

**REPORT PURSUANT TO SECTION 103 OF
THE GARDA SÍOCHÁNA ACT 2005 INTO ALLEGED COMMENTS
MADE BY GARDAÍ, ON MARCH 31ST 2011, RELATING TO TWO
FEMALE PROTESTORS ARRESTED AT A “SHELL TO SEA”
DEMONSTRATION AT, OR NEAR, AUGHOOS, ERRIS, CO. MAYO**

1. BACKGROUND

1.1 On April 5th 2011, the Garda Síochána Ombudsman Commission (GSOC) commenced an investigation, in the public interest, under section 102(4) of the Garda Síochána Act 2005 into alleged comments made by gardaí in Co. Mayo on March 31st 2011. The comments were alleged to have been made following the arrest of two female protestors for public order offences connected with the on-going protests against installation works for the laying of a gas pipeline in the area.

1.2 The alleged comments were made during a conversation between five gardaí who were on duty at the time and were the sole occupants of a marked garda jeep. The five gardaí had been involved in the arrest of the two females. This conversation was captured on a pocket camcorder device that had been seized from one of the females by gardaí during their arrest, placed in a pocket by a garda and unknowingly left in “record” mode.

1.3 Later that same day, the two females were released from garda custody and the camcorder was returned to them. They listened to the recording and, on discovering the nature of the content, made it public.

1.4 It was alleged that gardaí could be heard joking on the recording about raping the females if they refused to give their name and address. It was also alleged that they could be heard joking about deporting them from Ireland (it was supposed that one was an American or Canadian citizen), on enlisting the support of the Garda National Immigration Bureau to harass them and other comments of an inappropriate nature. Whilst the audio on the recording is of poor quality during some sections of this conversation, an approximate transcript of the conversation has been prepared and is attached as an Appendix to this report for reference.

1.5 The incident generated a large amount of media interest at the time and the recording was published on the internet by the females, one of whom also gave a press conference outlining the alleged effect that listening to the conversation on the recording has had on her (a complaint was subsequently received by GSOC from the female concerned in respect of this).

1.6 The investigation was designated pursuant to s.98 of the Act on April 5th 2011 on the basis of a potential criminal offence of Misconduct in Public Office contrary to Common Law.

1.7 Contrary to media reports at the time of the incident, there was never any “tape” of the alleged conversation giving rise to this investigation. The recording was captured digitally on a non-removable hard-drive housed inside the camcorder device (fuller details are included at section 3.2 of this report).

1.8 At no stage during this incident were either of the females involved threatened directly with being raped or deported by gardaí. They did not hear the conversation at the time as it took place inside a garda jeep where the only persons present were the five gardaí. The two females concerned became aware of the alleged conversation *after* the event, following their release and on reviewing the content of the camcorder that had been returned to them by gardaí.

2. THE ARREST

2.1 One of the females, ‘Ms. A’, was a student at Maynooth University (NUIM) at the time of this incident. On March 31st 2011 she was accompanied by a friend/colleague, Ms. B. They were engaged in protests in the area against the laying of a gas pipeline in the area.

2.2 At 14:00hrs on March 31st 2011 at Ballygelly South, Co. Mayo, Ms. A was arrested by gardaí pursuant to s.24 of the Criminal Justice (Public Order) Act 1994 for failing to provide her name and address when demanded by gardaí after being suspected of committing an offence. At 14:05hrs on the same date and at the same location, Ms. B was also arrested for the same offence.

2.3 Ms. A and Ms. B were conveyed by gardaí to Belmullet Garda Station where they were detained for a short period before being released without charge.

2.4 During the arrest, Ms. A had in her possession a small pocket camcorder device. This was taken from her by a garda involved in the arrest and placed in his pocket. This device had been left in “record mode” unknown to the garda concerned who then returned to a garda vehicle where he joined a number of his colleagues.

2.5 The conversation outlined above then took place between the gardaí contained within this vehicle that was captured on the camcorder as it continued to record. It is this recorded conversation that formed the basis for the GSOC investigation and the subsequent complaint received from Ms. A.

2.6 On their release from garda custody, the camcorder was returned to the females who reviewed its contents and discovered the recorded garda conversation. The conversation was then made public.

3. THE CAMCORDER

3.1 Requests were made by GSOC designated officers to obtain possession of the original camcorder at the centre of this incident as the primary evidential exhibit which was last known to be with Ms. A. It became apparent that the device actually belonged to Maynooth University and was being borrowed by Ms. A at the time of this incident. It also became apparent that she no longer had possession of the device but that it had been passed to her solicitor at the time.

3.2 The camcorder in question is a pocket High Definition "Flip Ultra HD" model with an internal storage capacity of 8GB and no removable media. This means that the device is both the "capture" and the "storage" media for any recorded content. There are no tapes, discs or memory cards contained within the device which essentially uses a non-removable internal hard drive on which to store the video files recorded.

3.3 GSOC officers attempted to take possession of the camcorder from the solicitor representing Ms. A. This solicitor would not hand over the device stating that he wished to take further instruction from his client as he had been advised that the device contained confidential information in relation to her studies.

3.4 GSOC was later notified that the solicitor was no longer being retained by Ms. A and that a member of academic staff from Maynooth University had attended at his office and taken possession of the camcorder.

3.5 Ms. A appointed a new solicitor and he approached GSOC suggesting that the files in relation to her studies, which Ms. A considered confidential, could be deleted before the device was given to GSOC and that this could be done by someone from Maynooth University, under GSOC supervision. GSOC informed him that any level of interference with an exhibit central to an ongoing criminal investigation, unless conducted by appropriately forensically trained personnel and to an evidential standard commensurate with the requirements of the criminal justice system, had the potential to render the exhibit inadmissible as evidence at any future proceedings and was unacceptable. No agreement was reached arising from this discussion.

3.6 Further contact was made with Maynooth University in an effort to retrieve the camcorder. GSOC was later notified that the device was now in the possession of the University and that academic staff at the University had deleted files from the device in the company of other academics.

3.7 It was later claimed by those responsible for the deletion that the files deleted from the camcorder had no bearing on the investigation being conducted, that they related to confidential information obtained during the course of studies and that this was the reason they were deleted.

3.8 GSOC took possession of the device on April 14th 2011. As the potential evidential value of what had been deleted from the device was not known to GSOC, attempts were made to forensically retrieve all files from the device, including those which had been deleted.

3.9 Footage of the original incident giving rise to the GSOC investigation was recovered from the device along with a number of files that had been deleted and overwritten. Despite extensive efforts by forensic specialists, these overwritten files were not able to be retrieved in a viewable format due to the damage caused to the files by the overwriting process. The scientist's report confirmed that a sequence of deletions from the device had taken place shortly prior to GSOC taking possession of the device.

3.10 GSOC sought to interview a number of academic staff from Maynooth University in connection with this matter.

3.11 A member of Maynooth University academic staff was interviewed by GSOC designated officers under caution in relation to possible offences of attempting to pervert the course of justice contrary to Common Law and attempting to delay, obstruct or interfere with a designated officer of GSOC in the exercise of their powers contrary to s.98(3) of the Garda Síochána Act 2005. This interview yielded no information of significant evidential value.

3.12 GSOC decided not to send a file to the DPP.

4. GARDA INTERVIEWS

4.1 All gardaí known to GSOC to have been involved in this incident were interviewed by GSOC staff. The arresting gardaí were interviewed as witnesses and statements were obtained. They gave evidence of the arrest of the two females and had nothing further to offer this investigation.

4.2 On March 31st 2011, the Member-in-Charge at Belmullet Garda Station was also interviewed as a witness and a statement was obtained. She gave evidence of the processing of the two arrested females and of taking possession of the camcorder from a garda for the duration of their custody before handing it back to Ms. B.

4.3 The remaining gardaí, not including the Sergeant, were interviewed under caution by GSOC officers at GSOC offices in relation to possible offences of Misconduct in Public Office contrary to Common Law. The four gardaí concerned gave full and frank accounts of their dealings with Ms. A and Ms. B on March 31st 2011 and of the conversation in the garda jeep that took place following their arrest.

4.4 All four gardaí confirmed that the use of the word "rape" during this conversation was, at every stage, by their Sergeant and that it is his voice that can be heard on the recording talking of raping the females.

4.5 Upon the conclusion of these interviews GSOC was satisfied that two gardaí had no involvement in the conversation whatsoever and were simply present when it took place. On this basis, it was decided that they had no case to answer and the investigation in respect of them was discontinued pursuant to s.93(1)(c) of the Garda Síochána Act (2005). They were duly notified along with the garda authorities.

4.6 A query arose relating to a particular section of the camcorder audio recording as to the role of one of the members in the conversation and whether or not he used the word “rape” which was not entirely clear from the recording. He offered another explanation during interview which was considered plausible and which was accepted in the absence of any additional information to the contrary. The investigation in respect of this garda was also discontinued pursuant to s.93(1)(c) of the Act and he was notified of this decision along with the garda authorities.

4.7 A fourth garda had a more active role in the conversation. Whilst GSOC was satisfied that he did not use the word “rape” at any stage, he was identified as being the person making comments concerning the Garda National Immigration Bureau and concerning the Rosspport Solidarity Camp, referring to them as “that crusty camp” and inferring that they may be carrying disease of some description.

4.8 During the course of these interviews, new evidence came to light that another garda may have overheard one of the females using the word “rape” during the course of their arrest and prior to the word being used by any garda. This line of enquiry was pursued and a Detective Garda, who was present when the arrests took place, provided GSOC with a statement to that effect.

4.9 The arrests were video recorded at the time and the footage was reviewed in light of the above statement. Due to the distorting effect on the audio of high winds in the area at the time it was not possible to establish what was or was not said, or by whom. No other evidence became available to corroborate the Detective Garda’s statement.

4.10 The Sergeant involved in this case exercised his right to silence during his interview and largely gave a “no comment” interview. However, when content of the Detective Garda’s statement was put to him, he stated that he had indeed heard the word “rape” used at the scene by someone during the arrest of the two females but he could not say who, and whether they were male or female, as he had his back turned at the time and this comment came from behind him.

4.11 Based on the content of these interviews and the available evidence obtained, GSOC formed the view that there was no criminal case to answer in respect of any of the gardaí involved in this incident due to insufficient evidence to support a charge of Misconduct in Public Office contrary to Common Law or any other offences that may be reasonably considered. GSOC was also of the view that there may be a disciplinary case to answer in respect of the Sergeant and one of the gardaí concerned and that the most appropriate means of progressing this was by way of s.95 of the Act through an investigation into possible misbehaviour of a disciplinary nature.

5. THE SECTION 95 INVESTIGATION

5.1 The investigation under s.95 of the Act was commenced in respect of the two outstanding gardaí for whom possible disciplinary breaches were considered

5.2 Both gardaí were written to and advised of their right under s95 to make submissions or present evidence to GSOC. Neither member availed of this right.

5.3 It became apparent during the s.95 process that the Sergeant concerned had since retired from the Garda Síochána. Following his retirement, he was no longer amenable to the Garda Síochána (Discipline) Regulations 2007.

5.4 A report was prepared for the Garda Commissioner pursuant to s.97 of the Act recommending that disciplinary proceedings be instituted against the remaining serving garda involved in the conversation at the centre of this investigation.

ADDITIONAL COMMENTS

The Garda Síochána Ombudsman Commission offers thanks to those parties who cooperated with this investigation. This was a very public event which had the potential to undermine public confidence in the Garda Síochána.

The Ombudsman Commission is conscious that events such as these can be a cause of distress and hopes that this report will bring some measure of comfort to those affected.

The Ombudsman Commission welcomes the reassurances offered to the public by the Garda Commissioner, in a statement on April 5th 2011, in relation to the policing of sexual offences, when he pledged that victims of sexual crime would be met with compassion and sensitivity. The Ombudsman Commission also welcomes his apology, in a statement on April 7th 2011, to victims of sexual crime.

The Ombudsman Commission offers its reassurance to the public and to serving gardaí that proportionate and fair investigation of events such as this is conducted in an independent manner, in the public interest.

Appendix

Approximate transcript of audio recording from camcorder

- Sgt. A "Who is them two lassies – do you know the two of them?"
- Garda B "I don't know the second one, the first one is (refers to Ms. A) with blonde hair".
- Garda C "She was up on the tractor earlier on".
- Sgt. A "It'd do no harm to get the second one's name again".
- Garda B "She's some Yank. I don't know who the fuck she is".
- Garda C "Is she a Yank?"
- Garda B "It sounds like it, it sounds like it, the accent anyway".
- Garda D "Sounds like a Yank or Canadian".
- Garda B "Well whoever, we'll get Immigration fucking on her".
- Sgt. A "She refused to give her name and address and told she would be arrested".
- Garda B "And deported".
- Sgt. A "And raped".
- Garda B "I wouldn't go that far yet, she was living down at that crusty camp, fuck's sake, you never know what you might get".
- Laughter*
- Sgt. A "Give me your name and address or I'll rape you".
- Garda C "Hold it there, give me your name and address, there, I'll Facebook you".
- Laughter*
- Sgt. A "Or I'll definitely rape you".
- Garda C "Will you be me friend on Facebook?"