

POLICING VULNERABLE COMMUNITIES: A REFLECTION ON THE FUTURE OF POLICING IN IRELAND

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Dear Editor,

In September 2018, in a landmark Report entitled '*The Future of Policing in Ireland*', the Commission on the Future of Policing in Ireland published its central findings following an extensive review of Ireland's modern policing culture.¹ Prepared over the course of sixteen months by a team of independent, Government-appointed experts, the Report sets out a vision for a 'reformed and reinvigorated police service'.² This vision, it must be said, is not one which will be entirely unfamiliar to those who have been engaged in the provision of policing services in Ireland over the course of the past decade. In echoing the contributions of the Dean Lyon's Commission of Investigation (2006),³ as well as those raised more recently by the Morris Tribunal (2008),⁴ the Report contains no fewer than fifty recommendations aimed at addressing 'systemic problems [within An Garda Síochána] related to structures, accountability mechanisms, management processes and culture'.⁵ 'Policing outcomes in Ireland', we are told, 'will not improve simply by adding more police or appointing new police leaders. There is an urgent need for comprehensive, fundamental change. This should be a first-order national priority'.⁶

¹ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland* (Commission on the Future of Policing 2018).

² *ibid* vi.

³ Department of Justice, 'Report of the Commission of Investigation (Dean Lyons Case)' (Department of Justice 2006).

⁴ The Morris Tribunal, 'Report of the Tribunal of Inquiry set up pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division' (Reports 1-8) (Government of Ireland 2004).

⁵ Commission on the Future of Policing in Ireland (n 1) vi.

⁶ *ibid*.

Given the Commission’s incarnation against a backdrop of growing public concern with the operational transparency of An Garda Síochána—manifest, most notably, by the establishment of The Disclosures Tribunal (2018)⁷—the Report’s central finding of the ‘urgent need for comprehensive, fundamental change’ is hardly surprising.⁸ However, what is surprising and, indeed welcome, about the Report is its recognition of the increasing demands that are being placed on An Garda Síochána:

‘In reality, police in Ireland and elsewhere spend a lot of time dealing with social issues. They are often on the front line supporting the more vulnerable members of society – people with mental health conditions or substance misuse problems, homeless people, children and elderly people at risk, and those left behind in poverty or social exclusion...a great proportion of front line police time and resource is taken up with activities not directly related to crime’.⁹

In recognizing that attending to these wider social issues poses a risk of straining the operational effectiveness of An Garda Síochána, the Report makes a number of important recommendations for structural reform.

One such recommendation is for An Garda Síochána to form ‘mutually respectful partnerships’ with other public agencies both nationally and locally.¹⁰ However, while it is difficult to dispute the benefits of inculcating such a multi-disciplinary approach to tackling national social issues, the practical introduction of such an ambitious, reformative proposal will not be without significant structural challenges. Indeed, even by the Report’s own admission, the realisation of these strategic partnerships will ‘require buy-in across government at a high level, not only by departments that are part of the criminal justice system, but by all departments serving people at risk’.¹¹ It will also, moreover, require ‘information sharing of a kind which does not currently take place between public agencies’.¹² For these reasons, it is difficult to envisage this

⁷ The Disclosures Tribunal, The Third Interim Report of the Tribunal of Inquiry into Protected Disclosures made under the Protected Disclosures Act 2014 (Government of Ireland 2018).

⁸ Commission on the Future of Policing in Ireland (n 1) vi.

⁹ Commission on the Future of Policing in Ireland (n 1) 6.

¹⁰ *ibid.*

¹¹ Commission on the Future of Policing in Ireland (n 1) 7.

¹² *ibid.*

strategic reform as an immediate solution to the operational challenges faced by An Garda Síochána.

A less radical, and perhaps more immediately realisable, reformative proposal can, however, be found in Chapter 20 of the Report where the Commission observes as follows:

‘Police are often first on the scene in situations where the key problem is mental illness or drug abuse. It is vital that they know how to recognise such problems when they encounter them – that they are knowledgeable about such problems, if not expert – and that they know how to access the right kind of expert assistance quickly. We therefore recommend enhanced training in mental health and substance misuse awareness, at least part of it jointly with members of the relevant expert services’.¹³

Recommendations of this nature, it should be said, are by no means new. As far back as 1996 the Commission on the Status of People with Disabilities suggested that ‘[d]isability awareness training should be provided to all Gardaí and other persons working in this area as part of their general training’.¹⁴ And yet, while some positive steps have undoubtedly been taken over the course of the past two decades in the direction of promoting greater disability awareness training within An Garda Síochána—most notably in the form of the launch of ‘Diversity Works’ training scheme in 2006¹⁵ as well as the introduction of a ‘Policing with Communities’ module on the B.A. in Applied Policing Degree in the Garda Training College there remains scope for further improvements in this area,¹⁶

¹³ Commission on the Future of Policing in Ireland (n 1) 75.

¹⁴ Commission on the Status of People with Disabilities, *A Strategy for Equality: Report of the Commission on the Status of People with Disabilities* (Stationery Office 1996) 63.

¹⁵ *European Union Peace II Garda Síochána / PSNI Diversity Works Programme 2006*. See also: Special EU Programmes Body, ‘PSNI and An Garda Síochána Launch Cross Border Diversity Training’ (Spring 2016) *Your EU* 10.

¹⁶ See An Garda Síochána, *Written Submission to the Working Group on the Protection Process* (An Garda Síochána, 27 February 2015).

To take just one example, the undisclosed award of damages in 2016 to a man who had a severe form of autism and profound intellectual disabilities following his arrest and detention by An Garda Síochána, suggests that there remains a lack of standardisation in practice amongst members of the service.¹⁷ It would seem that while disability-awareness training may well be a constituent element of the modern Garda College curriculum, not all members of the service have shared equally in the benefits of such tuition. Nor, would it seem, have all members of the Gardaí familiarised themselves equally with the best practice forensic standards which have been set down by Garda management with respect to interviewing vulnerable witnesses.¹⁸ As a result of this plurality in the level of disability awareness within the service, the response which will greet, for instance, a crime victim with an intellectual disability upon reporting an incident of criminal victimisation at a Garda station cannot be predicted.¹⁹ As one victim support worker intimated as part of a recent Irish study, '[v]ictims of crime's experience depends on the individual Garda that they meet - some are terrific, some are fantastic and some are not, and there are huge barriers when you meet up with them'.²⁰

As the primary gatekeepers of Ireland's criminal justice system, members of An Garda Síochána enjoy unparalleled influence over the trajectory of a complaint. Moreover, as first responders to alleged incidents of victimisation, they are uniquely placed to shape a victim's initial impression of the Irish criminal justice process. For these reasons, the capacity of members of An Garda Síochána to respond appropriately, sympathetically and respectfully to the concerns of intellectually disabled complainants at the initial, often traumatic, reporting stage of a crime is a major factor in shaping their overall experience of the criminal justice system. The adoption of a presumptively dismissive attitude towards victims with intellectual disabilities, or the application of inappropriate interviewing techniques, not only risks prejudicing the quality of

¹⁷ See Mary Carolan, 'Damages for Man with Autism 'Treated Despicably' by Gardaí' *The Irish Times* (Dublin, 2 February 2016).

¹⁸ See, for instance, Alan Cusack, 'The Pre-Trial Position of Vulnerable Victims of Crime in Ireland' in Penny Cooper and Linda Hunting, (eds.) *Access to Justice for Vulnerable People* (1st edn, Wildy, Simmonds and Hill 2018) 185, Claire Edwards, Gillian Harold and Shane Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland* (1st edn, University College Cork 2012), Shane Kilcommins, Claire Edwards and Tina O'Sullivan, *An International Review of Legal Provisions and Supports for People with Disabilities as Victims of Crime* (Irish Council for Civil Liberties 2013).

¹⁹ It is notable, for instance, that no specific refresher training on diversity is available to graduates upon completion of the BA in Applied Policing. See An Garda Síochána (n 16) 2.

²⁰ Edwards, Harold and Kilcommins (n 18) 107.

evidence that will be uncovered in an investigation, but it also risks reinforcing traditional constructions of incapacity. Moreover, from a legal perspective, the adoption of such an approach cannot be reconciled with Ireland's international obligations under both the UN Convention on the Rights of Persons with Disabilities²¹ and the Victims Directive.²² Nor, more significantly, can it be reconciled with the State's obligation to vindicate the life, person, good name, and property rights of every citizen under Article 40.3.2 of Bunreacht na hÉireann.

With Drew Harris' recent appointment as the new Commissioner of the force, An Garda Síochána has a unique opportunity to retailor its policies and training programmes in order to better respond to the individuated needs of all consumers of Ireland's criminal justice process. While, in the short term, the realisation of the enhanced training programme advocated by the Commission will undoubtedly represent a further operational strain on a police service that is already operating at its limit, in the longer term this development promises to yield a more inclusionary justice system, not only in terms of setting a best practice example for other Irish criminal justice agencies, but also in the sense of empowering and incentivising some of the most vulnerable members of Irish society to actively report incidents of criminal wrongdoing.

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Dr Alan Cusack

²¹ Convention of the Rights of Persons with Disabilities 2006 [A/RES/61/106] Article 13.

²² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA 2001/220/JHA [2012] OJL 315.