Corporate Governance Assurance Agreement

between the Garda Síochána Ombudsman Commission and the Department of Justice and Equality

2018 - 2020

1. Introduction

This Corporate Governance Assurance Agreement has been drawn up by the Department of Justice and Equality in consultation with the Garda Síochána Ombudsman Commission. It sets out the broad corporate governance framework within which the Garda Síochána Ombudsman Commission will operate and defines key roles and responsibilities which underpin the relationship between the Garda Síochána Ombudsman Commission and the Department of Justice and Equality. While this document does not confer any legal powers or responsibilities, it forms a key part of the overall Governance framework. The Agreement does not in any way impinge upon the independence of the Garda Síochána Ombudsman Commission under the provisions of the Garda Síochána Act 2005. The purpose of the Agreement is to provide a framework for the administrative accountability of the Garda Síochána Ombudsman Commission as a body funded by the exchequer.

Any question regarding the interpretation of this document shall be determined in consultation and agreement between the Minister/Department and the Garda Síochána Ombudsman Commission. It shall be noted that the relevant legislative procedures will, of course, take precedence over any part of this document.

This document will be updated as necessary, and at least every three years.

1.1 The Garda Síochána Ombudsman Commission (hereinafter 'GSOC') was established as a statutory, independent body (under the Garda Síochána Act 2005) to provide independent oversight of alleged misbehaviour by members of the Garda Síochána. GSOC commenced operations on 09 May 2007. The Garda Síochána Act 2005 (as amended) stipulates that GSOC is independent in the exercise of its functions.

1.2 GSOC has an important role in ensuring that public confidence in the Garda Síochána is safeguarded, and has extensive powers under the 2005 Act to enable it to carry out its

responsibilities. Its main functions as set out in the Garda Síochána Act, 2005 (as amended) are:

1) To receive complaints made by members of the public concerning the conduct of members of the Garda Síochána,
2) To carry out the duties and exercise the powers assigned to it under *Part 4* in relation to those complaints,
3) To issue guidelines for the informal resolution under *section 90* of certain categories of complaints and to make procedural rules for investigations under *section 95*,
4) To report the results of its investigations under *Part 4* 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,
5) To conduct, in accordance with *section 102 or 102B*, other investigations of matters concerning the conduct of members of the Garda Síochána,
6) To examine practices, policies and procedures of the Garda Síochána in accordance with *section 106,*
7) To draw up with the Garda Commissioner protocols in accordance with *section 108*, and
8) To carry out any other duties and exercise any other powers assigned to it under this Act.

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

1.4 In addition to investigating complaints from members of the public GSOC is empowered to conduct other investigations. These are:

1) To conduct independent investigations, following referral by the Garda Síochána, in circumstances where it appears that the conduct of a member of An Garda Síochána may have resulted in the death of, or serious harm to, a person (provided for by section 102(1) of the Garda Síochána Act 2005, as amended).

2) GSOC may investigate if it appears in the public interest, even if a complaint has not been received, any matter that appears to indicate that a member of the Garda Síochána may have committed an offence, or behaved in a manner that would justify disciplinary proceedings (provided for by section 102(4), and 102(7) of the Garda Síochána Act 2005, as amended).

3) 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 member of the Garda Síochána may have committed an offence, or behaved in a manner that would justify disciplinary proceedings and GSOC shall investigate that matter (section 102 (4A) of the Garda Síochána Act 2005 as amended).
The Minister for Justice may also if she or 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 member of the Garda Síochána may have committed an offence, or behaved in a manner that would justify disciplinary proceedings and GSOC shall investigate that matter (section 102 (5) of the Garda Síochána Act 2005 as amended).
The Policing Authority may refer to GSOC any matter relating to policing services and the Minister may refer to GSOC any matter that give rise to a cause for concern that a member of the Garda Síochána may have committed an offence, or behaved in a manner that would justify disciplinary proceedings for the Commission to consider whether the matter is one that it should investigate (section 102 (7) of the Garda Síochána Act 2005 as amended).

4) To investigate (with the consent of the Minister for Justice and Equality) where there is a concern that the Garda Commissioner may have committed an offence or behaved in a manner that would constitute serious misconduct (provided for by section 102B of the Garda Síochána Act 2005, as amended).

5) Under the Protected Disclosures Act 2014, SI no. 339 of 2014, the Ombudsman Commission is a prescribed person to which a disclosure relating to the Garda Síochána may be made. The Ombudsman Commission may, if it appears desirable in the public interest to do so, investigate the disclosure even if the person making the disclosure is a member of An Garda Síochána.

1.5 The purpose of the Agreement is to set out the arrangements for the effective governance, funding and general administration of the Garda Síochána Ombudsman Commission in accordance with the Code of Practice for the Governance of State Bodies (2016).

2. Role of the Garda Síochána Ombudsman Commission within the Justice & Equality Sector

2.1 Mission

Through examining and investigating complaints, GSOC will provide and promote an efficient, fair and independent oversight of policing in Ireland.

2.2 Strategic Objectives

The objectives of GSOC, in accordance with section 67(1) of the Garda Síochána Act 2005 (as amended), 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 members of the Garda Síochána, 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.

GSOC's strategic objectives are to:

- Improve Efficiency
- Promote Awareness
- Inspire Confidence
- Influence Policy
- Establish High Quality Service
- Improve Effectiveness

2.3 Vision

To be a public service which will influence reform of the Garda Síochána by ensuring a fair and open police complaints process.

3. Corporate Governance

3.1 Roles and Responsibilities

Accounting Officer

GSOC falls under the Department of Justice and Equality's Vote (Vote 24) and as such the Department's Secretary General is the Accounting Officer. The Accounting Officer is responsible for the safeguarding of public funds and property under his/her control, for the efficiency and economy of administration by his/her Department and for the regularity and propriety of all transactions in the appropriation account. Further external scrutiny and governance is provided through the submission and analysis of the Appropriation Accounts to the Comptroller and Auditor General and ultimately to the Oireachtas through the Public Accounts Committee. As Accounting Officer, the Secretary General is accountable to the Committee of Public Accounts (PAC) and other Oireachtas Committees.

The Commission

Section 65 of the 2005 Garda Síochána Act (as amended) requires that GSOC to 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 is appointed as Chairperson.

The members of the Commission 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).

Chairperson of the Commission

The function of the Chairperson of GSOC is to manage and control generally the officers, administration and business of the Ombudsman Commission. In addition, the Chairperson is responsible for the implementation of effective corporate governance and for ensuring that the Ombudsman Commission's statutory obligations are fully met.

3.2 Statement of Strategy

In accordance with paragraph 1.15 of the Code of Practice, GSOC should have a formal process in place for setting strategy. A Statement of Strategy should be adopted for a period of three to five years ahead. The statement should have regard to specific objectives in the Department of Justice and Equality's Statement of Strategy, and should also be consistent with any Government policies for the reform and modernisation of the Public Service as well as the statutory responsibilities of GSOC.

3.3 Annual Report and Accounts

Section 80(1) of the Garda Síochána Act 2005 (as amended) 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.

Section 80(4) of the Garda Síochána Act 2005 (as amended) requires GSOC at the end of each five-year period, commencing with the date of its establishment, to submit to the Minister a report reviewing the general performance of its functions in the preceding five years.

Each of GSOC's annual reports and five year reports must be laid before the Houses of the Oireachtas by the Minister for Justice and Equality.

Section 77(1) of the Garda Síochána Act 2005 (as amended) requires GSOC to keep proper books of account, including an income and expenditure account and balance sheet, as approved by the Minister for Justice and Equality with the consent of the Minister for Finance. Section 77(1) also provides that, not later than three months after the end of the accounting period to which the accounts relate, GSOC shall submit accounts kept under that section to the Comptroller and Auditor General for audit.

3.4 Reporting Requirements – Annual Report

In accordance with Appendix A of the 'Business & Financial Reporting' Annex to the *Code of Practice for the Governance of State Bodies*, the Annual Report should include:

i. Confirmation that this Agreement has been reached with the Department of Justice and Equality and, in particular, indicating GSOC's level of compliance with the requirements of the Code of Practice for the Governance of State Bodies.
ii. Confirmation that an appropriate assessment of GSOC's principal risks has been conducted, including a description of these risks, where appropriate and associated mitigation measures or strategies.
iii. Confirmation that GSOC is adhering to the relevant aspects of the *Public Spending Code*

3.5 Reporting Requirements – Financial Statements

In accordance with Appendix B of the 'Business & Financial Reporting' Annex to the *Code of Practice for the Governance of State Bodies*, the Financial Statements should include:

i. Details of any non-salary related fees paid in respect of Commission members.

ii. Aggregate pay bill, total number of employees and compensation of key management level;

iii. Total Costs incurred in relation to travel and subsistence and hospitality;

iv. Details of expenditure on external consultancy/adviser fees;

v. Details of the number of employees whose total employee benefits for the reporting period fell within each band of €10,000 from €60,000 upwards;

vi. Details of termination/severance payments and agreements with a value in excess of €10,000, made within the period.

3.6 Internal Audit

As a body which falls under the Department of Justice and Equality Vote (Vote 24), GSOC is, subject to resources, monitored and reviewed by the Department of Justice & Equality Internal Audit Unit, who can initiate an audit at any time. Areas of work focused on may include the following:

- Travel and Subsistence Costs
- Value for Money
- Procurement
- Adherence to Policies and Procedures

GSOC will consider and implement, where possible and appropriate, any recommendation arising from engagement with the Department's Internal Audit Unit recommendations.

3.7 Audit and Risk Committee

Due to the size of the Ombudsman Commission and that only the Chairperson has executive functions, it is not feasible for GSOC to have an Audit and Risk Committee. As such, the Department's Audit and Risk Committee shall provide this service and retains oversight of risk management within GSOC.

It is noted that GSOC has implemented a Risk Management Process which will be led by a designated Risk Management Officer who is supported by a Risk Management Monitoring Group (RMMG) which meet on a quarterly basis to review risk and update GSOC's risk register. The

RMMG is comprised of Business Unit line managers representative of the GSOC Business Units, and is supported and assisted by the Director of Administration who reports to the Ombudsman Commission.

3.8 Protected Disclosures

In accordance with Section 21(1) of the Protected Disclosures Act 2014, GSOC will establish and maintain appropriate Protected Disclosures Procedures for the making of protected disclosures by workers who are or were employed by GSOC and for dealing with such disclosures.

As of July 2016 GSOC has published a Protected Disclosures Policy covering internal disclosures by GSOC staff members. This policy applies to all staff of GSOC, covering all those working as an employee of GSOC (including fixed term, part-time), agency worker, independent contractor, consultant, intern, casual worker, any person who works or has worked under a contract for GSOC or those offering special assistance to GSOC in accordance with *section 74* of the Garda Síochána Act 2005 (as amended).

As members of the Ombudsman Commission are prescribed persons under the Protected Disclosures Act, GSOC shall publish a policy for dealing with disclosures made by members of An Garda Síochána.

3.9 Governance Obligations

As an agency operating under the aegis of the Minister GSOC is subject to a range of statutory and corporate governance obligations including the 2016 *Code of Practice for the Governance of State Bodies*. The Commission will ensure that all the necessary obligations, including those for risk management, internal audit and the Public Spending Code are fully complied with.

3.10 Chairperson's Comprehensive Report to the Minister

To confirm compliance (or otherwise) with key provisions of the Code of Practice and the Governance Standard for Justice and Equality Sector Bodies, the Chairperson of the Commission

will complete, on an annual basis, a Comprehensive Report to the Minister in order to provide assurance to the Department that the systems of internal control, risk management and other areas of compliance are operating effectively. This report will address all of the relevant requirements of paragraph 1.9 of the '*Business & Financial Reporting Requirements*' Annex to the *Code of Practice for the Governance of State Bodies*.

3.11 Provision of Information to Members of the Oireachtas

In accordance with D/PER Circular 25/2016 - *Protocol for the Provision of Information to Members of the Oireachtas by State Bodies under the aegis of Government Departments/Offices*, GSOC is obliged to:

i. Provide and maintain a dedicated email address (***Oireachtas@gsoc.ie***) for Oireachtas members.
ii. Put in place formal feedback processes to obtain feedback from Oireachtas members.
iii. Comply with target deadlines and standards in terms of acknowledgements and responses to queries.
iv. Designate a person at senior management level (***Assistant Principal, Policy & Secretariat Unit***) within the organisation with responsibility for ensuring the timely provision of information to members of the Oireachtas.
v. Report annually (in the Chairperson's comprehensive report to the Minister) on compliance with standards set out in Circular 25/2016.
vi. Seek, where appropriate, to publish the response to queries from members of the Oireachtas on GSOC's website.

3.12 Governance obligations will also be reviewed as part of the overall monitoring process of this Oversight Agreement itself.

3.13 Comply or Explain

GSOC is compliant with the requirements outlined in the 2016 *Code of Practice for the Governance of State Bodies* with some exceptions. These exceptions are explained below:

1. In recognition of GSOC's particular circumstances and statutory independence, this Corporate Governance Assurance Document has been agreed between both parties as satisfying the requirements of an Oversight Agreement as prescribed in the 2016 Code of Practice for the Governance of State Bodies. This Agreement sets out the broad corporate governance framework within which GSOC will operate and defines key roles and responsibilities which underpin the relationship between GSOC and the Department of Justice and Equality.
2. Section 1.18 of the Code advises that the Minister should have sight of the financial plans and strategy statements of the State Body for the Minister's views before the plans are finalised and adopted. Formal reporting mechanisms are in place with the Minister and GSOC is responsible for the management of its own budget. Its strategy statement is informed by that of the DJE. As such, GSOC does not submit financial plans or strategy statements to the Minister for views.
3. Section 1.24 and section 4.8 of the Code advises that the role of the Chairperson and the Chief Executive Officer should not be combined. GSOC, in its current structure, does not have a Chief Executive Officer. The Ombudsman Commission is set up and its membership, composition, terms and conditions defined by statute.
4. Section 3.4 of the Code in relation to *Circular 12/10: Protocol for Civil Servants Nominated to Boards of Non-commercial State Bodies* does not apply to GSOC. The process of appointments to the Ombudsman Commission is provided for under the Act and there is a reporting relationship between GSOC and the Department regarding risk, internal controls and operational matters as outlined in this Corporate Governance Assurance Agreement.
5. Section 3.10 of the Code outlines that the Secretary of the Board is responsible for the induction of new Board members. In GSOC, the Director of Administration is responsible for the formal induction of new Commission and Senior Management Team members and organising mentoring and training where required.
6. Section 4.1 outlines compliance with the Guidelines on Appointments to State Boards regarding terms of appointment and diversity. These guidelines do not apply to GSOC as

the terms and conditions and gender composition of the Ombudsman Commission are outlined in sections 65 and 66 of the Act.

7. Sections 7.2 and 7.7 of the Code refer to a State Body having a properly constituted Internal Audit Unit and an Audit and Risk Committee. Having regard to the size of the Commission, it is not deemed feasible for it to establish its own Internal Audit Unit or its own Audit & Risk Committee. Alternative arrangements have been put in place to provide GSOC with access to the Department's Internal Audit Unit and Audit Committee. In addition, GSOC is subject to annual audit by the Comptroller and Auditor General and has an internal risk management process to be overseen by a Risk Management Officer and a Risk Management Monitoring Group.
8. Section 8.27 of the 2016 Code outlines that Ministerial approval is required for any action which would extend or change the State body's remit. GSOC's remit is decided by government and set out in legislation. GSOC is, therefore, not in a position to extend its functions or to diversify in any way. It is extremely important that GSOC operates within its statutory remit, as to do otherwise would jeopardise its operations and run counter to its role and purpose. Similarly, GSOC is not involved in acquisitions. While its functions are labour intensive and require considerable skill and expertise, it requires a limited range of equipment to fully discharge its remit.

4. Commitments

4.1 Mutual Commitments:

- Both parties agree to proactive and timely communications, cooperation and information on service delivery;
- Both parties agree to consult and to keep each other fully appraised on all matters of mutual relevance;

- The Government is pursuing a comprehensive programme of justice reform. GSOC and the Department of Justice and Equality commit to ongoing consultation on such reform and the need for legislative change in matters which relate to GSOC's functions.

4.2 Department of Justice and Equality Commitments

The Department will provide the following supports to GSOC to enable it deliver on its objectives:

- Where required, liaise with the Department of Public Expenditure and Reform on behalf of GSOC to ensure, as far as possible, timely sanction for expenditure and staffing in line with Public Financial Procedures and Civil Service HR Policy Guidelines;
- Provide updates to GSOC on Public Financial Procedures and Civil Service HR Policy Guidelines;
- Provide guidance to GSOC on Civil Service HR Policy, public expenditure, remuneration and industrial relations, procurement and contracts;
- Provide guidance to GSOC on Government Accounting and Governance;
- Provide advice to GSOC in relation to proposed ICT projects (and resulting expenditure) and prompt review (by the Department of Justice and Equality's ICT governance group) of the sanctioning of project related expenditure;
- Liaise with GSOC in relation to Public Service Reform initiatives.

5. Finance and Planning

5.1 Annual Budget

The Annual budget for the Garda Síochána Ombudsman Commission is reflected as a separate subhead within the Justice and Equality Vote (Vote 24), for which the Secretary General is the Accounting Officer.

The annual budgetary provision for GSOC will form part of the Estimates for the Justice and Equality Vote and the requirements of GSOC will be considered in that context.

5.2 Staffing Resources

GSOC is empowered to appoint its own officers, subject to the consent of the Minister for Public Expenditure and Reform and the Minister for Justice and Equality. Officers of GSOC are not staff of the Department; they hold office in the Civil Service of the State.

GSOC may make requests for exceptional staff needs to the Department of Public Expenditure and Reform, through the Department of Justice and Equality. Following the grant of delegated sanction for Vote 24, GSOC is not bound by the moratorium on recruitment and promotion in respect of posts up to and including Principal Officer (PO) (Standard), provided it remains within budget. It is recognised that GSOC have an independent HR division, with full responsibility for their salary budget. In that context, GSOC undertake to remain within their delegated sanction budget. Sanction from the Department of Public Expenditure and Reform must still be sought in respect of recruitment for posts of PO1 and above. While decisions are a matter for the Department of Public Expenditure and Reform, the Department of Justice and Equality will commit to supporting GSOC where agreed necessary.

6. Potential Risk Factors

GSOC operates a formal Risk Management policy and maintains a Risk Register and, in accordance with the Department of Finance Guidelines, this is updated on an ongoing basis. The maintenance of the Register ensures that risks are identified and assessed and necessary mitigating actions are, where resources allow, put in place.

Reflecting the key priorities of the organisation, the main potential risks to the achievement of outputs set out in this Agreement at the time of writing are:

- Strategic Risks – Lack of resourcing
- Reputational Risks – Negative media engagement
- Operational Risks – Lack of compliance with EU General Data Protection Regulation

7. Monitoring Arrangements

The Department of Justice and Equality commits to a minimum of two meetings per year between GSOC and relevant officials in which there will be detailed consideration of progress made on the objectives agreed and any new objectives that may need to be put in place as a consequence of legislative change or Departmental or Government policy. Such meetings will afford both organisations the opportunity to inform one another and address any matters arising out of the operation of this Agreement and will, inter alia, consider: developments, achievements, challenges encountered etc.

GSOC undertakes to return:

(a) relevant and appropriately detailed performance information to allow for monitoring of this Agreement; and

(b) relevant and appropriately detailed performance information for inclusion in the Revised Estimates for Public Services volume.

8. Previous Agreements

This agreement supersedes any such previous agreement between the Department of Justice and Equality and the Garda Síochána Ombudsman Commission.

9. Duration and Signatories to the Agreement

Ms Justice Mary Ellen Ring, Chairperson, Garda Síochána Ombudsman Commission and Oonagh McPhillips, Acting Secretary General, Department of Justice and Equality agree that the arrangements as set out in this Agreement will apply with effect from the date signed hereunder for a period of 3 years.

Mary Ellen Ring

Ms Justice Mary Ellen Ring

Chairperson

Garda Síochána Ombudsman Commission

Date: 29 March 2018

Oonagh McPhillips

Oonagh McPhillips

Acting Secretary General

Department of Justice and Equality

Date: 29 March 2018