

Statement of reasons for establishing a commission to investigate matters relating to two disclosures made by members of the Garda Síochána under the Protected Disclosures Act 2014

Section 3(1) of the Commissions of Investigation Act 2004 provides that following a proposal made by a Minister, with the approval of the Minister for Public Expenditure and Reform, the Government may by order establish a commission to —

- (a) investigate any matter considered by the Government to be of significant public concern, and
- (b) make any reports required under the Act in relation to its investigation.

The Government is of the view that it is necessary to establish such a commission under the Commissions of Investigation Act 2004 to investigate and report upon matters of significant public concern. The matters referred to are certain matters which were examined by Mr. Justice Iarfhlaith O'Neill and contained in the conclusions and recommendations of a report received by the Tánaiste and Minister for Justice and Equality on 7th December 2016. These matters are set out in the proposed terms of reference of the commission.

The Government is satisfied that a Commission of Investigation is the most appropriate method of investigating these matters. The Government considers that the matters to be investigated and reported on by the Commission under its terms of reference are matters of significant public concern as envisaged under section 3(1) of the Commissions of Investigation Act 2004 and having regard to section 16 of the Protected Disclosures Act 2014.

The matters in question arise in the context of the receipt by the Tánaiste, in early October 2016, of two disclosures dated 26 September 2016 and 30 September 2016 respectively, from members of An Garda Síochána. The Tánaiste subsequently appointed Mr Justice Iarfhliath O'Neill to review the

allegations contained in the disclosures and to report to her with his recommendations.

Mr Justice O'Neill examined the allegations, put them to those against whom they were made and sought the latter's responses. He also sought the observations of the persons making the disclosures and those against whom the allegations were made on a number of matters, including the form that any investigation into these matters should take.

In light of his inquiries, Mr Justice O'Neill concluded, while he was not in a position to make any determination on the truth or falsity of the allegations, that a Commission of Investigation under the 2004 Act should be established to investigate these and other relevant matters. He also made the point that the disclosures contain allegations of serious wrongdoing but that these allegations are wholly denied by the persons against whom they are made.

Finally, Mr Justice O'Neill indicated that he was aware of other disclosures made by other members of An Garda Síochána and of suggestions for them to be included in any inquiry process which might follow his review. In response to these suggestions he states that the allegations which were contained in the two protected disclosures which he reviewed were unique and, therefore, they should be dealt with by a stand-alone inquiry.

In coming to its view that a Commission of Investigation should be established and the scope of that investigation, the Government has noted the recommendations of Mr. Justice Iarfhlaith O'Neill, expressed in his report to the Tánaiste, that the establishment of a Commission of Investigation to investigate the allegations made is imperative in the public interest to ascertain the truth or falsity of the allegations.

Attached herewith is a copy of the proposed Terms of Reference and the Conclusions and Recommendations of Mr. Justice O'Neill's Report.

Annex to the Statement
of Reasons

Report of Mr. Justice Iarfhlaith O'Neill
“Review of Certain Protected Disclosures”

Proposed Terms of Reference

1 The Commission is directed to investigate the following matters:

[a] The allegation made in a Protected Disclosure made under the provisions of the Protected Disclosures Act 2014, on the 30th of September 2016, by Superintendent David Taylor, wherein he alleges that he was instructed or directed by former Commissioner Martin Callinan and/or Deputy Commissioner Noirin O’Sullivan, to contact the media to brief them negatively against Sergeant Maurice McCabe and in particular to brief the media that Sgt McCabe was motivated by maliciousness and revenge, that he was to encourage the media to write negatively about Sgt McCabe, to the effect that his complaints had no substance, that the Gardaí had fully investigated his complaints and found no substance to his allegations and that he was driven by agendas.

[b] The allegation of Superintendent Taylor in his Protected Disclosure, that he was directed to draw journalists’ attention to an allegation of criminal misconduct made against Sgt McCabe and that this was the root cause of his agenda, namely revenge against the Gardaí.

[c] To investigate such knowledge which former Commissioner Callinan and Commissioner O’Sullivan had concerning the matters set out in [a] and [b] above.

[d] To investigate contacts between members of An Garda Síochána and media broadcasting personnel relevant to the matters set out in [a] and [b] above.

[e] To examine all records relating to the mobile telephones used by Superintendent Taylor and former Commissioner Callinan and Commissioner O’Sullivan, in the period from the 1st of July 2012 to the 31st of May 2014 to ascertain whether there are any records of text messages or other telecommunication interactions relating to the

matters set out at [a] and [b] above and to examine and consider the content of any such text messages or other telecommunication interactions.

[f] To examine all electronic and paper files, relating to Sergeant Maurice McCabe held by An Garda Síochána and to consider any material therein relevant to [a] and [b] above.

[g] To investigate whether Commissioner O’Sullivan, using briefing material prepared in Garda Headquarters, planned and orchestrated broadcasts on RTE on the 9th of May 2016, purporting to be a leaked account of the unpublished O’Higgins Commission Report, in which Sgt McCabe was branded a liar and irresponsible.

[h] To investigate whether a meeting took place between former Commissioner Callinan and Deputy John McGuinness on the 24th of January 2014 in the carpark of Bewley’s Hotel, Newlands Cross, Co. Dublin and to examine and consider the circumstances which led to any such meeting, the purpose of such meeting and matters discussed at such meeting.

[i] To investigate such knowledge which Commissioner O’Sullivan had of the meeting referred to in [h] above.

2 The Commission shall have a discretion in relation to the scope of the investigation it considers necessary and appropriate to achieve the general objective of the investigation.

Conclusions and Recommendations

1 The two Protected Disclosures under review and the two Section 41 reports disclose allegations of serious wrongdoing on the parts of former Commissioner Callinan and Commissioner O'Sullivan in the discharge by them of the offices of Commissioner and Deputy Commissioner of An Garda Síochána. These allegations are wholly denied by the Commissioner and former Commissioner.

2. The seriousness of the allegations and the fact that they relate to the performance by both the Commissioner and former Commissioner of their duties as holders of the highest offices in An Garda Síochána, means that it is imperative in the public interest that an inquiry is established immediately to ascertain the truth or falsity of these allegations.

3. It is recommended that the appropriate form of inquiry to be established is a Commission of Investigation under the provisions of the Commissions of Investigations Act 2004.

4. It is recommended that the proposed terms of reference set out above be adopted as the Terms of Reference for the proposed Commission of Investigation.

5. It is recommended that an independent Legal Cost Accountant be engaged to review any Guidelines made pursuant to Section 23 of the Act to ensure that such guidelines are appropriate and adequate to meet the reasonable costs necessarily incurred by a person brought before a Commission of Investigation and permitted legal representation before that Commission.