Towards Fair and Effective Policing:
Submission to the *Commission on the Future of Policing in Ireland*

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1. Introduction

I am pleased to make this submission to the Commission on the Future of Policing in Ireland (CFP). In its terms of reference, the CFP is tasked with examining a broad set of concerns. While some of those arise from recent events, it is also important that the CFPs recommendations are not constrained by the present, and outline a model of policing suitable for any context and attentive to future challenges.

My comments below focus on selected aspects of policing, but at the outset it is important to note that many of the best recommendations the Commission could consider are to be found in the 1999 Patten Report on policing in Northern Ireland. While the Patten Commission was established in recognition of the importance of policing to the Northern Ireland peace process, it based its recommendations on a series of first principles, which they articulated as a set of questions that every proposal they made had to satisfy (Patten Report 1999: 5):

> 1. Does this proposal promote effective and efficient policing?
> 2. Will it deliver fair and impartial policing, free from partisan control?
> 3. Does it provide for accountability, both to the law and to the community?
> 4. Will it make the police more representative of the society they serve?
> 5. Does it protect and vindicate the human rights and human dignity of all?

The recommendations they derived from these principles are not necessarily specific to the Northern Ireland context, and those that are not inherently tied to Northern Ireland's political and institutional context warrant serious consideration to ensure that the institutions, ethos and practice of Irish policing have human rights, community engagement, transparency and accountability, and professionalism and efficiency at their core.

Beyond that, it is worth noting that there have been considerable changes in policing and its oversight in recent years, but often these developments have arisen in a piecemeal fashion, reflecting crisis-management rather than a more long-term and strategic approach. The CFP represents an important opportunity to ensure that those recent initiatives and arrangements are optimal, and are operating to their full potential.

2. Accountability and Governance

For many years, Irish policing existed in somewhat of a cocoon. It operated with considerable public support and was subject to little outside scrutiny. When scandals did arise they were routinely dismissed as the actions of errant officers, and the organisation itself remained largely unaffected by these events.

The Morris Tribunal into policing in Donegal appeared to change that narrative decisively, given the sobering account it provided of misconduct, ineffective management, and lack of accountability (Conway 2010). The *2005 Garda Síochána Act* – hailed at the time as the most far-reaching changes to policing in Ireland since the force was created – provided for the establishment of the Garda Síochána Ombudsman Commission, the Garda Inspectorate, and a range of other measures to enhance and modernise policing in Ireland. A decade later, another major set of reforms were enacted through the *2015 Garda Síochána Act*, particularly through the establishment of the Policing Authority.

Yet despite two major pieces of legislation, and all of the institutional changes they heralded, further scandals developed that generated a major political crisis, and it was deemed necessary to establish the Commission on the Future of Policing in Ireland to consider what measures may be necessary to enhance policing and ensure that a high quality policing service was delivered. Why were the two overhauls of policing reflected in the 2005 and 2015 Acts not sufficient to achieve this goal?

I believe the answer lies in the minimalist approach that has been taken to police reform in Ireland. The 2005 and 2015 Acts were, in large part, most noteworthy for establishing new institutions of governance and oversight – particularly the Garda Síochána Ombudsman Commission, the Garda Inspectorate, and the Policing Authority. Despite the availability of models in various other jurisdictions – particularly a network of policing governance institutions in Northern Ireland that routinely are described as world-leading and epitomising 'best-practice' – the establishment of equivalent institutions in the Irish Republic was marked by foot-dragging and a dilution of the very powers which made the Northern Irish institutions so robust and so worthy of emulation. In relation to the Policing Authority, only a few years ago some prominent commentators deemed it impossible even to establish such an entity. In effect, one of the key failures of the process of ensuring police accountability in the Irish Republic is not the institutions themselves, but rather the lack of political will to render them fit for purpose from the outset.

The early years of those institutions have provided an opportunity to assess the adequacy of their role and powers. In all cases, there are deficiencies that have been identified by many commentators, not least by the leaders of those organisations themselves. The concerns

raised in respect of these institutions extend beyond the teething problems of their establishment, and relate to their ability to fulfil their mandate and to meet the public's expectations of them.

First, the CFP in its recommendations should seek to ensure that these institutions are sufficiently resourced in terms of budget, personnel and expertise.

Second, the powers of these institutions must be sufficient to enable them to perform their roles fully and effectively. At the least it should involve the following:

- The Policing Authority will never fulfil its role in terms of ensuring accountability until it has (a) a proper role in setting and allocating budgets (the Patten Report placed *great* importance on this in its recommendations for the Northern Ireland Policing Board), (b) a mandate covering all aspects of policing and the police organisation, including the office of the Garda Commissioner – with appropriate safeguards if necessary (eg, perhaps judicial oversight in respect of particular issues), and (c) a robust requirement on the part of the Commissioner to respond to issues and concerns raised by the Authority. In addition, it is crucial that there is full clarity and transparency in terms of the relationship between the Authority, the Minister for Justice, and the Commissioner.

- The CFP should also consider the composition of the Authority. It should ensure that it has the expertise and independence to enable it to perform its functions to a high standard. But in many jurisdictions, governance bodies such as police authorities/boards (and the recent shift to Police and Crime Commissioners in England and Wales) include democratically elected individuals. Unless there are compelling reasons why political representatives should not be included in the membership of the Authority, the CFP should consider ways to expand the Authority's membership to make it more democratically and politically representative.

- For the Garda Inspectorate, there should be a more transparent and robust requirement on the part of An Garda Síochána to respond to its findings and recommendations. For example, the 2014 report on Criminal Investigations raised a myriad of concerns in relation to basic aspects of policing. It is alarming that these concerns do not yet seem to have been addressed to the satisfaction of the Inspectorate.

- For GSOC, there should be a more sustained focus on linking individual cases/complaints with wider policy issues, and in particular to ensure that a 'learning' approach is built into its activities, such that analysis of the nature and trends of complaints can feed back

into policing with a view to identifying and addressing problematic issues more proactively and systematically.

Third, the CFP should consider how best to ensure coherence across this new institutional landscape of accountability and governance. This may involve a clearer distinction between their roles in respect of particular issues. It may also involve strategies of collaboration and communication (perhaps in terms of addressing issues of overlapping concern, having an annual policing conference to share research findings or raise issues of mutual interest, etc).

Beyond those issues, at an organisational level, there should be full commitment to an ethos of transparency in terms of policy and decision-making. Again, this could mirror the Patten recommendations on these issues: first, that transparency should entail the release of information unless it is the public interest – not the police interest – not to do so; and second, that the principle of 'operational independence' should give way to a commitment to 'operational responsibility' whereby the rationale behind police decision-making is provided unless there is a justifiable reason why it should not be.

3. Police Practice and Organisational Culture

When we consider public attitude surveys on policing, the findings typically indicate a relatively high level of satisfaction with the police – over 80% during the early 2000s, although when the Garda surveys were recommended in recent years, the findings of the quarterly surveys indicated lower satisfaction levels.

While historically such findings have been used to assert that the police are legitimate and they operate with widespread public support, it is important that the claim of high satisfaction levels is not used as a buffer against change. In reality the underlying meaning of 'satisfaction with the police' is ambiguous and nuanced.

Many people express satisfaction on the basis of an abstract affiliation with the organisation, and perhaps a sense of themselves as being law-abiding, respectable, and so on. But often this view is formed with limited or no actual contact with the police – so in effect, it measures an 'idea' rather than experience of the police. When one examines the views of those who have had contact with the police, levels of satisfaction drop, and there are also clear differences in the views of people on the basis of age, housing tenure, and so on. It is particularly troubling that this is the case for victims of crime, for whom the police would seem to be an obvious resource in terms of supporting them and demonstrating an awareness of and care for their vulnerability.

The real value of public attitude research is in identifying problems. In that sense, while it is important to know levels of satisfaction/confidence/support, it is more revealing to consider

levels of dissatisfaction – what individuals and groups express a lack of confidence in the police, and on what basis?

One of the difficulties in answering this question is that we have only limited information on police practice. The 2014 Garda Inspectorate report on criminal investigations largely examined case-processing, record-keeping and decision-making. Its findings are, frankly, deeply disturbing in terms of highlighting inconsistencies and inadequacies across a wide range of issues, and revealing a standard of policing that did not meet appropriate professional standards. Yet this analysis was largely based on examining case processing. Our knowledge of police behaviour and decision-making in day-to-day activities, and particularly in terms of engaging with the public, is very limited. Empirical studies of police perceptions of and interactions with the public reveal problematic issues in different settings, particularly in terms of relations with marginalised groups (Ilan 2016; Ionann Management Consultants 2004; Mulcahy 2012; O'Brien-Olinger 2015). We need further information on what the police actually do, and what informs that behaviour – how many arrests do they make, how many stop-and-searches, and in what circumstances, how do they view their role, how do they understand their relationship with and responsibilities to members of the public, etc?

In this respect, it is important that police training is appropriate in terms of its content and delivery, particularly in terms of challenging an inappropriate loyalty to the organisation and one's colleagues over an officer's responsibilities to the role and to the public.

It also is important that internal management structures are committed to maintaining and supporting professional practice throughout the organisation, and to addressing concerns raised by front-line staff and other members of the organisation. It is important that there is full appreciation of, and support for, the capacity of police officers to provide insightful and effective responses to the policing challenges they face.

4. Equality, Diversity and Recruitment

The scale of immigration and ethnic diversification that occurred during the 1900s/2000s was unparalleled in Irish history. The experience of ethnic diversification in Ireland is quite atypical when compared to the lengthy processes of immigration that was the norm in many other European societies. In Ireland's case, this was quite a rapid and intense process, spurred by a buoyant economy, which occurred in the absence of a colonial relationship with the immigrant groups. For that reason, the nature and dynamic of diversity in Ireland may follow a different trajectory than other societies, and there is scope to ensure that Ireland avoids some of the challenges and difficulties witnessed in other societies. This

requires taking appropriate steps to address any current difficulties, while also being proactive in laying the groundwork for positive police-community relations into the future.

The international experience suggests that many immigrants who arrive in a country are initially most concerned about securing a livelihood (most are of working age) and establishing themselves – 'fitting in' – in a new culture and country. The Garda Research Unit (Walker 2007) report on the attitudes of ethnic minorities towards the police found that their levels of satisfaction with An Garda Síochána were notably higher than the figures reported in the overall national survey.

The Garda Bureau of Community, Diversity and Integration – formerly the Garda Racial, Intercultural and Diversity Office –was initially established in light of the growing ethnic diversity that characterised Irish society from the mid-1990s onwards. It is remarkable that this office, addressing one of the most far-reaching changes in Irish society in recent decades, is understaffed and is heavily reliant on the commitment and goodwill of the staff there. The importance of this office and its role should be recognised through the allocation of sufficient resources.

One of the initiatives developed within this unit is the role of Ethnic Liaison Officer (McInerney 2015). These officers tend to be based in the local community policing unit, and serve as a liaison point for any issues relating to ethnic minority individuals and groups in specific areas. Research assessing their potential is quite positive. For example, ELOs believe that their activities have made them more aware of diversity issues and more positive towards minority groups, and ELOs and other officers believe that the role of ELOs has a positive impact on organisational culture generally. However, the role itself is an add-on and part-time role for the officers, and training is sporadic. For the role to meet its potential, it is worth considering establishing it on a full-time basis, and for ensuring that the training is robust and timely. Beyond that, it is important that an awareness of and attentiveness to equality/diversity issues is fully mainstreamed within the organisation as whole. Responsibility for the delivery of appropriate policing should not rest with ELOs alone.

Other relevant measures include the composition of An Garda Síochána. There is a high level of underrepresentation of ethnic minority groups that needs to be addressed through a proactive recruitment strategy. There is also a need to ensure sufficient linguistic expertise within An Garda Síochána to meet the needs of a diverse society.

However, in addition to ensuring that an appropriate policing service is provided to first-generation immigrants, one further significant issue is relations between the police and second-generation immigrants – those whose ethnic heritage is African, Asian, etc, and who are Irish citizens, who have grown up in Ireland and who speak with Irish accents. If these

young people grow up in an environment of discrimination and marginalisation, and are seen as a 'problem' group by the police, then hostile relationships between them and the police will be more likely. There is a pressing need to ensure that situation does not arise and that all sections of the public can plausibly view An Garda Síochána as 'their' police, acting on their behalf (O'Brien-Olinger 2015).

While discussion on diversity has often focused on 'new' ethnic minority groups, it is important to recognise the scale of the difficulties surrounding relations between Travellers and the police (Mulcahy 2012). There is a staggering difference in the life chances of Travellers compared to those of the settled population in terms of life expectancy, health, child mortality, employment, and education. But Travellers are also characterised by high levels of overrepresentation within the criminal justice. One Garda Research Unit survey found that Traveller respondents expressed the lowest level of satisfaction (52 per cent) with the police of all groups surveyed – considerably less than that for other ethnic minority groups, and also considerably less than satisfaction levels found in the national survey that same year (81 per cent satisfaction) (Walker 2007). Addressing these issues through targeted strategies should be a priority.

5. Community Engagement and Police-Public Consultation

Community-based policing should be at the heart of future policing arrangements in Ireland. This involves a commitment to working productively and proactively with the breadth of communities in Irish society, devolving decision-making to the lowest level possible, and supporting dedicated community policing units in every area. This should be reflected in the content of training, and in establishing a minimum specified period for which officers would work in these roles. There should also be a review of promotion practices to ensure that the value of these activities is recognised within the organisation.

At an institutional level, Joint Policing Committees were established under the provisions of the 2005 Act, and these have the potential to serve as a valuable forum for public-police consultation on issues relating to policing, crime and disorder.

However, to date JPCs have not met their potential. Even more than a decade after their establishment, their level of activity is highly variable, and some are much more dynamic and ambitious than others. In many cases, there seems to be no urgency about holding meetings, and no enthusiasm for developing a work/activity programme that the JPC could pursue. In some cases, they seem largely reduced to an occasional forum where local crime figures are reported. This is not necessarily the fault of any of the individuals involved. Instead, I think it primarily reflects the confusion and lack of clarity that surrounded their establishment, and the lack of support and direction in terms of their development.

The Policing Authority now has a role in providing oversight of JPCs, and this should be encouraged and supported. But to improve the functioning and effectiveness of JPCs (and within those areas, Local Policing Fora), it is worth reviewing their role, and highlighting the various issues on which they can have an impact. There should be some basis for effective information-sharing across JPCs. This could include not simply the range of activities each is involved in, but also identifying common problems and solutions to these, and highlighting best practice or successful initiatives that other JPCs may wish to consider implementing in their own locality.

JPCs can play an important role in terms of police-public consultation, and ultimately, police legitimacy. But they can also play a key role in terms of mobilising local capacity to address some of the problems that the police may end up dealing with, but for which a more long-term solution is likely to involve greater input and coordination across a range of agencies. The public's demand for policing and security is always likely to outstrip the resources available to An Garda Síochána. Many of the problems that police deal with involve other agencies – schools, transport, voluntary organisations, medical services – and JPCs can play a key role in developing partnerships to provide appropriate and effective responses to those issues.

6. Future Challenges

Modern society is characterised by important trends including urbanisation, diversity, an ageing population, individualisation, inequality, and technological advances, among other things. The scale and speed of such changes can generate a profound sense of insecurity and alienation. In a rapidly changing world, the police can function as a crucial safety net.

While there are many factors that need to be considered in respect of the future challenges of policing in Ireland, here I want to note some specific issues given the role of the police in addressing them.

- Drugs – The nature of drugs policing varies from worldwide, but more jurisdictions are turning away from a purely law-enforcement approach in favour of one that involves either a public health approach, decriminalisation strategies or other measures that shift the focus away from arrest/prosecution of drug users. Is would be helpful to review Garda policy on these issues in light of those international trends, with a view to identifying a more effective policing approach. This is particularly important given the resources absorbed in policing low-level drug use, and the limited impact it has.

- Corporate crime – Like most police services worldwide, An Garda Síochána's response to corporate crime is inadequate. The scale of harm that arises from corporate crime is

immense, and its economic and environmental costs far exceed that arising from street-crime. The establishment of the Criminal Assets Bureau – based around a multi-agency approach – was an innovative response to concerns over criminal gangs, and it has been emulated in other jurisdictions. A similar multi-agency model may be an appropriate model to follow, but however it is done, this should be a priority area in the future.

- Internet/digital crime – The policing challenges arising from the digital age are immense. Crime victimisation surveys in England and Wales have recently tried to assess the impact of digital victimisation. Although the surveys conducted to date are preliminary, when cybercrime and fraud are included, victimisation levels rise by approximately 90 per cent (ONS 2017). An Garda Síochána should seek to ensure that it has sufficient expertise to enable it to provide an appropriate response to cyber crime, but also to consider appropriate strategies in terms of public awareness and crime prevention in relation to these issues into the future.

7. Political Will and the Implementation Process

When the Independent Commission on Policing published its report on policing in Northern Ireland (the Patten Report), it recognised the controversy that would surround its recommendations. To help ensure public confidence in the implementation process, the Patten Report proposed the establishment of an Oversight Commissioner to oversee implementation of the Report's recommendations. Patten later described this as 'one of our best ideas' (2010: 25). I highlight this to reflect the fact that some recent reform measures have been constrained by a lack of clarity in terms of the implementation process. The journey from proposal to final form seems to have been characterised by a watering-down of key dimensions of accountability at every turn, particularly in terms of the powers of GSOC and the Policing Authority (mentioned above).

If the CFP does not want its recommendations fall into the category of 'another missed opportunity', it should consider how to address uncertainty over the level of political will to support major changes, and the implementation process itself. Whether in the form of an Oversight Commissioner or through some other means, it should consider the value of a reporting process to chart the level of progress made in terms of implementing the recommendations/measures, and to identity and overcome any obstacles to this.

The CFP should also consider whether its role will extend beyond the publication of its report and whether its members will play a role in promoting its recommendations.

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