioned statements. In addition there were issues as to precisely what level of information was given either to Insp Joyce or passed on to the three gardaí concerned as to the status of the GSOC investigation and the nature of the statements which the three gardaí concerned were required to make including the purpose for which those statements might be used.

3.12 In that regard the Inquiry has found that it is difficult to express a definitive view on a conflict of evidence between GSOC officers (SIO Harden and IO Breen) and An

Garda Síochána (Insp Joyce) as to precisely what was said at a meeting in Ballyshannon garda station on the 1st January concerning whether a criminal investigation under s.98 of the 2005 Act was in being. The Inquiry accepts that the GSOC officers concerned attempted to communicate the fact that there was such a criminal inquiry in being and genuinely believed that they properly communicated that fact to Insp Joyce. However, the Inquiry also accepts that Insp Joyce did not have that fact communicated to him in a way which he clearly understood and that he was, therefore, not actually aware, as a result of the meeting in question, that a criminal investigation was in being. That lack of clear communication was one of the factors (but not by any means the only factor) which led to the fact that the three members of An Garda Síochána who had been identified as being the subject of the criminal investigation (Sgt Doyle, Sgt Galvin and Gda Clancy) were not informed of the fact that there was a criminal investigation and that they were the subject of it.

3.13 The Inquiry has noted, however, the agreement of all those who were present at the meeting of the 1st January to the effect that it was accepted that statements from the three gardaí concerned would be obtained in which those gardaí would be required to "justify" their conduct in the context of their contact with the late Ms Sheena Stewart prior to her death. Those statements were to be taken in conjunction with the taking of statements of the gardaí concerned in the context of the preparation of a file in relation to a possible criminal prosecution under the Road Traffic Acts. It was also clear at the meeting in question that the relevant statements would be made available to GSOC for the purposes of its investigation.

3.14 The Inquiry has concluded that there was nothing wrong, in and of itself, in GSOC using that method for obtaining initial statements from the gardaí in question and that there was nothing wrong, in and of itself, in such statements being requested without the members concerned being cautioned. However, the Inquiry has concluded that it was wrong that those members were required to submit statements to GSOC without the members concerned having been informed of the existence of a criminal investigation and of the fact that they were the subject of the criminal investigation concerned.

3.15 The Inquiry has also concluded that, at the time when the three gardaí concerned made their respective statements, it had not been made sufficiently clear to those members that the statements which they were to make were, at least in part, for GSOC purposes. In that regard, whatever about the lack of communication which occurred at the meeting of the 1st January referred to above, it is clear that the GSOC officers concerned at that meeting reached an agreement that statements were to be taken from the three members at least in part for purposes of the GSOC investigation. The fact that that aspect of the agreement was not clearly communicated to the members concerned must be attributed to a failing of adequate internal communication on the part of An Garda Síochána.

3.16 Thereafter the GSOC investigation continued in what would appear to be a relatively normal fashion save for the fact, to which it will be necessary to turn shortly, that, quite extraordinarily, the three gardaí concerned were not made aware that there was a criminal investigation in being and, in particular, that they were the subject of that investigation.

3.17 The next major development was the extension of the GSOC investigation into one involving possible offences concerning making false and misleading statements or perverting the course of justice. Issues arose concerning whether the decision to extend the Inquiry in that regard was justified. A closely connected question of whether, in the light of that extension, it was appropriate to conduct cautioned interviews of both Sgt Galvin and Gda Clancy also arose.

3.18 In that context the Inquiry is satisfied that the decision to extend the Inquiry, taken on the 12th February, to one involving possible offences of making false and misleading statements or perverting the course of justice was a decision which was reasonable in the light of the information available at that time. Until a satisfactory explanation was given for the discrepancy between the statements made by Sgt Galvin and Gda Clancy, on the one hand, and CCTV footage, on the other, there was a realistic possibility that a conclusion might be reached that the statements were designed to deliberately downplay the extent to which it might be said the members concerned ought to have had a greater level of concern for Ms Stewart's safety.

3.19 It should be noted that satisfactory explanations were ultimately given but that does not, in the Inquiry's view, change the circumstances which prevailed at the time when the decision to extend the investigation was taken. For like reasons the Inquiry is satisfied that it was prudent, in all the circumstances, for the interviews in question to be conducted under caution.

3.20 It is next necessary to turn to those cautioned interviews. For reasons set out in more detail in the course of the report, an issue was originally identified concerning whether there might have been anything inappropriate about the manner in which those cautioned interviews were undertaken. However, no materials or evidence came to light to suggest that the relevant interviews were conducted in anything other than a professional and appropriate fashion. The findings of the Inquiry in that regard can be found in more detail in Part IV of the report.

3.21 Sgt Galvin was the second member to be interviewed under caution. Soon after that cautioned interview two developments or events occurred. First, the GSOC officer principally involved in the investigation came to the conclusion that there was no basis for recommending a criminal prosecution in respect of either Sgt Galvin or Gda Clancy. Having consulted his superior officer and on the recommendation of that superior officer the matter was referred for internal legal advice. At 4.44pm on the afternoon of the 27th May GSOC Legal Affairs sent an email concurring with the recommendation as to no prosecution but suggesting that a file should, nonetheless, be sent to the DPP. The second and tragic event which occured was that, in the early hours of the following morning, Sgt Galvin took his own life. Given the publicity which subsequently attached to the status of the GSOC investigation at the time of Sgt Galvin's death, the precise sequence of events and the status of that investigation at various times are analysed in Part III of the report.

3.22 The remaining specific issues which arose for the Inquiry's consideration related to the circumstances in which information concerning the status of the investigation by GSOC was released to the media in the period immediately after Sgt Galvin's death. In that context it needs to be emphasised that the scope of an inquiry under s.109 of the 2005 Act is limited to considering the conduct of GSOC designated officers and does

not, therefore, extend as such to a consideration of the conduct of the GSOC Commissioners or any other staff of GSOC who are not designated officers.

3.23 On that basis the Inquiry notes the limited nature of its remit under this heading. The Inquiry is only entitled to consider the conduct of designated officers. Therefore, the Inquiry is concerned to determine whether any GSOC designated officer might be said to have been at fault in the way in which information concerning the status of the investigation into Sgt Galvin arising out of the death of Ms Sheena Stewart was given to the media and, in particular, the fact that that information was given prior to the Galvin family being briefed.

3.24 The Inquiry is satisfied that it was reasonable, in all the circumstances, for GSOC to give information to the media but concludes that it would have been "significantly preferable" if greater coordination had taken place to at least maximise the likelihood that information was not imparted to the media before there had been sufficient contact with the Galvin family. The Inquiry has noted the extreme distress which this sequence of events caused for the family, friends and colleagues of Sgt Galvin. The Inquiry is also of the view that the sequence of events in question has contributed to some of the misinformation which gained currency surrounding the GSOC investigation.

3.25 The Inquiry has concluded that, while acknowledging that more could and should have been done to at least ensure that the Galvin family were properly briefed in advance of any media information being disseminated, it would in all the circumstances not be appropriate to level specific personal criticism at any GSOC designated officers in that regard. The Inquiry has reached that view not least because of the extremely charged circumstances then prevailing. The Inquiry also notes that, while the specific findings under this heading relate only to relevant GSOC designated officers, it is appropriate to record, lest by not so doing an inference to the contrary might be drawn, that it does not consider that Ms Lee of the GSOC press office could be the subject of any legitimate adverse findings either.

3.26 In the course of considering both the sequence of events and the issues which arose, the Inquiry was struck by the frequent lack of information or misunderstanding which became apparent.

3.27 In that context the Inquiry notes that much of the evidence betrayed a significant lack of information and misunderstanding on the part of many gardaí as to the precise role, remit and practice of GSOC. The Inquiry notes that some of the lack of understanding which arose in the context of this case is specific to the circumstances investigated. The lack of adequate communication to An Garda Síochána at the meeting in Ballyshannon on the 1st January is a case in point. In particular the fact that an email, which was intended to lead to the formal communication to the three gardaí concerned that they were the subject of a criminal investigation, was inadvertently deleted in the divisional office of An Garda Síochána at Letterkenny was highly unfortunate. These factors combined to lead to the extraordinary situation that neither Sgt Galvin nor Gda Clancy knew that they were the subject of a criminal investigation until they were contacted (almost three months after the investigation commenced) about a requirement that they present themselves for a cautioned interview. Even more extraordinarily Sgt Doyle was unaware that he had been the subject of investigation until he was told, after the death of Sgt Galvin, that no action was to be taken in respect of him.

3.28 The question of lack of communication or adequate information is one of the matters which is the subject of recommendation by the Inquiry as will be seen from the next section of this report.

(iii) Summary of Recommendations

3.29 The Inquiry is mindful of the fact that its focus was on a single case and that there may, therefore, be a danger in seeking reach overbroad conclusions and thus make overbroad recommendations based on the conduct of an inquiry into a single case. Notwithstanding that, the Inquiry feels, for reasons which are set out in more detail in the course of the report, that there are a number of areas in respect of which it should make recommendations.

3.30 The first set of recommendations contained in the report relate to the legislation itself. As the Inquiry notes in the report a number of legal issues concerning the proper scope of an inquiry under s.109 of the 2005 Act arose in the course of the conduct of the inquiry. While the Inquiry has expressed its views on the issues raised, the Inquiry recommends that those aspects of the legislation identified as having given rise to those issues should be reviewed for the purposes of putting the issues concerned beyond doubt in the event that there may be a further inquiry of this type. While it is inevitable that such issues may arise on the first occasion when a new piece of legislation is operated, it seems to the Inquiry, from its experience of having conducted this particular inquiry, that the work of any future inquiry will be made easier if the issues of debate identified were clarified by amendments to the legislation in question. In particular the question of whether it is permissible for a s.109 inquiry to consider a decision to designate an investigation by GSOC as one to be conducted as a criminal investigation under s.98 of the Act should be placed beyond doubt. In addition further consideration might be given to clarifying with greater precision the matters which should be addressed in the report of an inquiry.

3.31 In addition, the Inquiry has set out, in Part IV, a detailed analysis of the legislation insofar as it governs a decision to designate an investigation by GSOC as a criminal investigation (under s.98 of the Act) or a disciplinary investigation (under s.95 of the Act). For the reasons explored in detail the Inquiry considers that aspect of the legislation to be unclear and particularly so in the context of a case which comes to GSOC on a referral by An Garda Síochána under s.102 of the Act as opposed to as result of a complaint by a member of the public. As noted in the report, the Inquiry came to

the view that this lack of clarity in the legislation was at least in part responsible for some of the issues which arose concerning the instigation of a criminal investigation on the facts of this case. The Inquiry recommends that the legislation be reviewed to bring greater clarity to that important question.

3.32 Moving on from the legislation itself the Inquiry also came to the view that some of the general practices concerning the conduct of GSOC investigations required reconsideration. In that context the Inquiry noted a lack of clarity amongst GSOC personnel as to the precise circumstances in which they should inform members of An Garda Síochána about the progress of a criminal investigation in accordance with the obligation to inform contained in s.103 of the 2005 Act. While recognising that a final decision on the imparting of information must necessarily be an operational decision taken by those on the ground, the Inquiry recommends that more detailed guidance be given by GSOC to its designated officers in that regard.

3.33 The Inquiry also recommends that much more detailed information be made available to members of An Garda Síochána, in a clear form likely to be read and understood, about the way in which GSOC investigations are carried out. It is in particular suggested that such information should be specifically imparted directly to any member of An Garda Síochána who becomes the subject of a criminal investigation.

3.34 In addition, it is suggested that consideration be given to changing the current practice whereby the existence of a GSOC criminal investigation is notified by An Garda Síochána to the member concerned. It is suggested that this notification should be carried out by GSOC in conjunction, if that is considered appropriate, with an appropriate line manager within An Garda Síochána.

3.35 Finally, the Inquiry has tentatively suggested that GSOC might give consideration to whether it is appropriate to apply its policy, of always referring a file to the DPP at the conclusion of a GSOC criminal investigation under s.98 involving a death, in all cases. The Inquiry feels that some consideration should be given to considering whether there may not be some cases where no or so little evidence or materials are turned up in the

course of a GSOC investigation of that type that a referral of a file to the DPP might be considered neither necessary nor truly justified.