An Roinn Dlí agus Cirt
Department of Justice

GSOC Garda Ombudsman
INQUIRY INDEPENDENCE IMPARTIALITY

Department of Justice

Garda Síochána Ombudsman Commission

Oversight Agreement 2021-22

1. Introduction

1.1 Scope of this Agreement

This Agreement has been drawn up by the Department of Justice **("the Department"**) in consultation with the Garda Síochána Ombudsman Commission **("GSOC"**), in accordance with the Code of Practice for the Governance of State Bodies **("the Code of Practice"**). Together with the separate but related annual Performance Delivery Agreement (PDA), it succeeds the previous governance agreement between the two parties.

This Agreement sets out the broad governance and administrative accountability framework within which GSOC operates, and defines the key statutory and administrative roles, responsibilities and commitments that underpin its relationship with the Department. Under the Garda Síochána Act 2005 as amended ("**the 2005 Act**"), GSOC is independent in the performance of its functions and this Agreement does not affect same. While this Agreement will remain in force until end 2022, the parties will, in accordance with the Code of Practice, review it within 12 months and update it as necessary.

1.2 Background and context

1.2.1 *Role of GSOC*

GSOC is an independent statutory body established in 2007 under the 2005 Act. Its primary role is to provide independent handling, oversight and investigation of complaints against members of An Garda Síochána (AGS) and, as required, to undertake other investigations relating to the conduct of Garda members.

GSOC has an important role in ensuring that public confidence in AGS is safeguarded, and has extensive powers under the 2005 Act to enable it to carry out its responsibilities. Its functions, as set out in section 67(2) of the Act, are:

- To receive complaints made by members of the public concerning the conduct of members of the Garda Síochána;
- To carry out the duties and exercise the powers assigned to it under Part 4 in relation to those complaints;
- To issue guidelines for the informal resolution under section 90 of certain categories of complaints and to make procedural rules for investigations under section 9;
- To report the results of its investigations under Part 4 of the Act to the Garda Commissioner and, in appropriate cases, to the Director of Public Prosecutions and, if it reports to the Director, to send him or her a copy of each investigation file;
- To conduct, in accordance with section 102 or 102B, other investigations of matters concerning the conduct of members of AGS;
- To examine practices, policies and procedures of AGS in accordance with section 106;
- To draw up protocols with the Garda Commissioner in accordance with section 108; and
- To carry out any other duties and exercise any other powers assigned to it under the Act

The statutory objectives of GSOC, per section 67(1) of the 2005 Act, are: to ensure that its functions are performed in an efficient and effective manner and with full fairness to all

persons involved in complaints and investigations under Part 4 concerning the conduct of Garda members; to promote and encourage the use of mediation and other informal means of resolving complaints that are suitable for resolution by such means; and to promote public confidence in the process for resolving complaints.

1.2.2 Investigation of complaints

Under the 2005 Act, GSOC has all the powers that are necessary for, or incidental to, the performance of its functions, and may delegate any of its functions under the Act to its members or officers. Under certain sections of the Act a GSOC designated officer, where directed by GSOC to investigate a complaint, has for the purposes of the investigation all of the powers, immunities and privileges conferred and all of the duties imposed on any Garda member by or under any enactment or the common law.

1.2.3 Other investigations

In addition to investigating complaints from members of the public, GSOC is statutorily empowered to conduct other investigations under section 102 of the 2005 Act, as follows:

- To conduct independent investigations, following referral by AGS, in circumstances where it appears that the conduct of a Garda member may have resulted in the death of, or serious harm to, a person.
- If it appears in the public interest GSOC may investigate, even if a complaint has not been received, any matter that appears to indicate that a Garda member may have committed an offence or behaved in a manner that would justify disciplinary proceedings.
- The Policing Authority may, if it appears to it desirable in the public interest to do so, request GSOC to investigate any matter relating to policing services that gives rise to a concern that a Garda member may have committed an offence, or behaved in a manner that would justify disciplinary proceedings, and GSOC shall investigate that matter.
- The Minister for Justice may also if (s)he considers it desirable in the public interest to do so, request GSOC to investigate any matter that gives rise to a concern that a Garda member may have committed an offence, or behaved in a manner that would justify disciplinary proceedings, and GSOC shall investigate that matter.
- The Policing Authority may refer to GSOC any matter relating to policing services and the Minister may refer to GSOC any matter that gives rise to concern that a Garda member may have committed an offence or behaved in a manner that would justify disciplinary proceedings. GSOC will consider any such referral to determine whether the matter is one that it should investigate.
- To investigate (with the consent of the Minister) where there is a concern that the Garda Commissioner may have committed an offence or behaved in a manner that would constitute serious misconduct.

Under Statutory Instrument no. 339 of 2014 (made under the Protected Disclosures Act 2014), members of GSOC are prescribed persons to whom a protected disclosure relating to AGS may be made. GSOC may, if it appears desirable in the public interest to do so, investigate such a disclosure even if the person making the disclosure is a Garda member.

1.2.4 GSOC's Vision, Mission and Values

As set out in its Statement of Strategy 2021-23, GSOC's Vision is of "*first-rate, human-rights based policing oversight, contributing to trusted policing and a safe and secure*

society". Its Mission is "*to provide an independent, high-quality and trusted system for dealing with matters involving the possible misconduct of members of the Garda Síochána, in a manner which respects human rights and promotes public confidence."* GSOC's core values are:

- Independence;
- Impartiality;
- Integrity;
- Innovation;
- Commitment to Public Service;
- Courage;
- Respect; and
- Trust.

1.2.5 High-Level Outcomes

GSOC's Statement of Strategy 2021-23 sets out four intended High-Level Outcomes to guide its work over the coming years, as follows:

- Provision of an independent complaints handling function and investigation of alleged police misconduct in the public interest.
- Delivery of an excellent customer service.
- Delivery of a smooth transition to GSOC's successor body.
- A high-performing well-respected organisation.

1.2.6 Strategic fit within the Justice sector

One of the Department's strategic goals, as set out in its Statement of Strategy 2021-23, is to *"tackle crime, enhance national security and transform policing"*. GSOC supports this goal in discharging its mandate as describe above.

1.2.7 Department's functional interactions with GSOC

While other areas of the Department (e.g. Corporate, Legislation) have dealings with GSOC as required, the three main areas that interact with GSOC are the Criminal Justice Governance, Criminal Justice Policy and Transparency functions respectively. **Transparency** is responsible for sourcing, assessing and communicating all information required by the Minister, and managing (inter alia) internal and external communications including press queries, representations, complaints from members of the public, and parliamentary questions. Transparency has direct dealings with GSOC in such matters. **Criminal Justice Policy** liaises directly with GSOC on relevant policing policy issues.

Criminal Justice Governance has primary Departmental responsibility for the governance of all criminal justice agencies under the aegis of the Minister. It comprises six Principal Officer-led teams, each of which has specific dealings with GSOC as follows:

Team	*Purpose*
Criminal Justice Performance and Compliance	To support and monitor GSOC's compliance with its corporate governance obligations and its achievement of agreed objectives in the context of the resources provided, and to manage the governance relationship on an ongoing basis.
Governance Standards	To develop and promote consistent approaches to oversight, put in place effective governance agreements and performance targets, and advise on specific governance structures and proposals.
Financial and Capital Resources	To oversee the financial (current and capital), infrastructural and ICT resource management of GSOC, and to manage approvals for the accompanying resources.
Human Resources and Appointments	To advise and consult on strategic HR issues and requirements, and to manage board and/or senior executive appointments.
Garda Performance and Compliance	To support, monitor and appraise An Garda Síochána's overall performance and compliance with its corporate governance obligations, to manage the AGS/Department governance relationship on an ongoing basis, and to liaise with GSOC and other Garda oversight bodies on related matters as required.
Policing Legislative Framework	To develop, via the Policing, Security and Community Safety Bill, a new statutory governance and oversight framework for policing in line with the recommendations of the report of the Commission on the Future of Policing in Ireland.

2. Corporate Governance Arrangements and Obligations

2.1 Roles and Responsibilities

2.1.1 GSOC members

Section 65 of the 2005 Act provides that GSOC shall consist of three members who are appointed by the President on the nomination of the Government and following passage of resolutions by Dáil Éireann and Seanad Éireann recommending their appointment. At least one of the three members must be a man and at least one must be a woman. One of the members shall be appointed as Chairperson.

The three members are responsible collectively for leading and directing GSOC's activities within a framework of prudent and effective control as set forth in the Code of Practice for the Governance of State Bodies (2016).

2.1.2 Chairperson

The role of the Chairperson of GSOC is to manage and control generally the officers, administration and business of the organisation. As such, the Chairperson is responsible for effective corporate governance within GSOC and for ensuring that its statutory obligations are met.

2.1.3 GSOC officers

GSOC is empowered to appoint its own investigative and administrative personnel, subject to the consent of the Minister for Justice ("the Minister") and the Minister for Public Expenditure and Reform. Officers of GSOC are civil servants of the State.

2.1.4 Senior Management Team

GSOC's senior management team comprises:

Director of Administration	Director of Operations
Deputy Director of Administration	Deputy Directors of Operations
Head of Legal Services	

2.1.5 Accounting Officer

GSOC is funded under the Department of Justice's Vote (Vote 24), for which the Department's Secretary General is the Accounting Officer. The Accounting Officer is responsible for the safeguarding of public funds and property under their control, for the efficiency and economy of administration by their Department and for the regularity and propriety of all transactions in the appropriation account. External scrutiny of the appropriation accounts and related matters is provided by the Comptroller and Auditor General (C&AG) and ultimately by the Oireachtas via the Public Accounts Committee.

2.1.6 Minister for Justice

Under section 76 of the 2005 Act, the Minister grants GSOC funding for its activities out of public monies provided by the Oireachtas. In this context the Minister is politically accountable to the Oireachtas for GSOC's effectiveness in using those resources to fulfil its statutory functions.

The Act provides that GSOC shall, *inter alia,* submit to the Minister:

- An annual report on its activities in the immediately preceding year;
- Its annual audited accounts and the C&AG's report on same;
- Every five years from the date of its establishment, a report reviewing the general performance of its functions in the preceding 5 years;
- Any other reports on matters that have come to its notice and that, in its opinion, should, because of their gravity or other exceptional circumstances, be the subject of a special report to the Minister.

The Minister shall, as soon as practicable after receiving the aforementioned reports, cause copies of same to be laid before each House of the Oireachtas.

2.2 Adherence to relevant Governance Codes and Standards

As a State body operating under the aegis of the Minister, GSOC is subject to a range of statutory and corporate governance obligations including the relevant requirements of the 2005 Act and other legislation, the aforementioned Code of Practice and other Department of Public Expenditure and Reform (DPER) codes, circulars and guidance documents. GSOC will ensure that the relevant obligations are complied with and the Department will satisfy itself of same through the reporting and monitoring arrangements set out in this agreement.

2.3 Statement of Strategy

In accordance with section 1.17 of the Code of Practice, GSOC produces a multi-year Statement of Strategy. The current Statement of Strategy covers the period 2021-23. In accordance with section 1.15 of the Code of Practice, the Statement of Strategy includes appropriate objectives and goals along with relevant indicators against which performance can be clearly measured.

2.4 Audit and Risk Management

GSOC has a risk management policy and process in place led by the Director of Administration who is the designated Risk Management Officer (RMO). The RMO is supported by a Risk Management Monitoring Group (RMMG) comprising heads of business units and other key personnel, which meets on a regular basis to review and, as required, update GSOC's risk register. Risk management is a standing agenda item at the Ombudsman Commission's monthly meeting, with a monthly risk management report reviewed and specific risks discussed. The risk register is reviewed in full at least once annually by the Ombudsman Commission. Procedures to manage risk are in place throughout GSOC and are a standing agenda item at management, team, staff and project meetings. A summary of key risks identified and managed by GSOC will be provided to the Department routinely at each governance meeting. Details of key risks will be provided to Criminal Justice Governance (Performance & Compliance).

The Department's Internal Audit Unit (IAU) supports GSOC in monitoring and reviewing the effectiveness of its arrangements for internal governance, risk management and internal control. Audit work is agreed between the Head of Internal Audit and GSOC, with the IAU carrying out audits within an agreed timeframe. The Department's Audit Committee provides further support in verifying that the interests of Government and other stakeholders are protected through appropriate internal controls and business/financial reporting.

2.5 Other Key Obligations and Requirements

GSOC will comply with its statutory obligations and administrative requirements under the Code of Practice and other relevant DPER circulars and guidance, and has set out in its own policies and procedures the arrangements in place for meeting these obligations. GSOC will report as required to the Minister/Department (including, where relevant, in its Annual Report) and to other relevant authorities on matters including but not limited to:

- Procurement
- Expenditure

- Protected Disclosures
- Child Protection
- Data Protection
- Human Rights, Equality and Diversity
- Quality Customer Service
- Ethics and Standards in Public Office
- Provision of information to Members of the Oireachtas
- Environmental and Energy Management

2.5.1 Staffing

GSOC may make requests for exceptional staff needs to DPER through Criminal Justice Governance (Human Resources & Appointments). It is recognised that GSOC has an independent HR division with full responsibility for their salary budget. In that context, GSOC undertakes to remain within its delegated sanction budget. Sanction from DPER must be sought in respect of recruitment for posts at PO1 grade and above. While such decisions are a matter for DPER, the Department of Justice commits to supporting GSOC where agreed necessary.

2.6 Reporting requirements under statute and Code of Practice

2.6.1 Annual Report

Section 80(1) of the 2005 Act requires GSOC, not later than 31 March of each year, to submit to the Minister a report on its activities in the immediately preceding year. In line with the applicable provisions of Appendix A of the 'Code of Practice for the Governance of State Bodies – Business and Financial Reporting Requirements', the Annual Report shall include the following (*inter alia*):

- An explanatory note on any derogations (as agreed between GSOC and the Department) from the applicable provisions of the Code of Practice.
- Confirmation that GSOC has carried out an appropriate assessment of its principal risks (which should also be described) and, where appropriate, outline any associated mitigation measures or strategies.
- Confirmation of adherence to all relevant aspects of the Public Spending Code.
- A statement on the system of internal control in GSOC, covering the applicable items mentioned in Appendix D of the 'Code of Practice for the Governance of State Bodies – Business & Financial Reporting Requirements'.

2.6.2 Five-year report

Section 80(4) of the 2005 Act provides that GSOC shall, at the end of each five-year period commencing with the date of its establishment, submit to the Minister a report reviewing the general performance of its functions in the preceding five years. The next such report is due in May 2022.

2.6.3 Chairperson's Comprehensive Report to the Minister

In conjunction with the submission of GSOC's Annual Report, the Chairperson will furnish a Comprehensive Report to the Minister in line with the applicable provisions of section 1.9 and Appendix C of the 'Code of Practice for the Governance of State Bodies – Business & Financial Reporting Requirements'. The purpose of the Comprehensive

Report is to provide assurance that the necessary systems of internal control, risk management and other areas of compliance are in place and operating effectively. In line with the Code of Practice, the aforementioned statement on the system of internal control forms part of the Chairperson's Comprehensive Report in addition to its inclusion in GSOC's Annual Report.

2.6.4 Financial reporting

Section 77 of the 2005 Act requires GSOC to keep proper books of account, including an income and expenditure account and balance sheet, in such form as may be approved by the Minister with the consent of the Minister for Finance. Not later than three months after the end of the period to which the accounts relate, GSOC shall submit accounts kept under that section to the C&AG for audit. Immediately after the audit, GSOC shall present the Minister with copies of the audited accounts and of the C&AG's report on same.

3. Monitoring arrangements and key interactions

Criminal Justice Governance will hold two formal governance meetings with GSOC per year (or more if necessary). These meetings will consider, as required:

- Progress on the implementation of GSOC's Statement of Strategy and its annual business plan(s);
- Progress against the targets set out in the annual PDA;
- Human resource issues including staffing, training and industrial relations matters;
- Financial management and budgetary matters;
- ICT management and cyber governance;
- Risk management, risk reporting and other internal controls;
- Any internal governance-related issues of note;
- Updates from the Department regarding relevant criminal justice matters or pending legislation that may impact upon GSOC's remit or functions;
- Any matter relating to GSOC that might have been the subject of, or might give rise to, public commentary or scrutiny;
- Any matter that might impact on the reputation of GSOC; and
- Any other matter comprehended in, or arising from, this Agreement.

Outside of the aforementioned governance meetings there will continue to be regular, less formal interactions between GSOC and the Department in accordance with the business needs and mutual commitments of each party. In this context, informal and unscheduled contact will remain an integral part of the relationship between the parties.

4. Commitments

4.1 Mutual Commitments

Each party will:

- Be proactive and timely in communicating on (a) relevant matters including significant public announcements, media engagements and publications and (b) specific information requests and responses to meet the Minister's obligations to the Oireachtas or to inform responses to representations, media queries etc. This will be underpinned by a 'no surprises' approach to matters of mutual interest or concern.
- Liaise proactively on wider justice sector/public service reforms and policy initiatives.
- Engage constructively on the transitional arrangements relating to GSOC under the proposed Policing, Security and Community Safety Bill.

4.2 Departmental commitments

The Department will:

- Provide for and resource the annual budget for GSOC.
- Liaise with D/PER as appropriate on resourcing requests on behalf of and in consultation with GSOC, in line with public financial procedures and policies on public service numbers.
- Provide any necessary guidance/direction on procurement and expenditure rules, Civil Service HR policy, remunerations and industrial relations, government accounting and governance generally.
- Take due account of GSOC's role and statutory functions and ensure that GSOC is included/consulted as appropriate in all relevant matters.
- Inform and involve GSOC in any Departmental activities that relate to the functions that GSOC undertakes or may be required to undertake.
- Coordinate issues of a horizontal nature where there are shared or related legislative responsibilities by various entities which are under the Department's aegis and which impact on GSOC's functions.
- Advise GSOC in relation to proposed ICT projects (and resulting expenditure) and prompt review by the Department's ICT Governance Group of the sanctioning of project-related expenditure.

4.3 GSOC commitments

GSOC will:

- Provide timely, relevant and appropriately detailed information to facilitate the operation of this Oversight Agreement and the annual PDA, including in the context of the formal governance meetings;
- Engage with Criminal Justice Governance (Standards) on targets/indicators for inclusion in the annual Revised Estimates for Public Services volume and the annual PDA;
- Inform the Department of any trends or emerging risks in policing that could impact the ability of the Garda Síochána to deliver an effective service;

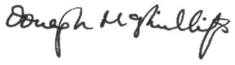
- More generally, in keeping with the 'no surprises' principle, ensure that significant governance-related issues or concerns are brought formally to the attention of Criminal Justice Governance at the earliest possible opportunity.

5. Comply or Explain

GSOC is in the process of establishing an Audit and Risk Committee to oversee the management of risk and internal controls in the organisation and to advise the Commission in relation to matters of audit, governance and risk. It is expected that the Committee will be in place by Quarter 3 of 2021.

6. Duration and signatories to the Agreement

Oonagh McPhillips, Secretary General, Department of Justice, and Ms. Justice Mary Ellen Ring, Chairperson, Garda Síochána Ombudsman Commission, affirm that this Agreement shall be in effect from the date hereunder until 31st December 2022.



Oonagh McPhillips
Secretary General
Department of Justice

Ms. Justice Mary Ellen Ring
Chairperson
Garda Síochána Ombudsman Commission

Date: 01/07/2021

Oversight Agreement Addendum

Amending Agreement

Between:

Ms. Oonagh McPhillips, Secretary General, Department of Justice

and

Rory MacCabe S.C., Chairperson, Garda Síochána Ombudsman Commission

Oversight Agreement 2021-2022

This Addendum between the Department of Justice and the Garda Síochána Ombudsman Commission is being appended to the Oversight Agreement 2021-2022, which was signed, by both parties and dated 1 July 2021.

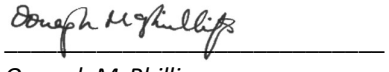
The Addendum confirms the agreement by the Parties to extend the Oversight Agreement 2021-22 beyond 31 December 2022 for continued implementation, without amendment, until the commencement of the structural oversight provisions of the Policing, Security and Community Safety Act 2024.

No Amendments

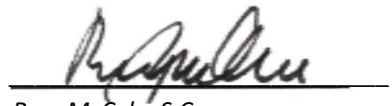
The terms and conditions of the Oversight Agreement 2021-22 will continue to remain unchanged, as appropriate.

Signatories to this Agreement

Oonagh McPhillips, Secretary General, Department of Justice, and Rory MacCabe S.C., Chairperson, Garda Síochána Ombudsman Commission, affirm that this Addendum to the Oversight Agreement 2021-2022 will continue to be in effect until the commencement of the structural oversight provisions of the Policing, Security and Community Safety Act.



Oonagh McPhillips
Secretary General
Department of Justice



Rory McCabe S.C.
Chairperson
Garda Síochána Ombudsman Commission