

Garda Síochána Complaints Board

Annual Report 2005

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Foreword

GSCB

Michael McDowell TD
Minister for Justice, Equality and Law
Reform

Minister,

I have pleasure in submitting the nineteenth Annual Report of the Garda Síochána Complaints Board, which covers the year 2005. The Report is submitted in accordance with section 13(1) of the Garda Síochána (Complaints) Act, 1986.



Gordon Holmes
Chairman

May 2006

Introduction by the Chairman

It is with a sense of pride that I present the Annual Report of the Garda Síochána Complaints Board for the year 2005.

My pride is occasioned by the great work done by the Board and above all by the Executive of the Board in the year gone by. The procedure which the Board is compelled to operate on receipt of a complaint is a somewhat unwieldy one. First of all, a valid complaint alone gives the Board jurisdiction to investigate a matter. Once that complaint is admitted (and this is a function designated to the Chief Executive) the Commissioner of an Garda Síochána is requested to appoint an investigating officer. That officer remains answerable to the Garda Commissioner. He has to conduct his investigation and interview all the necessary witnesses. He is expected to provide an Interim Report to the Board within 30 days (this is very rarely achieved) and he must then prepare a Final Report for the Board.

The investigating officer, who is usually a Superintendent and sometimes an Inspector, has of course all his other duties to perform at the same time. Whilst there are some designated Garda officers whose priority it is to conduct these investigations, nonetheless, a very large number of them are conducted by officers of the Gardaí who are holding down at the same time a very onerous and difficult task involving the many duties that a Garda Superintendent or an Inspector has to carry out. Thus, it can be seen that the incorporation of files for the Board is a cumbersome and difficult matter. The procedures are, as I have said in previous Reports, awkward and it, therefore, gives me the greatest pleasure to give the statistics for the Board at the end of the year 2005.

When this Board was originally appointed the Board had on hand over 900 cases. That has steadily come down over the years and, thanks to the great and dedicated work done by the Chief Executive and his staff, the number of cases on hand at the end of 2005 was down to 371.

This was a tremendous achievement. Of these cases 91% were less than a year old and this shows that in the year 2005, even while the Board was under sentence of extinction, it performed its tasks extremely well.

The shortcomings under which the Board operates have been identified by the Board itself for many years. Since I became Chairman I have underlined these legislative shortcomings in each year's Annual Report. I had the full support of my Board in doing this. It brought home to the public (or at least it should have brought home to the public) the fact that the Board was and remains its own most severe critic.

It is perhaps disappointing to see that some of the high profile cases in the year gone by were never reported to the Board at all and thus were not the subject matter of a complaint and were not the subject matter of an investigation by the Board. In the absence of a complaint the Board has no authority to move or to act. The surprise, therefore, is not the Board's failures but rather the success the Board has enjoyed over the years while subject to these many constraints.

Again in the year gone by many of the complaints made to us arise from public order offences. They emanate from incidents that occur in the early hours of



the morning and drink is, in virtually all of these cases, a major factor. As I pointed out last year, typically these cases arise as an incident inside or outside a bar or nightclub, or at a fast food establishment nearby. In some instances, persons injured in such rows have made accusations against Gardaí seeking to restore order, claiming that they were the cause of the injuries.

The Board sees no evidence that the enforcement of licensing laws in general and public order legislation is being maintained at a higher level than previously. This should be done in the interests of both the Gardaí themselves and the general public. Recent plans to increase the number of Gardaí, together with other staffing initiatives, are of course to be welcomed. It is hoped that they will be properly and carefully deployed and this will lead to a general reduction in the level of lawlessness which, fuelled by drink and drugs, is now so prevalent on our streets - particularly in the early hours of the morning.

It continues to be upsetting to see complaints coming from parents of underage people who, by any standard, were the worse for wear through drink at the time of the incident of which they complained. There was a total absence of care for their children on the part of these parents. They endeavour to build a case against members of the Gardaí for incidents which frequently are started by these underage children when they were drunk.

It remains a cause of concern, as we have said previously, to see this trend continue and it is equally upsetting to note that there is still no serious effort made to find and punish those who provide drink for young people. The total absence of

parental interest or control in such instances is a grave disappointment. The absence of a cohesive attempt to cut off the supply of drink from young people is and has been for many years another cause of grave disappointment.

In previous Reports, the Board has drawn attention to this and the failure of the Gardaí to deal with it is caused, we feel, not as much by lack of resources (here the situation appears to be improving), but by lack of a focussed effort to deal with all these drink related problems. It would be in the Gardaí's own interest if they are dealt with firmly and prioritised.

Last year we emphasised the necessity that when an investigating officer is presenting his report to the Board, no evidence should be omitted. It is for the Board to consider what is relevant and what is not relevant. I met with the Garda Commissioner to discuss this matter and a set of guidelines was agreed. It is certainly upsetting, however, that isolated incidents of omission of evidence still occur and there have been cases during the year when the investigating officer's report was inadequate. It is no pleasure for me as Chairman or for the Chief Executive of the Board to have to request the attendance of an investigating officer at the Board's offices in order to point out to him the shortcomings of the report which has been proffered to the Board.

Lest the wrong impression be given, the Board is very grateful for the excellence of many of the reports sent to it. Quite frequently they are concise, they are detailed, they are well set out and they show the fruits of the many years of training before these members of the

Gardaí rise to the ranks of Inspector and Superintendent.

Frequently reports have to be obtained quickly so that they can be sent to the Director of Public Prosecutions in time to enable him, where appropriate, to commence summary proceedings. There have unfortunately still been occasions where this has not happened and every step must be taken to redress this. I believe that investigating officers should not be appointed from Superintendents who are approaching their retirement age. There is nothing more disturbing than to see a case where a Garda Superintendent has retired leaving a number of reports outstanding. Another officer has to be appointed, he then has to virtually start off from scratch and of course delays follow.

During the year there have been many cases of complaints against members of the Gardaí for discourtesy. These actually happen even in the most trivial events, Road Traffic Act incidents for example. The difficulty the Board has in dealing with these is that there is a version of events given by the complainant and also a version of events given by the Gardaí concerned. Needless to add, the two versions are frequently diametrically opposed. Where, therefore, there is a conflict of evidence the Board finds it extremely difficult to act. If there was no outside evidence to lend weight one way or another, the Board can take no action against the member complained of. This has been the case for very many years but the fact that there appears to be an increase in these cases leads the Board to believe that it may well become a matter of concern if not addressed speedily. Courtesy has always been a hallmark of the Gardaí in this country and it is sincerely to be hoped that

they are not going to forget it. This is particularly so when they are dealing with members of the public because it is the members of the public who give the support the Gardaí need so badly.

A matter that has worried the Board very much is the reluctance of the Gardaí as a force, where a genuine bona fide mistake has been made, to offer apologies for that mistake. Over the years we have seen cases where, for example, the wrong person was arrested (with considerable justification - the likeness of the person arrested to a person wanted for a criminal offence was quite striking), an unmarked Garda car caused intense fright to a courting couple who thought they were being attacked by burglars and the wrong address was searched for drugs due to an error on the search warrant. All these led to bona fide errors made by individual members of the Gardaí. They were not culpable errors to the extent that the person who perpetrated them could not be blamed for them. They were acting in good faith. Nonetheless they were system failures. We believe that, if an apology were forthcoming in such cases, complainants would be favourably disposed to withdraw a complaint when made fully aware of all the circumstances.

The Gardaí need and require public support. They have it in large measure because of the good work they do. Individual incidents should not blur that.

The Board is there to ensure that the members of the Gardaí operate within the parameters of their own guidelines. It is only where they stray beyond that that the Board should become involved.

Yet again, in the year under review, the mechanism of the informal resolution of

complaints was very rarely used and surprisingly the refusal to avail of it comes from members of the Gardaí. Since the Board has received assurances that no record is kept on an individual member's personnel file this is not understood and indeed there are a number of cases where members of the Gardaí, including sergeants, refused informal resolution and later were dealt with by the Board under section 7(4) of the Act in respect of which a disciplinary record is kept.

Of course all is about to change. During the year the Dáil passed the necessary legislation to bring into being the Ombudsman Commission, which will take over the duties of the Board and, due to the significant change of approach, be able to handle them in a far more meaningful way.

The Ombudsman Commission

It is to be welcomed that the powers the Board wanted for ourselves for so long are being given to the body that is to succeed us. For all the Board's years in office and under different Chairmen and different Chief Executives it has attempted to be fair and to hold the balance between an Garda Síochána on the one hand and the public on the other. Where complaints are without foundation the Board so finds. Where they are frivolous or vexatious the Board so finds. Where there was serious content in those complaints the Board would act as best it could. The problem for the Board was that it did not have the powers it so anxiously desired to deal with these serious claims.

The Commission have all the powers that we would wish to have had and their investigative powers, as laid down by the

Act, headline the fact that they should be a highly effective complaints body. It is heartening to note the increased scale of their budget, which is at a significantly higher level than that of the Board. This would suggest that there is a full commitment to properly resource the new organisation.

Senator Maurice Hayes and the Implementation Review Group prepared a report on the start up of the Ombudsman Commission and a very useful document it is. The Chief Executive and I hope that we have been of assistance to the Hayes Review Group in what we have done and in indicating to them the tasks that lie ahead for the Ombudsman Commission and helping them to reach their conclusions in the matter. The Garda Síochána Complaints Board is mentioned in that document as one of the bodies with whom the Hayes Committee consulted and we think we did all in our power to help the Review Group in any way we could.

Many tasks lie ahead for the Commission before its start up. They have to engage their investigative staff. This may prove time consuming. It may be that the position of Chief Investigator is the most important new post the Ombudsman Commission will fill.

With the Chief Investigator in place after the usual round of advertisements, interviews, etc. he/she will then have to discuss with the Commission what his/her resource requirements will be and where these can best be recruited/sourced. This is another time consuming process. When in place the investigators will require training. Persons who are good at investigating insurance claims or investigating for

Customs and Excise or investigating for the Revenue for instance, may not know the principles of investigating the behaviour of members of the Gardaí. However, there may be persons in the police service in other countries who might be anxious to work in Ireland.

We are indeed happy that the resources available to the Commission (including indeed the remuneration of its members) are a quite substantial multiplier of the total resources given to this Board and whilst we are slightly envious of all of this, nonetheless, it is essential that the Commission be fully resourced. It has been allotted a job to do and it must be given the tools to finish that job.

It has been the experience of the Board that the number of cases, which arise through public complaint and which require to be independently investigated, is probably less than the public would think. Of course the Commission will have to act, as required by the Act, in many other cases that may not arise through public complaint but numerically the number of cases that will require independent investigation is somewhat less than might be expected. The vast bulk of the cases with which the Ombudsman Commission will be dealing may continue to be investigated by the Gardaí but will be investigated by them under close supervision by the Commission. The Commission's expanded jurisdiction, vis-à-vis the Board, will evidently increase its caseload.

The Board will continue receiving complaints until the new Ombudsman Commission is open for business. At present it looks as if this will be early 2007. From there on, the Board will effectively be

in runoff. It will not take on new cases. It will administer and finish the cases it has on hand. It will deal with the cases it has on hand that have been referred to tribunal. Some cases may be delayed because of judicial process and the Board will have to remain in existence to deal with these.

Representatives of the Board are due at some stage to appear before the Morris Tribunal and to explain the investigation carried out by the Board into the complaints that were made at that time in what has generally been known as the McBrearty matter. It is likely to be late 2006 before the Board appears before the Tribunal.

I would intend to issue a Report on the activities of the Board as at the end of this year and I would intend that the next Report should be the final Report from the Garda Síochána Complaints Board. That Board has served the country for nearly 20 years and the members of the Board have unstintingly given their time and their service to carrying out their duties. To the present members of the Board go my sincere thanks.

Coupled with thanks goes my congratulations to Anthony Duggan and his staff who have produced these excellent figures to show the Board's solid achievements over the last year. We will continue to assist the Ombudsman Commission in every way to enable them to commence activities on the appointed day as efficiently as possible. The Board would intend that its executive should work in tandem with the Commission in helping them to achieve their goals and to provide the service the public deserve.



A transparent and efficient complaint service will help greatly the appreciation by the public of the good work which continues to be done under difficult circumstances by an Garda Síochána.

My thanks to my Board and to the executive of the Board for their work throughout the year. It deserves the full appreciation of the public.

Dr. Gordon A. Holmes.

May 2006

Message from the Chief Executive

At the end of 2004 the Board closed out the year with a significantly reduced caseload. This provided a strong platform on which to base plans for the future period that the GSCB would remain in existence and in particular for the 12 month period to the end of 2005. Management, buoyed with a resolve to achieve further reductions in caseload and having an eye to developments in the complaints function over the coming years, focussed Business Planning on steering the GSCB towards the hand over of responsibility for the complaints function to the proposed Ombudsman Commission (OC). In keeping with best principles and through a partnership approach, targets were agreed to ensure that the GSCB was in the optimal position to achieve its longer term objectives.

July 2005 saw the enactment of the Garda Síochána Act 2005, which provided for the establishment of the OC. Staff in the GSCB embraced this development, albeit that it spelled the demise of the Board itself, and together with the Department of Justice Equality and Law Reform, provided significant input into the planning and development that followed the announcement of the establishment of the OC. In this context it is the Board's view that it has significant experience and expertise which it can make available, as required, to the OC at all stages of its development.

In the course of my work on the OC project, I had the pleasure of meeting our counterpart organisations from England/Wales (the Independent Police Complaints Commission) and Northern Ireland (the Police Ombudsman for Northern Ireland). Both the Commissioners and the Ombudsman went to extraordinary lengths to share their time and experiences and the assistance they afforded the GSCB has been of great help in the planning process for the new body. I take this opportunity to express my sincere thanks to them for their interest and support.

During the year, the Board also received visits from sister organisations in Canada and

Australia. Dr. Irene Froyland, Director of Corruption Prevention, Education and Research in the Corruption and Crime Commission of Western Australia visited the GSCB and met with the Chief Executive and Deputy Chief Executive. Information in relation to the Australian and Irish systems was exchanged with particular emphasis on raising the awareness of corruption, the recognition of corrupt practices and the investigative process.

Mr. Steven McDonnell, Senior General Counsel, Commission for Public Complaints Against the Royal Canadian Mounted Police also met with the GSCB. Mr. McDonnell was briefed in relation to the current and developing Irish police complaints system, its strengths and weaknesses and options for development of the new system. The GSCB also arranged for Mr. McDonnell to meet with senior members of an Garda Síochána involved in the complaints area. I am of the view that, organisationally, bodies with police oversight responsibility have much to gain from sharing experiences and an ongoing relationship between such organisations internationally can only assist in the development of best practice in this area.

To conclude, I wish to thank my former Deputy Chief Executive, Ms Éimear Fisher, who has recently left the organisation, for her effort and commitment, my current deputy, Mr. Pat Wylie, and all the staff of the Board for their dedication and professionalism during the year. I also wish to thank Mr. Sean Aylward, Secretary General of the Department of Justice, Equality and Law Reform, and his colleagues for the assistance and support they have given the Board throughout the year. Finally I would like to express my special gratitude to the Chairman of the Board, Dr. Gordon Holmes, for his unwavering support and to the members of the Board for their unstinting commitment to accomplishing the tasks and meeting the challenges that lie ahead.

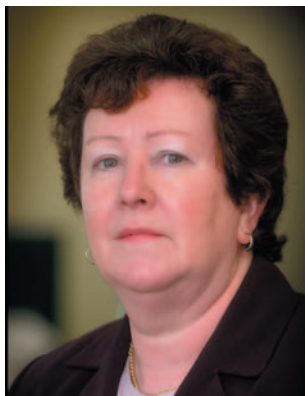
Anthony Duggan
Chief Executive



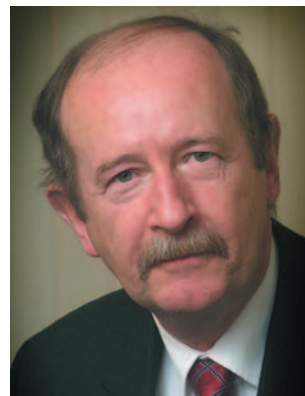
Members of the Garda Síochána Complaints Board



Gordon Holmes, Chairman



Mary Comer



Liam Crowley, Solicitor



Shane McCarthy, Solicitor



Noel Smith, Assistant
Garda Commissioner (to
December 2005)



Martin Donnellan, Assistant
Garda Commissioner (from
December 2005)



Ed Ronayne



Annie Walsh, Solicitor



Hugh Mohan, SC

Not pictured - Ms Carol O'Kennedy BL

Board Senior Management

Anthony Duggan, Chief Executive

Éimear Fisher, Deputy Chief Executive (to September 2005)

Patrick Wylie, Deputy Chief Executive (from September 2005)

Chapter 1

The Year in Review

- 1.1 The Board maintained progress in 2005 in relation to reducing the overall number of cases on hand. Much of this has been achieved in the context of its ongoing modernisation strategy, which was referred to by the Chief Executive in the 2004 Report. A figure of 371 cases on hand represents the lowest figure since 1992 when, unlike now, the average number of cases being received annually was below 1000, and a reduction of over 60% when compared with the number of cases on hand in 2000.
- 1.2 Progress in this area pays dividends in a number of different respects. For example, the Board is now in a position to deal with cases more rapidly, and the reduced number of cases also allows the Board's staff to give greater levels of attention to current workload, thereby improving the overall standard of service to members of the public.
- 1.3 As with other Government agencies, the Board is committed to delivering on its obligations under the Sustaining Progress Agreement in terms of service delivery and meeting performance related targets. In that context, the Performance Verification Group, appointed by the Government to monitor performance under the Sustaining Progress Agreement, has expressed satisfaction with the progress made by the Board to date. This could not have been achieved without the wholehearted cooperation of the Board's staff. Much has been accomplished through the mechanism of Partnership which provides staff with an input into the overall strategy of the Board in relation to its complaint processing functions and the means by which it delivers its services.

- 1.4 While it is essential that the Board strives to control its case arrears, the Board will always have complaints under investigation or awaiting decision. In that context, the Board has eliminated any significant number of arrears, minimised the number of cases taking above the average period of time to process, and is now dealing primarily with current or recent issues.



- 1.5 The establishment of the Ombudsman Commission may well mean that 2006 will be the Board's last full year of operation. The Ombudsman Commissioners were appointed recently and work will now commence on bringing the new organisation on stream. Once the Commission commences operations, the Board will cease to take new complaints from members of the public. The Ombudsman Commission may inherit some of the cases the Board has received but for which investigation has not commenced. Accordingly, it is vital that the number of active cases is kept to a minimum to facilitate as smooth a transfer of functions as

The Board is now in a position to deal with cases more rapidly, thereby improving the overall standard of service to members of the public.

GSCB

The Board has eliminated any significant number of arrears, and is now dealing primarily with current or recent issues.

possible. This was one of the key objectives of the Board in 2005 and remains crucial for 2006.

- 1.6 During 2005, the Board provided an input into various programmes concerned with developing the Commission and will continue to do so in 2006. Such assistance is essential to ensure that the new organisation benefits from the experiences of the past and provides an effective solution in the context of a police oversight body for Ireland.

Chapter 2

Summary of Complaints Received

2.1 A brief synopsis of the throughput of complaints in 2005 is shown below:

Complaints Received

- 1173 complaints were received in 2005 - a decrease of 5% on 2004;
- 569 complaints were made in person at Garda Stations - 49% of total;
- 193 complaints were made in person to Board's office - 16% of total;
- Complaints sent by post constituted the majority of other complaints received.

Admissibility decisions made on Complaints in 2005¹

- 650 complaints were deemed admissible (531 in 2004);
- 489 complaints were deemed not admissible by the Chief Executive (540 in 2004);
- 105 complaints were deemed not admissible by the Board following investigation (123 in 2004).

Complaints Processed

- The number of complaints on hand at year end fell by 22% from end 2004 (473) to end 2005 (371);
- 91% of complaints at end 2005 were less than one year old (86% at end 2004).

Nature of Complaints

When compared with 2004, there was:

- a fall of 10 percentage points in complaints of abuse of authority;
- an increase of 6 percentage points in complaints of discourtesy;
- an increase of 3 percentage points in complaints of neglect of duty;
- an increase of 4 percentage points in complaints of discreditable conduct.

Complaints Withdrawn

- 23% (269) of complaints made in 2005 (1173) were later withdrawn - a decrease of 2 percentage points on the 2004 total (302 / 1231).

Board Decisions

- 50 complaints were resolved informally (35 resolved in 2004);
- The Board referred 51 cases of potential minor breaches of discipline to the Garda Commissioner under Section 7(4) (31 referred in 2004);
- The Board referred 23 cases of serious breaches of discipline to the complaints tribunal (27 referred in 2004).



The number of complaints on hand at year end fell by 22% from end 2004 (473) to end 2005 (371)

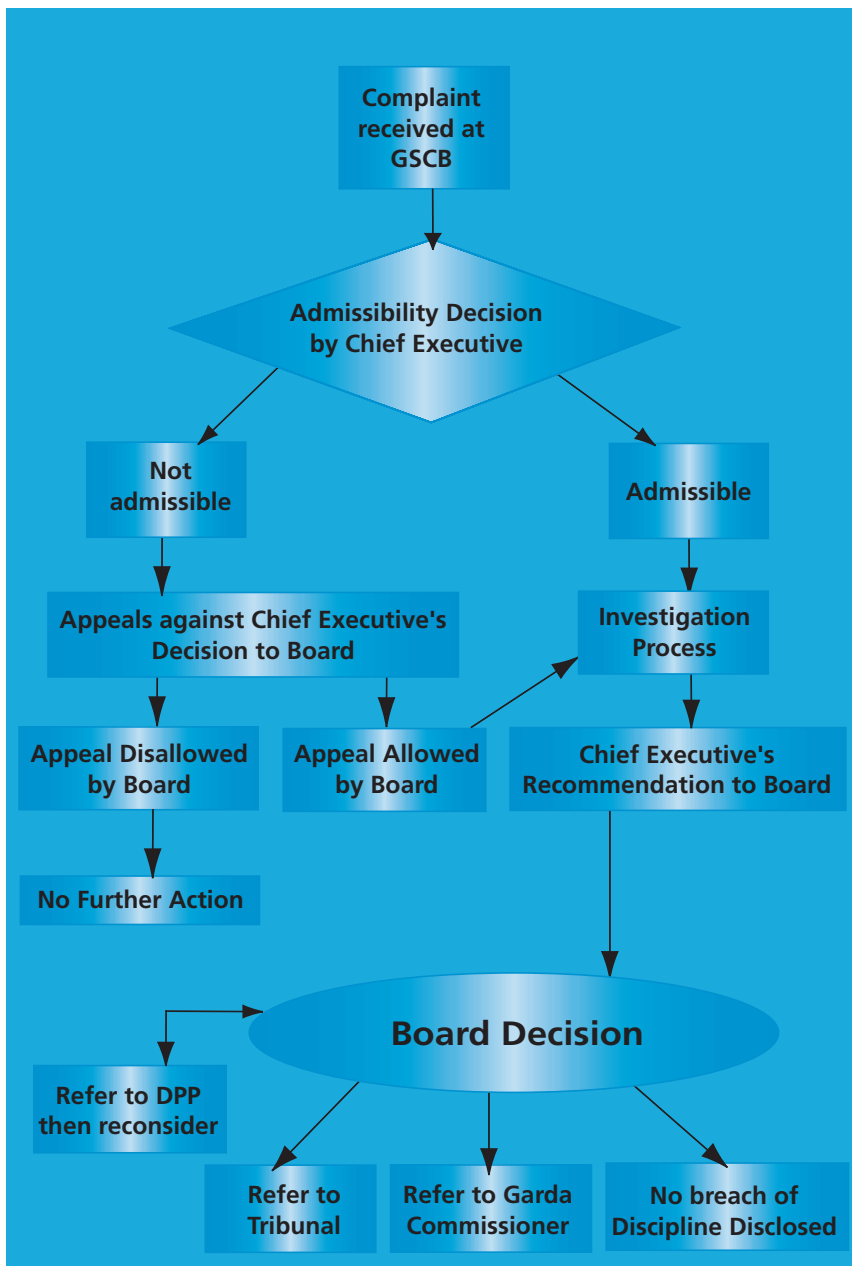
¹The number of complaints deemed admissible or otherwise by the Chief Executive may include complaints made prior to 2005. Similarly, a number of complaints made in 2005 were awaiting a decision on admissibility at year-end.

Chapter 3 Complaints Processing

Complaints Process

3.1 The process by which complaints are dealt with by the Board is illustrated in the diagram below.

The Year 2005 saw the lowest number of complaints made by the public against gardaí since 1995



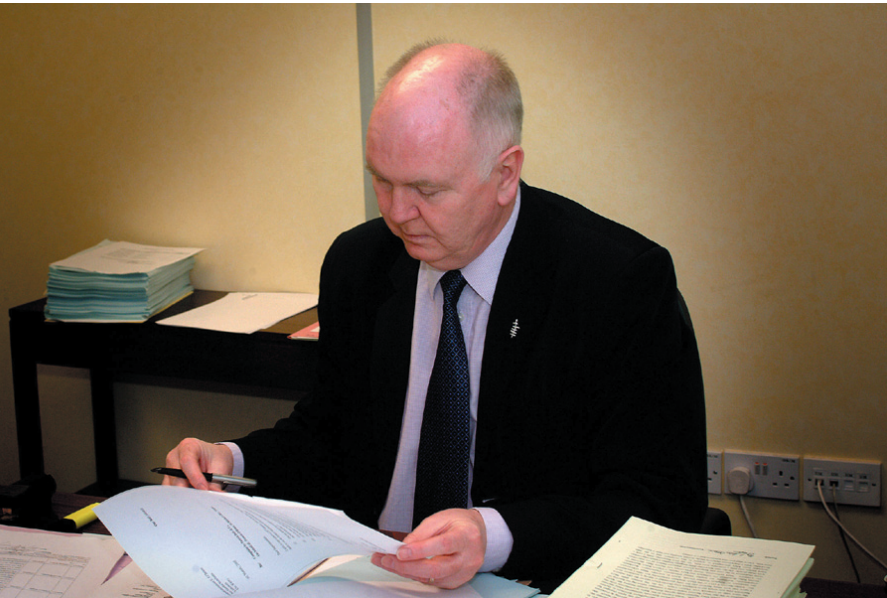
The number of complaints received in the Dublin area rose from 548 in 2004 to 555 in 2005, an increase of 1% on 2004.

Complaints Received

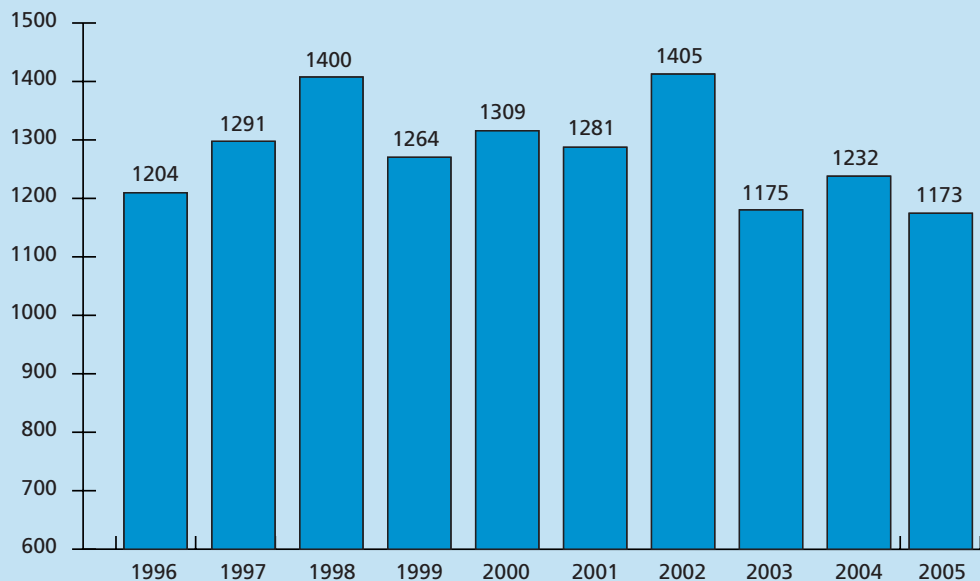
3.2 In 2005, the GSCB received a total of 1173 complaints about Garda behaviour or misconduct. This represented a fall of 5% on 2004 when 1232 complaints were received. This is the lowest number of complaints made by the public against members of the Gardaí since 1995 (1138).

The number of complaints received in the Dublin area (i.e. the six Dublin divisions) rose from 548 in 2004 to 555 in 2005, an increase of 1% on 2004. This represents a 3 percentage point rise in the number of complaints received in the Dublin area as a proportion of the overall number of complaints received in 2005 (See Table 2 in Appendix 2). However the figure of 555 complaints represents a decrease of 15% on the average annual complaint figure of 654 for the Dublin area over the past decade.

3.3 The number of complaints received by the GSCB each year since 1996 is shown in the table below. The average number received is 1273 complaints per year.



Number of complaints received each year since 1996



The average number received is 1273 complaints per year.

How and Where Complaints Were Made

3.4 In 2005, 49% of all complaints were made in person at Garda Stations. Just over 16% of the complaints were made in person to the GSCB in 2005. The majority of the remainder of complaints were made in writing to the Board. As in previous years, the greatest single block of complaints were made in the Dublin Metropolitan Area, although a number of individuals travelled some distance to the GSCB's offices in Dublin to make their complaints in person.

Admissibility of Complaints

3.5 Section 4 of the Garda Síochána (Complaints) Act 1986 sets out the criteria which a complaint must satisfy for it to be considered admissible by the GSCB. These conditions are set out in Appendix 1, paragraph 1.6. When a complaint is received, the Chief Executive, after due consideration, decides whether or not it meets the admissibility conditions specified under the Act.

3.6 Details of the types of conduct complained of in admissible complaints over the last two years are given in Table 6 of Appendix 2. The majority of complaints contain allegations of abuse of authority, although the number of complaints of this nature has fallen by 10 percentage points when compared with 2004. Allegations of discourtesy, on the other hand have increased by 6 percentage points from 30% to 36% of all admissible complaints. Increases of 3 percentage points (16% to 19%) and 4 percentage points (4% to 8%) have been recorded in the case of

neglect of duty and discreditable conduct respectively.

3.7 Table 7 at Appendix 2 provides details in relation to complaints that were found to be inadmissible in the last two years. Vexatious complaints constituted the largest block of cases deemed inadmissible (45%).

Complaints Informally Resolved

3.8 A total of 50 complaints of a less serious nature were informally resolved in 2005 - an increase of 43% on the 2004 figure. The informal resolution mechanism involves complaints being sent to the local Superintendent or Inspector who meets the parties concerned in an attempt to resolve the matter.

A total of 50 complaints of a less serious nature were informally resolved in 2005 - an increase of 43% on the 2004 figure.

Complaints Withdrawn

3.9 In 2005, a total of 269 complaints were either withdrawn or constructively withdrawn, representing a decrease of 33 cases (11%) when compared with 2004. Of these, 195 were withdrawn after they had been admitted for investigation. This is a decrease of 37 (16%) when compared with 2004.

Referrals to the DPP

3.10 In cases where the Board is of the opinion that a breach of discipline may have occurred and there is an allegation of an offence, the 1986 Act requires the Board to forward the matter to the DPP. In 2005, the Board referred 84 cases to the DPP, a reduction of 65%.

Complaints Adjudicated upon by the Board

3.11 During the course of the year, the Board adjudicated on 705 complaints, (these included complaint cases brought forward from previous years). Excluding complaints withdrawn by complainants (195) and those informally resolved, the Board considered the evidence relating to 510 complaints. In 437 of these cases the Board concluded that, following investigation, no breach of discipline had been disclosed on the part of the Gardaí involved. It also decided that a breach may have been disclosed in 73 cases, an increase of 15 on the 2004 figure. Table 4 in Appendix 2 provides further details.

During the course of the year, the Board adjudicated on 705 complaints.

Referrals to the Garda Commissioner

3.12 Of the 73 cases in 2005 where a breach of discipline may have been disclosed, the Board concluded that there were 51 (see footnote Appendix 2 table 4) potential breaches of a minor nature and referred them to the Garda Commissioner. Chapter 4 sets

out in greater detail the issue of minor breaches.

Referrals to Tribunal

3.13 Where the Board considers that a breach of discipline may be disclosed and that the breach is not minor in nature it must refer the matter to a tribunal. The Garda Síochána Complaints Tribunal then holds an inquiry to establish whether or not a breach of discipline occurred. Where a member admits a breach of discipline or a member is found by the tribunal to be in breach of discipline, the tribunal decides on the disciplinary action to be taken against the member. In this regard 23 complaints were referred to hearings of the Complaints Tribunal. This represents a decrease of 4 cases (15%) on 2004. Chapter 5 of this Report deals with cases referred to tribunal in 2005 in more detail.

Appeals to the Garda Síochána Complaints Appeal Board

3.14 The decision of the Tribunal may be appealed by the Garda member to the Garda Síochána Complaints Appeal Board. The Appeal Board is independent of the Garda Síochána Complaints Board. In 2005, no Appeal Board cases were heard. At the end of 2005 there were 6 cases awaiting hearing.



Complaint Cases on Hand

3.15 The Board is pleased to report a reduction in the number of cases on hand during 2005. On 31 December 2005, there were 371 cases on hand as compared to 473 at the end of December 2004, a decrease of 22%. This is the lowest number of complaints on hand at the end of any year since 1992. (In 1992, the number of cases on hand at the end of the year was 267. However, only 857 cases were received that year, well below the current average of 1273 and the total of 1173 received in 2005).

3.16 The percentage of complaints that were less than 12 months old at the end of 2005 was 91%. This was a significant improvement on the 2004 position when it was 87%.

Case Processing Time

3.17 The Board welcomes the continuing reduction of complaints on hand for more than 6 months. This now stands at 31% (114 cases), down from 40% (191 cases) in 2004. The factors causing delays in processing cases can vary and are affected by factors such as:

- the complexity of the case;
- difficulties in obtaining the cooperation of the complainant/members;
- difficulties in identifying the members involved;
- time needed to collect supporting evidence, e.g., medical reports;
- heavy workloads on investigating officers;
- legal challenges to Board decisions.

Chapter 4

Minor Breaches of Discipline

How Minor Breaches of Discipline are dealt with

- 4.1 The Garda Síochána (Complaints) Act, 1986, provides a mechanism for dealing with minor breaches of discipline. In that context, the Act provides that where the Board considers a breach of discipline may have occurred, it must refer the matter to the Garda Commissioner.
- 4.2 Prior to referring such cases to the Commissioner, the Board considers the evidence gathered during a formal investigation. It then informs the Garda member in question of the breach or breaches that it considers may be disclosed and provides an opportunity to the member to make any additional arguments, or provide any additional information, they consider relevant. It is only then, if the Board is still of the view that a minor breach of discipline may have been disclosed, that the Board refers the matter to the Garda Commissioner. While it is not a function of the Board to find that a member of an Garda Síochána has committed a minor breach of discipline, it has always been its practice to refer to the Garda Commissioner only those cases where it considers that the evidence may prove the case. The Garda Commissioner then decides whether the member has committed a breach of discipline or not. In the event that the Commissioner decides that a breach of discipline has been disclosed, he has a choice of dealing with the matter by way of advice, admonition or warning.

Minor Breaches of Discipline in 2005

- 4.3 During the year, the Board referred 51 cases to the Commissioner, where it considered that the evidence disclosed that a member of an Garda Síochána may have committed a minor breach of discipline. Table 11 in Appendix 2 indicates the outcome of referrals to the Commissioner in 2005.
- 4.4 The Commissioner notified the Board of his decision in 36 of these complaints. The Commissioner informed the Board that he had decided to issue a warning to a member in 6 cases, issue advice in 16 cases and to take no further action in 14 cases. At the end of 2005, the Board was awaiting his decision in the remaining 15 cases. Some of these cases were submitted to the Commissioner towards the end of the year and it is expected therefore that his remaining decisions will arrive early in 2006.
- 4.5 The number of complaints referred to the Commissioner in 2005 (51) represents an increase of 20 on 2004. Action had been taken on 71% of these cases at the end of 2005. This compared with the corresponding 2004 percentage of 70%.

During the year, the Board referred 51 complaints to the Commissioner, where it considered that the evidence disclosed that a member of the Garda Síochána may have committed a minor breach of discipline.

Chapter 5

Complaints Finalised at Tribunal

Role of Tribunal

5.1 The Garda Síochána Complaints Board is empowered to appoint tribunals to inquire into more serious allegations referred to it by the Garda Síochána Complaints Board, with a view to establishing whether a member of an Garda Síochána has been in breach of discipline. Garda Síochána Complaints Tribunals are held in private and decide whether or not the allegations are proven. (See Appendix 1 for further information on Complaints Tribunals).

Outcome of Tribunal Hearings

5.2 There were 25 complaint cases finalised at tribunal in 2005. This represented hearings involving 24 members and 50 breaches of discipline. Where penalties are imposed, tribunals take into account a range of issues, including all of the evidence presented, the general circumstances of the incident, the conduct of all parties concerned as well as the previous conduct of the member of an Garda Síochána complained of. The table below shows how these cases were disposed of in 2005.

Outcome of Complaint Cases Finalised at Tribunal Hearings in 2005

Outcome	No.
Cases Withdrawn	3
Complainant Failed to Appear	1
Struck Out on Grounds of Delay	1
Withdrawn and Informally Resolved in Advance of Hearing	1
Struck Out — Members had retired*	3
Struck Out — Member Not in Breach of Discipline	5
Member Found in Breach of Discipline – Caution	4
Member Found in Breach of Discipline – Reprimand	2
Member Found in Breach of Discipline – Reduction in Pay	4
Member Found in Breach of Discipline – Reprimand in respect of 1 breach and a reduction in pay in respect of 2 breaches of discipline	1

* The 1986 Act does not provide for the pursuance of a case by the Board where the member involved has retired.

It is the policy of the GSCB not to schedule tribunal hearings where court proceedings related to the complaint are outstanding. (See Chapter 6 for further information on legal challenges).

There were 25 complaint cases finalised at tribunal in 2005. This represented hearings involving 24 members and 50 breaches of discipline.



Summary of Hearings in 2005

5.3 The following is a brief outline of tribunal cases, which were finalised in 2005 and which are not the subject of an appeal to the Garda Síochána Appeal Board:

Tribunal Case No. 1

One breach of discipline was alleged against a member of the Gardaí for discreditable conduct in pursuing enquiries on behalf of a firm of Solicitors regarding the estate of a deceased person.

The tribunal decided to take no further action on the basis that the complainant had withdrawn the complaint after the Board had referred the matter to tribunal.

Tribunal Case No. 2

Three breaches of discipline were alleged against a member of the Gardaí for:

- (i) neglect of duty in forwarding a vehicle for scrapping in advance of the time specified;
- (ii) neglect of duty in failing to contact the person in advance of the disposal of the vehicle;
- (iii) neglect of duty in failing to inform the person of the procedures available to reclaim their costs.

The tribunal decided to take no further action on the basis that the complainant had withdrawn the complaint after the Board had referred the matter to tribunal.

Tribunal Case No. 3

One breach of discipline was alleged against a member of the Gardaí for falsehood in that the member made a

statement which was factually incorrect. The tribunal found the member in breach and imposed a reduction of four weeks pay.

Tribunal Case No. 4

One breach of discipline was alleged against a member of the Gardaí for abuse of authority in arresting a person without reasonable cause.

The tribunal found the breach not proven.

Tribunal Case No. 5

One breach of discipline was alleged against a member of the Gardaí for discourtesy in alleging to a group of children, which included a child who is a member of the traveller community, that members of the traveller community were responsible for burglaries in the area.

The tribunal found the member in breach and imposed a reprimand.

Tribunal Case No. 6

One breach of discipline was alleged against a member of the Gardaí for abuse of authority in producing his identity card in a nightclub and trying to arrest and take the person outside using false information.

The tribunal found the breach not proven.

Tribunal Case No. 7

One breach of discipline was alleged against a member of the Gardaí for abuse of authority in using excessive force by punching a person in the face.

The tribunal found the breach not proven.

Tribunal Case No. 8

Four breaches of discipline were alleged against three members of the Gardaí as follows:

- (a) Garda 'A' for neglect of duty in failing to make a comprehensive statement as required under section 7(9) of the Garda Síochána (Complaints) Act, 1986;
- (b) Garda 'B' for neglect of duty in failing to make a comprehensive statement as required under section 7(9) of the Garda Síochána (Complaints) Act, 1986;
- (c) Garda 'C' for:
 - (i) neglect of duty in failing to make a comprehensive statement as required under section 7(9) of the Garda Síochána (Complaints) Act, 1986;
 - (ii) neglect of duty while member in charge and with responsibility for a prisoner under the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations Regulations 1987).

The tribunal struck out the breaches of discipline against Garda 'A' and Garda 'B' and breach (i) against Garda 'C' at the request of the Board and dismissed breach (ii) against Garda 'C' as the delay was so significant that it would interfere with the interests of natural justice to proceed and determine the case.

Tribunal Case No. 9

The tribunal found that it could no longer proceed with the case as it was beyond its jurisdiction by reason of the member having retired. Accordingly, no breaches of discipline were formulated.

Tribunal Case No. 10

Five breaches of discipline were alleged against a member of the Gardaí for:

- (i) discourtesy in speaking to a juvenile;
- (ii) abuse of authority in using excessive force with a juvenile;
- (iii) abuse of authority in using unreasonable force by hitting a juvenile with his fists;
- (iv) abuse of authority in attempting to strike a juvenile;
- (v) discourtesy in speaking to a group of youths in a threatening manner.

The tribunal decided to take no further action on the basis that the complainant had withdrawn the complaint after the Board had referred the matter to tribunal.

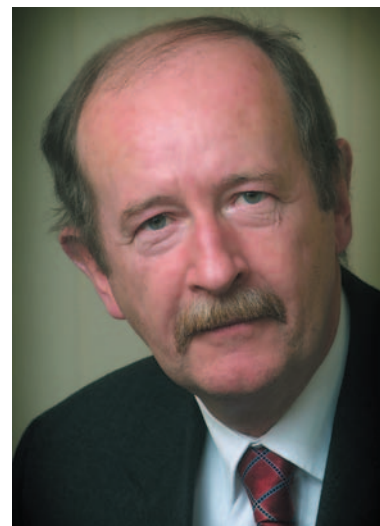
Tribunal Case No. 11

Breaches of discipline were alleged against two members of the Gardaí as follows:

- (a) Garda 'A' for abuse of authority in that unreasonable force was used when conveying a prisoner to a Garda station;
- (b) Garda 'B' for abuse of authority in that unreasonable force was used when conveying a prisoner to a Garda station.

The tribunal

- found that the injuries received were consistent with being beaten with a baton or batons;
- fully accepted the medical evidence given;
- found it difficult to accept that there was no interaction between the complainant and the members;
- found that on the balance of probabilities the injuries received by the prisoner were not received by him in the back of the police van as alleged against the two members.





Tribunal Case No. 12

Three breaches of discipline were alleged against a member of the Gardaí for:

- (i) abuse of authority in using excessive force by striking a person while he was handcuffed and seated in a Garda patrol car;
- (ii) abuse of authority in using excessive force by punching a person in the face while he was handcuffed and in custody in the Garda station;
- (iii) neglect of duty in failing to take reasonable steps to ensure the safety of the prisoner as required under the Garda Code.

The tribunal found the case not proven.

Tribunal Case No. 13

Three breaches of discipline were alleged against a member of the Gardaí for:

- (i) neglect of duty in failing to make a comprehensive statement as required under section 7(9) of the Garda Síochána (Complaints) Act, 1986;
- (ii) neglect of duty in failing to investigate allegations of assault;
- (iii) discreditable conduct in that failing to investigate the allegations of assault the member conducted himself in a manner likely to bring discredit on an Garda Síochána.

The tribunal found the case proven and imposed a reduction of four weeks pay in respect of each breach.

Tribunal Case No. 14

Two breaches of discipline were alleged against a member of the Gardaí for:

- (i) neglect of duty in failing to record a report in relation to a road traffic accident;
- (ii) neglect of duty in failing to investigate a report in relation to a road traffic accident.

The tribunal found the member in breach and imposed a reduction of four weeks pay.

Tribunal Case No. 15

Four breaches of discipline were alleged against a member of the Gardaí for:

- (i) discreditable conduct in the manner in which he looked at the complainant;
- (ii) discreditable conduct in intimidating a person by stating that first chance he got that he would do the complainant;
- (iii) discreditable conduct in threatening a person by saying that he would be "watching them";
- (iv) discreditable conduct in intimidating the complainant by acting in a hostile manner.

The tribunal found that it could no longer proceed with the case as it was beyond its jurisdiction by reason of the member having retired.

Tribunal Case No. 16

Three breaches of discipline were alleged against a member of the Gardaí for:

- (i) discreditable conduct in threatening a person;
- (ii) discreditable conduct in threatening a person that they could not take issue with his conduct as he was a member of an Garda Síochána;
- (iii) discourtesy in making comments about a person's relationship with his son.

The tribunal on hearing that the parties had reached an amicable resolution relating to the breaches of discipline alleged struck out all the charges against the member concerned at the request of the Board.

Tribunal Case No. 17

The tribunal found that it could no longer proceed with the case as it was beyond its jurisdiction by reason of the member having retired. Accordingly, no breaches of discipline were formulated.

Appeal Board

Four tribunal findings made in 2005 involving four members of an Garda Síochána and in respect of 8 complaint cases are the subject of appeal to the Garda Síochána Appeal Board.

Chapter 6

Legal Challenges

Legal challenges taken against the GSCB

6.1 The GSCB has a number of ongoing legal challenges before the Courts. These challenges are taken by either a complainant or a member of an Garda Síochána seeking to have a decision of the Board or a decision of a tribunal judicially reviewed. The policy of the Board is to defend, where appropriate, legal challenges brought against it. The Board incurs legal costs in defending these legal challenges and is also subject to awards of costs and damages made by the courts against it.

Judicial Reviews in 2005

6.2 One judicial review case was finalised in 2005 and a further 8 cases were on hands at the end of 2005. The lodging of applications for judicial review can have a considerable effect on the progress of a complaint investigation. The GSCB makes every effort to ensure that its actions in meeting such applications do not add to delays in finalising complaints.

6.3 The case finalised concerned a challenge by a complainant seeking a judicial review of a decision of the Chief Executive that the complaint was inadmissible. The complainant did not proceed with the judicial review.

Legal cases outstanding at end of 2005

6.4 The following is a brief summary of the eight outstanding cases:

- the member of an Garda Síochána complained of is appealing a decision of the High Court, in favour of the GSCB, to the Supreme Court. This case arises from the "Reclaim The Streets" protest in 2002;
- a member of an Garda Síochána sought a judicial review of the decision of the Board that a minor breach of discipline may be disclosed. The member is currently appealing the decision of the High Court, in favour of the GSCB, to the Supreme Court;
- a member of an Garda Síochána is seeking a judicial review of the final decision of the tribunal that the member be required to resign from the force. The High Court judgement on the matter was delivered in November 2005 and the member is appealing the decision to the Supreme Court;
- there are 2 cases, which were referred by the Board to tribunal a number of years ago and are now currently the subject of Judicial Review. The tribunals, which have seisin of the cases, are prohibited from hearing the matters further until the legal proceedings have been disposed of;
- a member of an Garda Síochána has sought judicial review of the decision of the Board that minor breaches of discipline may be disclosed;
- a member of an Garda Síochána has sought judicial review in a case where the Board were considering, but had not yet made a final decision, that a minor breach of discipline may be disclosed on the part of the member;
- in one case 7 members of an Garda Síochána have each individually sought judicial review of the decision of the Chief Executive that a complaint was admissible.



The lodging of applications for judicial review can have a considerable effect on the progress of a complaint investigation. The GSCB makes every effort to ensure that its actions in meeting such applications do not add to delays in finalising complaints.



Discovery

6.5 The policy of the GSCB in relation to discovery is that it treats as confidential all documentation in its possession. During 2005, there was one case in which a complainant sought, through the courts, discovery of the GSCB's file and following legal submissions limited discovery of the file was granted.

Civil Proceedings

6.6 There are currently 3 cases pending

- Case 1
a member of an Garda Síochána is claiming that the Board acted *ultra vires* in the manner in which it dealt with the complaint made against the member and is seeking damages;
- Case 2
a complainant is seeking damages from a number of parties, including the GSCB, on the grounds that the parties acted unconstitutionally, unlawfully and in breach of the Garda Síochána (Complaints) Act, 1986;
- Case 3
two members of an Garda Síochána are seeking damages from a number of parties, including the GSCB, as a consequence of the protracted delay in dealing with a case in which they were amongst the members complained of.

Chapter 7

Future Developments - The Ombudsman Commission

- 7.1 In July 2005, the Garda Síochána Act 2005 was enacted. This legislation provides for the setting up of a new police oversight body for the Republic of Ireland. The organisation, to be known as the Ombudsman Commission (OC), will succeed the Garda Síochána Complaints Board as the statutory body appointed to administer the public complaints function. The new organisation is headed up by three Ombudsman Commissioners and the President appointed Mr. Justice Kevin Haugh, Ms Carmel Foley and Mr. Conor Brady to these roles, on 10th February, 2006.
- 7.2 When compared with the Garda Síochána Complaints Board, the OC will have greatly expanded powers with which to fulfil its statutory role. In addition to its role of investigating complaints from members of the public, the OC can also deal with cases referred to it by the Garda Commissioner where it appears to the Garda Commissioner that the conduct of a member of an Garda Síochána may have resulted in the death of, or serious harm to, a person. The OC may also, if it appears to it desirable in the public interest to do so and without receiving a complaint, investigate any matter that appears to it to indicate that a member of an Garda Síochána may have committed an offence or behaved in a manner that would justify disciplinary proceedings. The Minister for Justice, Equality and Law Reform, may also, in certain circumstances, if he or she considers it desirable in the public interest to do so, request the OC to conduct an investigation.
- 7.3 The Board is pleased to note that many of the reforms and legal changes sought by it over the years of its existence have now been provided for in the context of the new organisation. The Board has always been of the view that an adequately resourced and suitably empowered oversight body is an essential component in ensuring public confidence in our police force. In this regard, it is interesting to note that the satisfaction rating amongst members of the public, from both sides of the community in Northern Ireland with the Police Ombudsman of Northern Ireland (PONI) remains consistently high. This satisfaction does not appear to be contingent on the number of negative findings against members of the Police Service for Northern Ireland (PSNI), but rather on the belief that the investigations carried out by PONI are conducted independently, fairly and transparently, regardless of their ultimate findings.
- 7.4 The establishment of the OC poses new and significant challenges for an Garda Síochána and some members may have concerns about its imminent commencement. However, an Garda Síochána enjoys a large measure of public support and the Board is of the view that the vast majority of members who perform their duties in an exemplary manner have little to fear and much to gain from the establishment of the OC which has the potential to assist in raising general standards of conduct from which will flow increased public confidence.
- 7.5 Over the course of 2006, the Board will do everything it can to assist the newly appointed Ombudsman Commissioners as they go about the task of setting up their new organisation. It wishes them every success in this role.

Appendix 1

The Complaints Process

Types of Complaint

A.1.1 The Garda Síochána Complaints Board deals with complaints of improper conduct by any member of an Garda Síochána (other than the Garda Commissioner), where that conduct is of a sort that could result in the member being charged with a criminal offence, or could constitute a breach of discipline under the terms of the Garda Síochána (Complaints) Act, 1986.

A.1.2 Conduct that would constitute a breach of discipline on the part of a member of an Garda Síochána may be summarised as follows:

- discourtesy;
- neglect of duty - failing to take action promptly on something which it is his/her duty to do;
- falsehood or prevarication - making or getting somebody else to make a statement or an entry in an official document which is, to his/her knowledge, false or misleading;
- abuse of authority - oppressive conduct towards a member of the public, e.g., making an arrest without good and sufficient cause or using unnecessary violence towards anybody;
- corrupt or improper practice — accepting or soliciting bribes using his/her position improperly to make a private gain;
- putting himself or herself under a financial obligation to anyone in such a way that he or she could be compromised in the performance of his or her duty;

- misuse of property or money in his/her custody belonging to a member of the public;
- being drunk on duty or in uniform;
- other discreditable conduct;
- accessory to the above conduct.

Persons Eligible to Make a Complaint

A.1.3 Complaints may be received from any member of the public who was directly affected by, or who witnessed, conduct of the sort described above. Where the complainant is under seventeen years of age, the complaint must be made through a parent or guardian. A complaint from a person with a mental disability must be made through a parent, guardian or other interested party.

A.1.4 Complaints are not allowed from:

- a serving member of an Garda Síochána;
- an anonymous source.

The Board is not empowered to initiate a complaint in its own right, even in cases of public interest.

Making a Complaint

A.1.5 Complaints may be made in writing, orally at the office of the Board or through a solicitor. A complaint may be made at any of the following locations:

- at the offices of the Board;
- to any member of an Garda Síochána at a Garda Station, or,

- to the Garda Commissioner, a Deputy Commissioner, or an Assistant Commissioner, at a place other than a Garda Station.

Complaints must be made within six months of the incident that gave rise to the complaint.

Admissibility

A.1.6 When a complaint is received in the offices of the Board it is examined by the Chief Executive, who decides whether or not a complaint is admissible. The criteria for admissibility are as follows:

- that the complainant is a member of the public;
- that the complainant witnessed or was directly affected by the conduct alleged in the complaint;
- that the complainant is over the age of 17 or, if under that age, that the complaint is being made on his / her behalf by a parent or guardian;
- that the conduct alleged in the complaint would constitute an offence or a breach of discipline;
- that the conduct complained of occurred within six months before the making of the complaint;
- that the conduct complained of was not already the subject of a disciplinary hearing under the Garda Regulations; and
- that the complaint is not frivolous or vexatious.

A.1.7 When the Chief Executive has made his decision, with regard to admissibility, he informs the complainant and the Garda Commissioner of his decision in writing. Where a complaint is deemed inadmissible, the Chief Executive indicates which of the above admissibility criteria has not been met. (A decision deeming a complaint to be admissible may be subject to judicial review. A decision deeming a complaint not to be admissible may be subject to review by the Board and/or judicial review).

Informal Resolution

A.1.8 Where the Garda Commissioner is of the opinion that the complaint is of a relatively minor nature, he may decide to resolve the matter informally, without recourse to a formal investigation. Before adopting this procedure, however, the Garda Commissioner must obtain the consent, in writing, of both the complainant, and the Garda member concerned. Where a complaint is informally resolved, details of the resolution are sent to the Board. The Board is entitled to request the Garda Commissioner to have the complaint formally investigated if it decides that the complaint was not suitable for such resolution.

Investigation Procedures

A.1.9 If an admissible complaint is not suitable for informal resolution the Garda Commissioner must appoint a member of an Garda Síochána, normally of the rank of

Superintendent, or if he considers that the circumstances so warrant, the rank of Inspector, to investigate the complaint. When the investigation has been completed the investigating officer sends a final report to the Chief Executive. If the investigating officer is unable to complete the investigation within a period of thirty days of the date of his or her appointment, an interim report is sent to the Chief Executive.

- A.1.10 The Chief Executive submits all reports of investigations to the Board, together with a recommendation in writing by him of the action that might be taken by the Board in relation to each complaint submitted.

Proceedings following Investigation

- A.1.11 If, after consideration of the report of the investigating officer and the comments and recommendations of the Chief Executive, the Board is of the opinion that the complaint concerned is admissible, and that the conduct alleged in the complaint may constitute an offence committed by the Garda concerned, it refers the matter to the Director of Public Prosecutions (DPP). It is for the DPP to decide whether the Garda member complained of should be prosecuted.
- A.1.12 If the Board is of the opinion that neither an offence nor a breach of discipline on the part of the Garda member concerned is disclosed, it notifies the Garda Commissioner, the investigating officer, the

complainant and the Garda member concerned of its opinion, and takes no further action in the matter.

- A.1.13 If the Board is of the opinion that a breach of discipline on the part of the Garda member concerned may be disclosed but that any such breach is of a minor nature which can be dealt with informally by the Commissioner by way of advice, admonition or warning, it refers the matter to the Garda Commissioner. This action is not taken until the Garda member concerned has been given an opportunity to make representations to the Board in relation to the matter.
- A.1.14 If the Board is of the opinion that a breach of discipline on the part of the Garda concerned may be disclosed, other than a minor breach referred to above, it must refer the matter to a Complaints Tribunal.

Complaints Tribunals

- A.1.15 A Complaints Tribunal is set up by the Garda Síochána Complaints Board whenever the Board has a need for such a tribunal to consider matters, such as an alleged breach of discipline on the part of a member of an Garda Síochána.
- A.1.16 A Complaints Tribunal consists of three persons, two of whom are members of the Complaints Board. The members of the tribunal must not have had any dealings with the particular complaint(s) previously.

(For this reason, the Complaints Board divides itself into two panels, an “A” Board and a “B” Board). One of the two members sitting on the Complaints Tribunal must be a practising barrister or solicitor with at least ten years experience. The third member is a senior Garda officer, normally a Chief Superintendent, nominated by the Garda Commissioner.

- A.1.17 The Complaints Tribunal hears evidence from the person who made the complaint, the member of an Garda Síochána against whom the complaint had been made and any witnesses. Oral evidence is given under oath at hearings. Having heard the evidence, the tribunal decides whether the allegations are proven. If the tribunal decides that the allegations are not proven, the case is closed. On the other hand, if the tribunal is satisfied that the allegations are proven, it has the power to impose penalties.
- A.1.18 There is a range of penalties available to a Complaints Tribunal, i.e., from a formal caution, reprimand or warning, to a fine of up to four weeks pay. The Tribunal also has the power to reduce a Garda member in rank or can order the dismissal of a member from the force.
- A.1.19 The person making the complaint cannot appeal against the decision of a Complaints Tribunal. A member of an Garda Síochána can appeal a tribunal decision or the penalty imposed to the Garda Síochána Complaints Appeal Board.

Appeal Board

- A.1.20 The Garda Síochána Complaints Appeal Board is independent in the performance of its functions. It consists of a chairperson and two ordinary members who are appointed by the Government. Its term of office is five years. The Chairman of the Appeal Board must be a judge of the Circuit Court, and at least one of the ordinary members of the Appeal Board must be a practising barrister or a practising solicitor of at least ten years standing. Membership of the Appeal Board may not include any person who is or has been a member of an Garda Síochána. The names of the current members are listed at Appendix 5.
- A.1.21 Sittings of the Appeal Board to hear submissions, to take evidence and to announce the decision or decisions are held in private. The person who made the complaint is entitled to attend the hearings. Oral evidence is normally given under oath at Appeal Board hearings. The Appeal Board may set aside, vary, or confirm the decision of the Complaints Tribunal.

Appendix 2 Statistics

Table 1
Incidence of Complaints in Garda Divisions

Division	2004	2005	Out-turn
Carlow/Kildare	39	39	-
Cavan/Monaghan	26	13	-13
Clare	31	31	-
Cork Area†	103	84	-19
Donegal	69	39	-30
Dublin Metropolitan Area*	548	555	+7
Roscommon/Galway East	24	22	-2
Galway West	24	29	+5
Kerry	29	25	-4
Laois/Offaly	33	38	+5
Limerick	45	74	+29
Longford/Westmeath	23	17	-6
Louth/Meath	53	51	-2
Mayo	32	23	-9
Sligo/Leitrim	36	33	-3
Tipperary	28	40	+12
Waterford/Kilkenny	46	34	-12
Wexford	43	26	-17
Total	1232	1173	-59

+ Cork Area: 3 Divisions combined
*Dublin Metropolitan Area: 6 Divisions combined

Table 2
Incidence of Complaints in Dublin Divisions

Dublin Divisions	Number of complaints	
	2004	2005
DMA Northern	70	70
DMA Southern	76	71
DMA North Central	113	86
DMA South Central	106	124
DMA Eastern	68	64
DMA West	115	140
Total	548	555
% Total Complaints	44%	47%

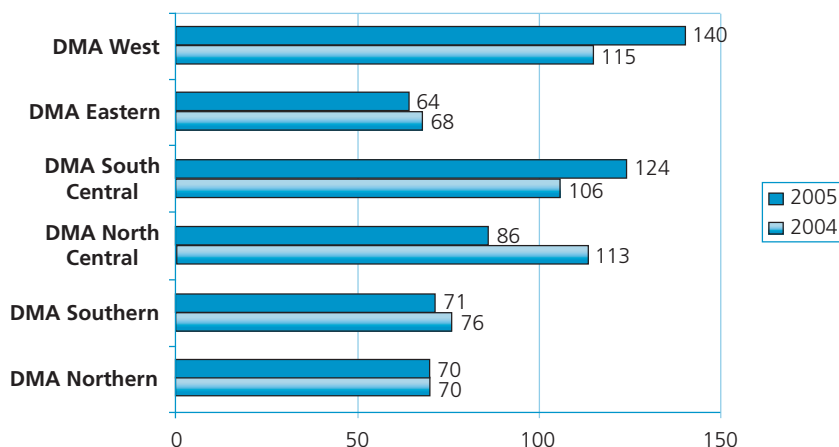


Table 3
Incidence of Complaints in Cork Divisions

Cork Divisions	Number of complaints	
	2004	2005
Cork City	72	54
Cork North	15	15
Cork West	16	15
Total	103	84
% Total Complaints	8%	7%

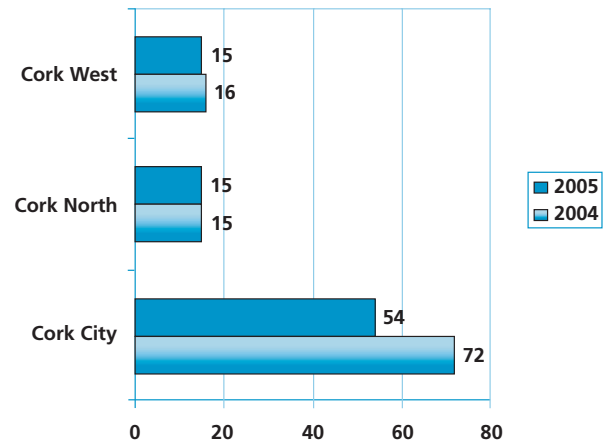


Table 4
Summary of Complaints Processed During 2005

	2004	2005
Complaints carried forward from previous years	600	473
Complaints reopened during year	25	43
Complaints received during year	<u>1,232</u>	<u>1,173</u>
Total complaints requiring attention during year	1,857	1,689
Complaints withdrawn or not proceeded with (prior to decision on admissibility)	70	74
Complaints deemed not admissible by Chief Executive	<u>540</u>	<u>489</u>
	-610	-563
Complaints requiring attention by Board	1,247	1,126
Complaints withdrawn or not proceeded with (after being deemed admissible)	232	195
Complaints deemed not admissible by Board	123	105
Complaints informally resolved	35	50
No offence or breach of discipline disclosed	326	332
Minor breach of discipline referred to Garda Commissioner	31	50*
Breach of discipline referred to Tribunal	<u>27</u>	<u>23</u>
Total complaints processed by Board	-774	-755
Complaints carried forward to following year	473	371

* 51 incidents of minor breaches of discipline were in fact referred to the Commissioner. However, one of these cases also resulted in a member being referred to a hearing of the Garda Síochána Complaints Tribunal. Accordingly, this case has been included in the Breach of Discipline referred to Tribunal category for statistical accuracy purposes.

Table 5
Outcome of Complaints Adjudicated upon by the Board in 2005

No Offence or Breach of Discipline Disclosed	Minor Breaches of Discipline referred to Commissioner	Breaches of Discipline referred to Tribunal
332	50	23
82%	12%	6%

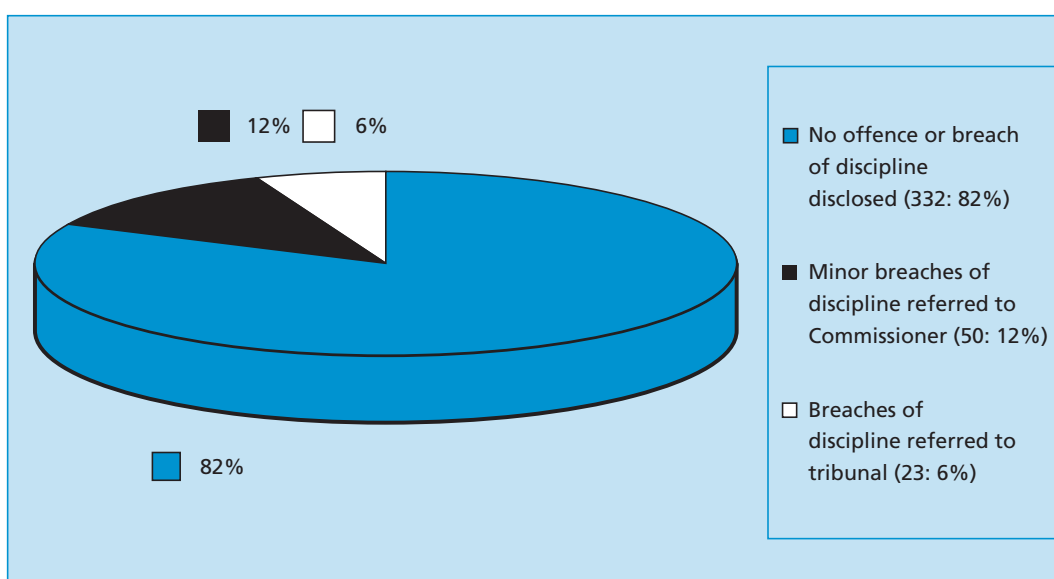


Table 6
Breaches of Discipline Complained of in Admissible Complaints

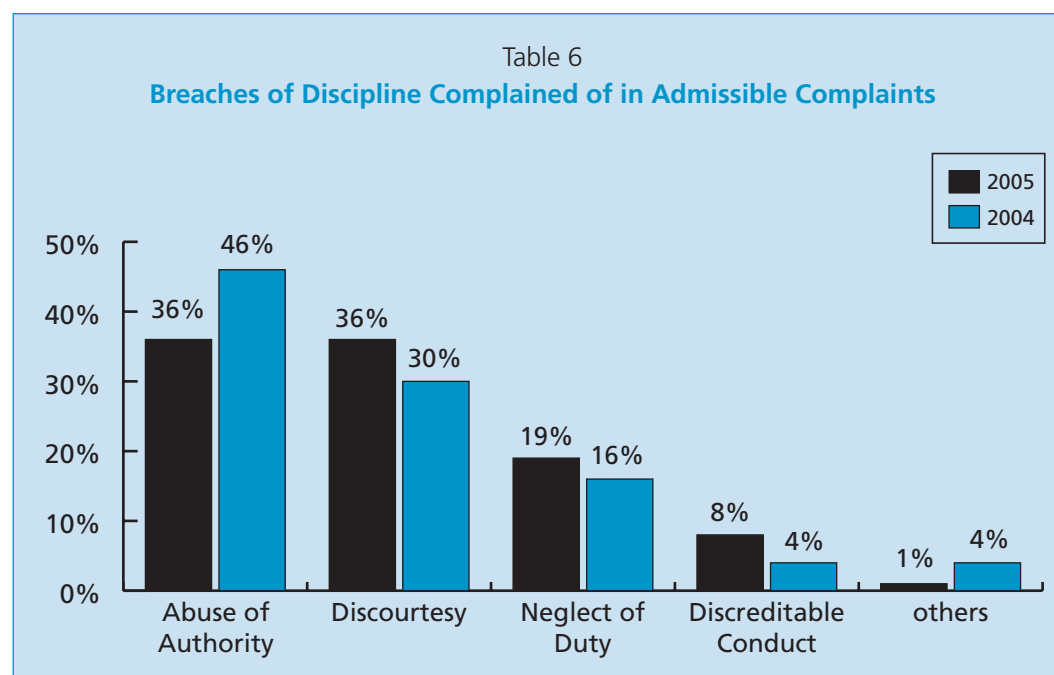


Table 7
Inadmissible Complaints based on complaints processed in each year

Reason	2004		2005	
	Number	Percent	Number	Percent
Conduct alleged would not constitute an offence or a breach of discipline	172	26%	194	33%
Complaint considered vexatious	259	39%	266	45%
Complaint considered frivolous	28	4%	22	4%
Complainant not directly affected or a witness	19	3%	12	2%
Conduct complained of occurred more than six months before complaint made	69	10%	65	11%
Other miscellaneous reasons	116	18%	35	5%
Totals of inadmissible complaints	663		594	

Table 8
Complaints on Hand at the end of 2005

Stage	2004	2005
Awaiting decision on admissibility	3	4
Under enquiry re admissibility	33	23
Awaiting informal resolution or appointment of investigating officer	30	27
Informal resolution in progress	30	24
Formal investigation in progress	228	179
Completed reports awaiting consideration by Board	82	65
Consideration postponed pending the outcome of court proceedings	7	3
Being considered by Director of Public Prosecutions	32	8
Awaiting representations under section 7(4) of Act	1	2
To be reconsidered by the Board	27	36
Total	473	371

Table 9
Age Profile of Complaints on Hand

Age	At 31st December 2004		At 31st December 2005	
	Number	Percent	Number	Percent
Over 12 months old	64	13%	33	9%
Between six and 12 months old	127	27%	81	22%
Between four and six months old	62	13%	76	20%
Less than four months old	220	47%	181	49%
Total number of complaints on hands	473		371	

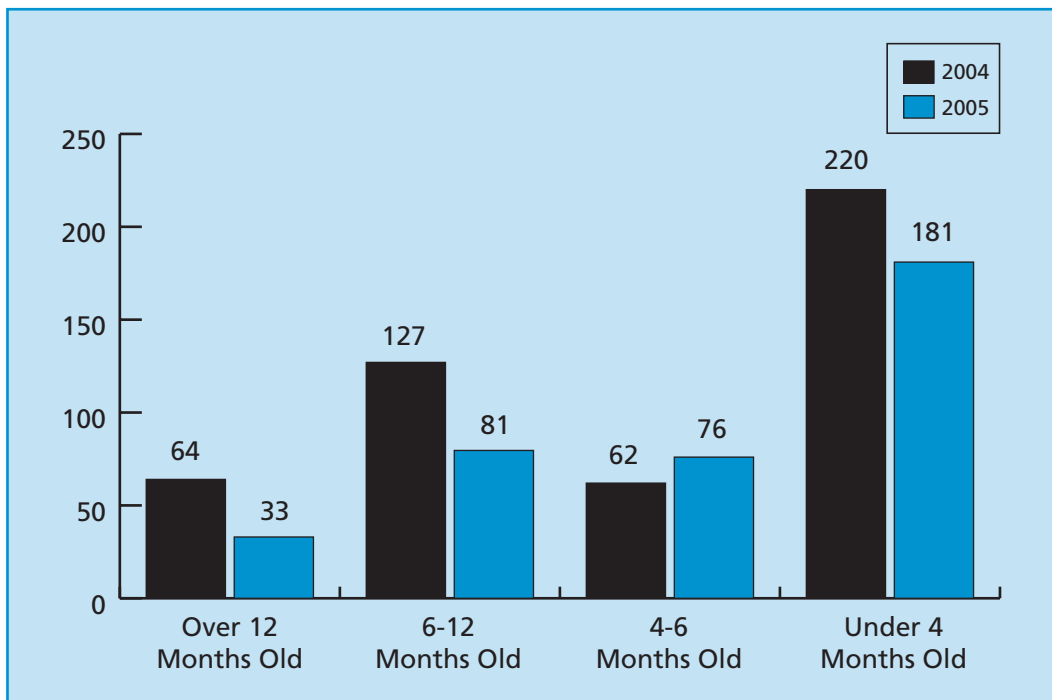


Table 10
Age Profile of Complaints on Hand by Year of Origin

Period received		Outstanding	Received	Finalised	Outstanding
From	To	at 31st December 2004	in 2005	in 2005	at 31st December 2005
January 2001	December 2001	3 (0.6%)			1 (0.27%)
January 2002	December 2002	18 (4%)			11 (2.96%)
January 2003	December 2003	43 (9%)			5 (1.35%)
January 2004	December 2004	409 (86%)			16 (4.31%)
January 2005	December 2005		1,173		338 (91.11%)
Totals		473	*1,216	1,318	371

* Includes 43 reopened cases

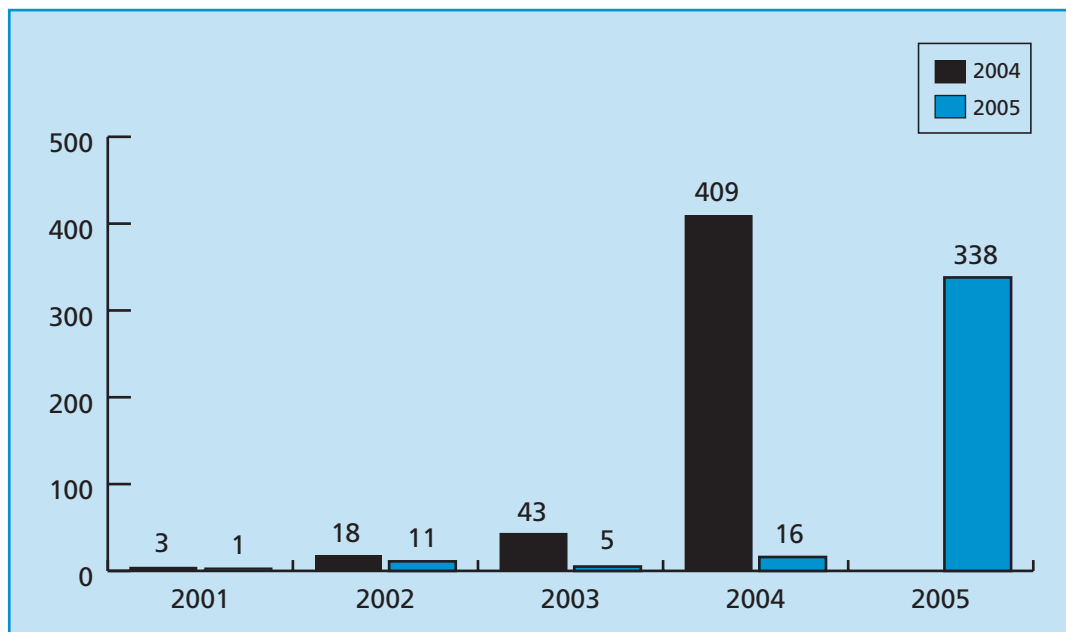
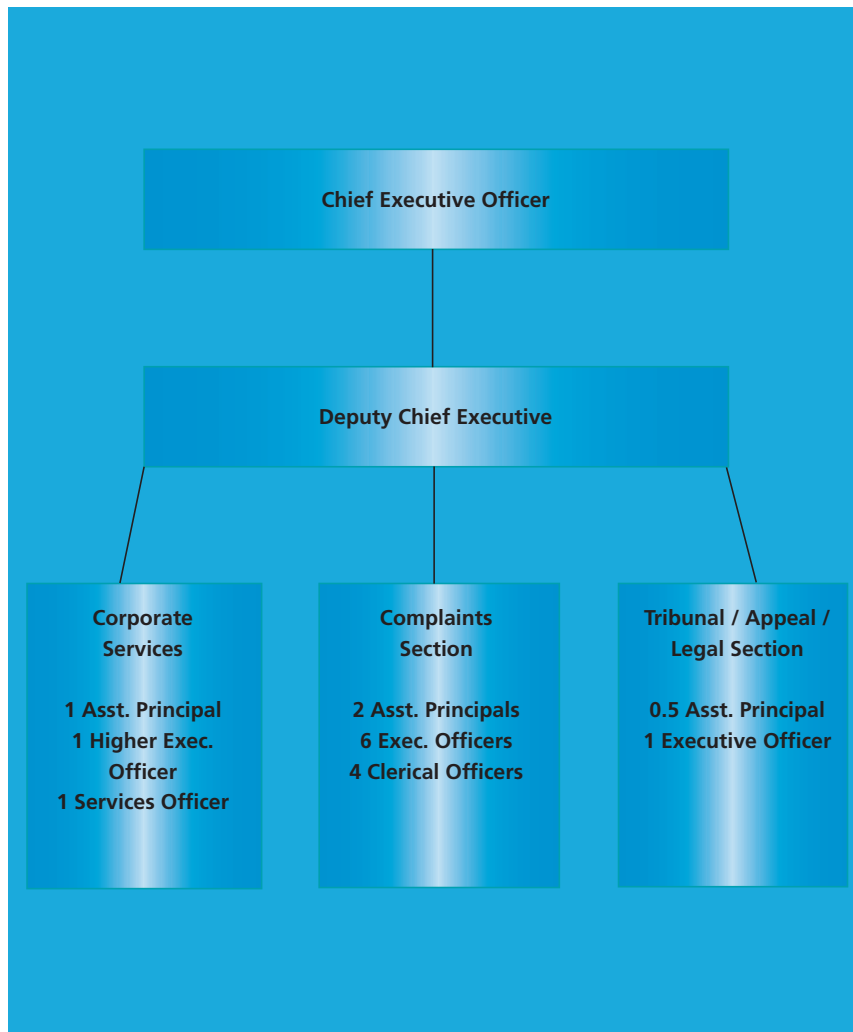


Table 11
Cases Referred to the Commissioner under Section 7(4)*

Date of Board Decision	Date Communicated to Commissioner	Commissioner's Decision	Date of Commissioner's Decision
31/01/2005	04/02/2005	Advice	04/04/2005
31/01/2005	10/02/2005	Advice	06/04/2005
31/01/2005	08/02/2005	Advice	04/04/2005
31/01/2005	08/02/2005	No Further Action	05/04/2005
07/03/2005	23/03/2005	No Further Action	09/05/2005
07/03/2005	14/03/2005	Advice	27/05/2005
07/03/2005	23/03/2005	No Further Action	30/06/2005
07/03/2005	31/03/2005	Advice	09/05/2005
07/03/2005	24/03/2005	No Further Action	06/05/2005
11/04/2005	18/04/2005	No Further Action	17/06/2005
11/04/2005	18/04/2005	Warning	17/06/2005
11/04/2005	18/04/2005	Advice	27/06/2005
11/04/2005	18/04/2005	No Further Action	28/06/2005
11/04/2005	18/04/2005	Warning	30/06/2005
11/04/2005	18/04/2005	Warning	04/03/2006
16/05/2005	24/05/2005	Advice	14/06/2005
16/05/2005	24/05/2005	Advice	06/07/2005
16/05/2005	03/06/2005	Advice	27/06/2005
16/05/2005	24/05/2005	Warning	17/01/2006
13/06/2005	22/06/2005	No Further Action	20/12/2005
13/06/2005	16/06/2005	No Further Action	07/09/2005
13/06/2005	22/06/2005	Warning	04/10/2005
13/06/2005	14/06/2005	Advice	16/09/2005
13/06/2005	22/06/2005	Advice	16/09/2005
18/07/2005	26/07/2005	No Further Action	11/10/2005
18/07/2005	29/07/2005	Warning	14/10/2005
18/07/2005	28/07/2005	Advice	28/10/2005
18/07/2005	25/07/2005	Warning	09/11/2005
06/09/2005	15/09/2005	Warning	15/11/2005
06/09/2005	21/09/2005	No Further Action	13/12/2005
06/09/2005	21/09/2005	Advice	08/12/2005
06/09/2005	19/09/2005	No Further Action	21/12/2005
06/09/2005	21/09/2005	No Further Action	13/12/2005
10/10/2005	14/10/2005	No Further Action	29/12/2005
10/10/2005	14/10/2005	No Further Action	20/12/2005
10/10/2005	21/10/2005	Advice	28/12/2005
10/10/2005	21/10/2005	Advice	12/01/2006
07/11/2005	16/11/2005	Advice	21/12/2005
07/11/2005	11/11/2005	Advice	13/12/2005
07/11/2005	11/11/2005	Advice	18/01/2006
07/11/2005	11/11/2005	Advice	18/01/2006
07/11/2005	11/11/2005	Advice	18/01/2006
07/11/2005	11/11/2005	No Further Action	13/02/2006
07/11/2005	17/11/2005	Advice	06/01/2006
12/12/2005	15/12/2005	Warning	10/02/2006
12/12/2005	15/12/2005		
12/12/2005	15/12/2005	Warning	21/01/2006
12/12/2005	15/12/2005		
12/12/2005	15/12/2005		
12/12/2005	15/12/2005	No Further Action	06/01/2006

* This Table consists of cases referred by the Board to the Commissioner in 2005 and the corresponding decisions made by him and notified to the Board at the time of publication of the report. Further decisions on the outstanding cases are expected in 2006.

Appendix 3 GSCB Organisation Chart



Appendix 4

Expenditure of the GSCB

Expenditure of the GSCB for the Years 2002 – 2005

Category	2002	2003	2004	2005
	€	€	€	€
Salaries, Wages and Allowances	670,839	844,243	970,038	1,074,805
Board Members' Fees	60,813	72,581	61,361	51,424
Travel and Subsistence	26,724	24,731	31,808	31,396
Tribunals and Appeals	8,036	69,495	26,106	28,446
Heating, Cleaning, Electricity & Maintenance	39,996	22,264	26,904	20,716
Stationery, Office Supplies	54,991	52,235	57,771	37,915
Office Equipment & Maintenance & Machinery Assets	54,159	14,604	35,312	38,838
Postage and Telephone	28,719	27,337	25,260	23,663
Miscellaneous Expenses	17,189	11,342	11,361	12,162
Professional Fees and Legal Costs*	300,600	44,317	941,249	307,189
Training	-	-	3,400	6,120

*The significant increase in legal costs in 2004 was due to the finalisation of long running court cases.

Appendix 5

Members of the Complaints Appeal Board

GSCB

Judge Matthew Deery (Chairman)

Ms Ann Walsh, Solicitor

Mr. James Gregory Ryan, Solicitor

Notes

GSCB

Notes



