



***THE CHILD LAW CLINIC
CENTRE FOR CHILDREN'S RIGHTS AND
FAMILY LAW
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THE FUTURE OF POLICING IN IRELAND***

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Introduction

The Child Law Clinic is part of the newly established Centre for Children's Rights and Family Law at the School of Law, University College Cork. In addition to performing funded and published research on children's rights, the Clinic also undertakes advocacy, making submissions and contributions to law reform to advance the rights of children and young people in law, policy and practice. The Clinic partners with other external parties as appropriate and in this instance has had the input of the Cork Life Centre, a voluntary organisation offering an alternative learning environment to young people who find themselves outside the mainstream education system.

Children and young people come into contact with the An Garda Síochána in a variety of circumstances. Children may have routine contact with Gardaí in the street, when they come into conflict with the law, where Gardaí are involved in responding to child protection concerns, or where they are required to investigate alleged crimes. It is important that Garda policy and practice as it relates to children is respectful of the rights and dignity of children, and that there is an awareness of the particular needs and vulnerabilities of children.

This submission sets out a number of key issues relating to police practice when they have dealings with children and young people. It first sets out the relevant international standards in this area, before considering key issues including relationships between children and young people in the street, the Garda Diversion Programme, interviewing and detaining children in conflict with the law, the role of the Gardaí in child protection, and accountability and complaints mechanisms.

International Standards

In Irish law (see the Children Act 2001 and the Child Care Act 1991), as in the United Nations Convention on the Rights of the Child (Article 1), the child is defined as a person up to 18 years of age. In this document, children and young people are interchangeably used terms that refer to those under 18 years.

In all areas of children's rights, the rights of the child are set out in the UN Convention on the Rights of the Child (UNCRC), to which Ireland is a party. The rights of the child in conflict with the law are set out under Articles 37 and 40 of the UNCRC. Article 40 has particular relevance to police interactions with children, and provides that children should be treated "in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."¹ This duty to treat children in a way that is consistent with their dignity, worth, and human rights, is applicable to all those who have contact with the child, and the Committee on the Rights of the Child, the body that monitors implementation of the Convention, has emphasised that this right should be protected throughout the entire process of responding to the child, and is applicable from first contact with law enforcement agencies.² A similar duty is set out under the

¹ Article 40(1) of the UNCRC

² UN Committee on the Rights of the Child, *General Comment No. 10: Children's rights in juvenile justice* (2007) CRC/C/GC/10 at para. 13

Council of Europe’s Child-Friendly Justice Guidelines,³ which requires that children “should be treated with care, sensitivity, fairness and respect throughout any procedure or case”, with special attention being given to their specific situation and needs. In all police interactions with children, the dignity of the child and respect for his or her rights should be a central concern.

The international standards also emphasise the importance of diversion from formal judicial proceedings “wherever appropriate and desirable”.⁴ This should be an “integral part” of the youth justice system, and should not be limited to minor or first time offenders.⁵ The Gardaí are primarily responsible for the operation of the Diversion Programme in Ireland.⁶ However, it is important that the emphasis on diversion in the international standards is subject to the proviso that “human rights and legal safeguards are fully respected” in diversionary processes.⁷ The Committee on the Rights of the Child have emphasised that these legal safeguards should include a check that there is compelling evidence that the child has in fact committed the alleged crime, the necessity for the consent of the child, and that the child should be given the opportunity to seek legal advice.⁸

Young people in conflict with the law are entitled to legal safeguards and to ensure that their procedural rights are upheld. The rights of young people are listed under Article 40(2) of the UNCRC, and include the right to be informed promptly of any charges, to legal and other appropriate assistance, and to the support of his or her parents or guardians. The Child-Friendly Justice Guidelines stress the need for information to be given to the child in a manner and language appropriate to the age and understanding of the child,⁹ and children should not be questioned or asked to sign a statement concerning involvement in criminal behaviour except in the presence of a lawyer or a parent.¹⁰ The Gardaí, in interviewing children, must be aware of these procedural rights, and facilitate children’s access to them.

Where children are detained in Garda custody, Article 37 of the UNCRC requires that they should be treated with humanity and respect, and should be separated from adults unless it would not be in the child’s best interests to do so.¹¹ Where children are detained in police custody, conditions should be safe and appropriate to their needs.¹²

The issue of specialisation and training is also dealt with under the international standards. Article 40(3) of the UNCRC requires States to seek to promote the establishment of laws, procedures and institutions specifically applicable to children.

³ Council of Europe: Committee of Ministers, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (adopted by the Committee of Ministers on 17th November 2010 at the 1098th meeting of the Ministers’ Deputies) CM/Del/Dec(2010)1098/10.2 (“the Child Friendly-Justice Guidelines”)

⁴ Article 40(3)(b) of the UNCRC; see also Rule 24 & 27, Part IV, Section B of the Child-Friendly Justice Guidelines

⁵ General Comment No. 10, *supra* n.2 at paras.25-26

⁶ See further below, Section Four

⁷ Article 40(3)(b) of the UNCRC; see also Rules 25&26, Part IV, Section B of the Child-Friendly Justice Guidelines

⁸ General Comment No. 10, *supra* n.2 at para. 27

⁹ Rule 28, Part IV, Section C of the Child-Friendly Justice Guidelines

¹⁰ Rule 30, Part IV, Section C of the Child-Friendly Justice Guidelines

¹¹ See further Rule 31, Part IV, Section C of the Child-Friendly Justice Guidelines

¹² Rule 32, Part IV, Section C of the Child-Friendly Justice Guidelines

This should include specialised units within the police.¹³ The standards also emphasise the need for appropriate training of professionals working with children.¹⁴ The Committee on the Rights of the Child has indicated that this training should be “systematic and ongoing”.¹⁵ While specialised members of the Gardaí – Juvenile Liaison Officers (JLOs) – currently have responsibility for young people involved in the Diversion Programme, there is a need to mainstream this training so that all Gardaí who have any contact with children and young people are appropriately informed and sensitised to the rights and particular circumstances of children.

The Relationship between Young People and the Police

When young people come into conflict with the law, police will invariably provide their first point of contact with the criminal justice system. Young people are often highly visible on the streets, where they are the subject of police attention.¹⁶ The nature of this interaction is vitally important, and can help to shape young people’s views of the fairness and legitimacy of the criminal justice system. It may also predict future engagement with the criminal justice system and influence levels of compliance within that system. Kilkelly has noted that:

“In these interactions, which frequently take place on the street and in conditions of low visibility, the authority of the police officer is heightened by the relative powerlessness and vulnerability of the young person.”¹⁷

The critical importance of procedural justice in enhancing relationships between children and the police has been highlighted by international research.¹⁸ For instance, Hinds has found that negative contact with police had a significant impact on young people’s attitudes towards them,¹⁹ but, importantly, that young people were more likely to comply with rules and decisions where that authority was perceived to be legitimate.²⁰ This study also identified procedural justice and the use of fair procedures in encounters with young people as critical in shaping young people’s perceptions of police legitimacy.²¹ This highlights the importance of ensuring that “engagement between young people and the police is characterised by checks and balances that ensure respect for the rights of young people and accountability for the way they are treated.”²² It has also been highlighted that special procedures should be developed specifically for children and young people to enhance these interactions.²³

While relatively little research has been undertaken specifically on Garda interaction with young people, some recent studies have begun to explore the interactions between children and Gardaí in Ireland, and have highlighted similar issues. Studies

¹³ General Comment No. 10, *supra* n.2 at para. 92

¹⁴ Rules 14&15, Part IV, Section A of the Child-Friendly Justice Guidelines

¹⁵ General Comment No. 10, *supra* n.2 at para. 97

¹⁶ Hinds, L., “Building Police-Youth Relationships: The Importance of Procedural Justice” (2007) 7(3) *Youth Justice* 195 at p.197

¹⁷ Kilkelly, U., “Policing, young people, diversion and accountability” (2011) 55 *Crime, Law and Social Change* 133 at p.133

¹⁸ Hinds, *supra* n.16

¹⁹ *ibid* at p.198

²⁰ *ibid* at p.202

²¹ *ibid* at p.203

²² Kilkelly, *supra* n.17 at p.134

²³ Hinds, *supra* n.16 at p.205

have shown an ambivalent relationship between young people and police, with both positive and negative views being expressed.²⁴ Distinctions were made by participants in one West of Ireland study between interactions with community officers on the one hand, and other “street” Gardaí on the other. While positive, non-confrontational interactions were reported with community officers, young people interpreted interactions with other Gardaí largely as “antagonistic and unfair”.²⁵ This translated into a cynicism about the purpose and effectiveness of the Gardaí overall.²⁶ Other studies have also highlighted negative interactions between young people and Gardaí.²⁷ In particular, young people in disadvantaged urban areas reported that they were seen as a nuisance and being moved on by Gardaí in their local neighbourhoods.²⁸ Feeney and Freeman found that almost two-thirds of the young people engaged in their study reported that a Garda had behaved in a way they considered unacceptable towards them, including disrespectful or impolite behaviour and stopping and searching without reason.²⁹ Young people have also reported feeling that their rights have not been respected in interactions with Gardaí.³⁰

These findings highlight the need to ensure that positive interactions are promoted in all contacts between police and young people. A key commitment of the *Tackling Youth Crime Action Plan 2014-2018* is to “build on the existing community policing partnerships and forums to enhance trust between local communities and their Gardaí.”³¹ The *Garda Síochána Children and Youth Strategy 2012-2014* also contained a commitment to “work to ensure their protection and we will be professional and respectful to them; we will be sensitive to their rights and needs if they come in conflict with the law or require our assistance”. While these commitments are positive, the findings of studies such as these identified here indicate that much more needs to be done. The distinction made between “community officers” on the one hand and “street Gardaí” on the other, underlines the importance of ensuring that all Gardaí – and not just those in specialist roles – receive a minimum level of training on the rights and circumstances of young people, and how to ensure that interactions and communication with them are respectful and conducive to good relationships.

It is an issue, however, that we have relatively limited information on the type and quality of Garda interactions with children and young people. Gleeson and Byrne have highlighted that information on stop and search practices are not public in Ireland.³² While the recent studies discussed above are beginning to highlight key

²⁴ Gleeson, H. & Byrne, M., “‘Some of them are alright’: The effects of experiences with community police officers on Irish young people’s attitudes toward the police” (2015) 15(1) *Irish Journal of Applied Social Studies* 70 at p.74

²⁵ *ibid* at p.75

²⁶ *ibid* at p.80

²⁷ Feeney, N. & Freeman, S., “What do young people think of the Gardaí? An examination of young people’s attitudes to and experiences of An Garda Síochána” (2010) 5(1) *Youth Studies Ireland* 3 at p.11

²⁸ Forde, C., Horgan, D., Martin, S., Parkes, A., “Children and Young People’s Participation in the Community in Ireland: Experiences and Issues” (2017) 17(1) *Irish Journal of Applied Social Studies* 3 at p.9

²⁹ Feeney & Freeman, *supra* n.27 at p.9

³⁰ Gleeson & Byrne, *supra* n.24 at p.76

³¹ Irish Youth Justice Service, *Tackling Youth Crime: Youth Justice Action Plan 2014-2018* (Dublin: Irish Youth Justice Service, 2013) at p.8

³² Gleeson & Byrne, *supra* n.24 at p.72

issues for children and young people, it is critical that children's voices are heard in a meaningful way in the process of reviewing Garda practice in this area, in line with national policy relating to children's participation.³³ The development of new policy and procedure should be informed by children's views and experiences, and consultation processes with children should be prioritised in reviewing Garda practice in every relevant area. The Commission on the Future of Policing should also take seriously the duty under Article 12 of the UNCRC to engage directly with children and young people in its work.

The Diversion Programme

The Garda Diversion Programme, originally established as the Garda Juvenile Liaison Scheme in 1963,³⁴ was given a statutory basis by the Children Act 2001.³⁵ The Diversion Programme is governed by Part IV of the 2001 Act, which sets out procedures relating to admission to the Programme and supervision while in the Programme. Before a young person is admitted to the Programme, he or she must be within the specified age range, accept responsibility for the behaviour complained of, and consent to be cautioned and, if applicable, to a period of supervision by a JLO.³⁶ Provision is also made under the Act that a conference can be convened in respect of the child to formulate an action plan for the child to prevent further involvement in criminal behaviour.³⁷ It has been noted that this raises particular challenges for police practice as police must combine "traditional functions with those of prosecutor, judge and probation officer with all of the conflicting issues they present for police governance and accountability."³⁸

The Diversion Programme in Ireland has been highlighted as a major strength of the Irish youth justice system, with commentators describing it as "overwhelmingly positive"³⁹ and as "one of our most celebrated interventions."⁴⁰ The strong focus on diversion mandated by the 2001 Act is a clear strength of the system. Nevertheless, a number of concerns have arisen around the implementation of the Programme in practice,⁴¹ and in particular around the due process rights of children.⁴²

³³ Department of Children and Youth Affairs, *National Strategy on Children and Young People's Participation in Decision-Making 2015-2020* (Dublin: Government Publications, 2015)

³⁴ O'Sullivan, N., "Building Trust and Confidence – Challenges and Opportunities for the Garda Síochána" (2015) 12 *Irish Probation Journal* 7 at p.7

³⁵ Children Act 2001 (No. 24 of 2001)

³⁶ Section 23 of the Children Act 2001

³⁷ Section 29 of the Children Act 2001

³⁸ Walsh, D. & Conway, V., "Police governance and accountability: overview of current issues" (2011) 55 *Crime, Law and Social Change* 61 at p.75

³⁹ Kilkelly, U., *Youth Justice in Ireland: Tough Lives, Rough Justice* (Dublin: Irish Academic Press, 2006) at p.94

⁴⁰ O'Sullivan, *supra* n.34 at p.8

⁴¹ Kilkelly, U., "Diverging or Emerging from Law? The Practice of Youth Justice in Ireland" (2014) 14(3) *Youth Justice* 212 at p.218; Swirak, K., "Problematising Advanced Liberal Youth Crime Prevention: The Impacts of Management Reforms on Irish Garda Youth Diversion Projects" (2016) 16(2) *Youth Justice* 162

⁴² Kilkelly, *supra* n.17; Smyth, P., "Diverting young offenders from crime in Ireland: the need for more checks and balances on the exercise of police discretion" (2011) 55 *Crime, Law and Social Change* 153; Walsh, D., "Balancing due process values with welfare objectives in juvenile justice procedure: Some strengths and weaknesses in the Irish approach" (2008) 3(2) *Youth Studies Ireland* 3; Brennan, A.M., "The Garda Diversion Programme and the juvenile offender: the dilemma of due process rights" (2012) 22(2) *ICLJ* 46; Campbell, L., "Garda Diversion of Young Offenders: An Unreasonable Threat

The decision whether or not to admit a child to the Diversion Programme ultimately lies with the Director of the Programme,⁴³ who has sole responsibility for deciding whether or not to admit the young person. Given the high level of police discretion involved in decisions around diversion,⁴⁴ and in particular the potential for net-widening due to the fact that children can be admitted to the Programme for behaviour that is anti-social but not necessarily criminal,⁴⁵ it is crucial that certain safeguards are in place. This is particularly important in light of the observation that young people who have become “known” to the Gardaí are often at higher risk of being drawn into further contact with the criminal justice system.⁴⁶ A key safeguard required by the international standards is that there is sufficient evidence to ground a charge against the child.⁴⁷ Commentators in this area have highlighted the importance of ensuring that there is enough evidence to warrant a prosecution.⁴⁸ This type of evidential check should be done in a systematic way to ensure that children are not being drawn into contact with the Diversion Programme needlessly.

A key issue relates to the right of the child to legal advice before admission to the Programme. This is a key requirement of the international standards, and in the Irish context, is made particularly important given amendments made to the Children Act 2001 in 2006 that allow evidence of admission to the Diversion Programme to be introduced to the court if the child is subsequently convicted for an offence and is being sentenced.⁴⁹ It has been said that this represents a “substantial change” to the Diversion Programme as a whole, and admission to the Diversion Programme may result in negative consequences to the child in the future.⁵⁰ It has also been noted that children are in a weak bargaining position compared to the police responsible for the decision-making.⁵¹ In light of this, it has been recommended that children should have access to legal advice (legally aided if necessary) before they are admitted to the Programme.⁵² The Gardaí have an important role to play in ensuring that children and their parents are informed both of the nature and potential consequences of involvement in the Diversion Programme, and to ensure that they understand their entitlement to seek legal advice prior to making any admissions.

Given the high level of discretion involved in decisions around admission to the Diversion Programme, a number of suggestions have been made to increase both the transparency of the process and the accountability mechanisms around it. Questions have been raised about whether there are sufficient checks and balances in this system.⁵³ Kilkelly has noted that accountability is particularly important in processes

to Due Process Rights?” (2005) 6(1) *Irish Journal of Applied Social Studies* 13; Griffin, D., “Restorative justice: A real alternative?” (2005) 15(4) *Irish Criminal Law Journal* 2

⁴³ Section 24 of the Children Act 2001

⁴⁴ Smyth, *supra* n.42 at p.157-158; Kilkelly, *supra* n.17 at p.135

⁴⁵ Kilkelly, U., *Children’s Rights in Ireland: Law, Policy and Practice* (Dublin: Tottel Publishing, 2008) at p.540

⁴⁶ Corr, M.L., “Young People’s Offending Careers and Criminal Justice Contact: A Case for Social Justice” (2014) 14(3) *Youth Justice* 255 at p.265

⁴⁷ Discussed above, see General Comment No. 10, *supra* n.2 at para.27

⁴⁸ Smyth, *supra* n.42 at p.160

⁴⁹ Section 48 of the Children Act 2001, as amended

⁵⁰ Kilkelly, *supra* n.17 at p.140

⁵¹ Walsh, *supra* n.42 at p.7

⁵² Kilkelly, *supra* n.17 at pp.145-146; Brennan, *supra* n.42 at pp.49-50; Campbell, *supra* n.42 at p.19; Griffin, *supra* n.42

⁵³ Smyth, *supra* n.42 at p.157

where a high level of discretion is given to police, and has suggested that these processes should be subject to judicial review.⁵⁴ She has suggested that an appeals process, whereby the young person has the ability to challenge a refusal to admit them to the Programme, would increase the levels of accountability.⁵⁵ Smyth has also called for “external oversight” to ensure that this appeals mechanism is sufficiently removed from the Garda structures and internal culture.⁵⁶ It has further been suggested that an explicit link with GSOC or the Ombudsman for Children might be a means of facilitating this type of external oversight.⁵⁷

Further, in order to increase the transparency involved in the process, it has been suggested that more information should be provided in the reports of the Monitoring Committee to provide greater insight into why young people are considered unsuitable for admission into the Diversion Programme, and to increase the ability to review the use of Garda resources.⁵⁸ This body, currently made up of both Garda and lay members, should be chaired by a lay member and should include those experienced in youth justice and child development, as well as academics with a particular expertise in empirical research. Both Smyth and Walsh have suggested the publication of criteria and guidelines governing admission and it is clear that transparency in decision-making in the Programme would help to increase transparency more generally.⁵⁹

Finally, it is timely to note that the Garda Diversion Programme has been subject to a comprehensive review by An Garda Síochána. Many of the key issues raised in this document are also subject to consideration by the Garda Diversion Review Group. In the process of any review of Garda practice in this area, full consideration should be given to the recommendations emerging from this review process.

Children in Garda Custody and the Interviewing of Children

In interviewing children suspected of involvement of a criminal offence, it is important that the procedural rights of children under Article 40(2) of the UNCRC are fully respected. Section 55 of the Children Act 2001 currently provides that Gardaí must carry out their duties in investigating offences involving children “with due respect for the personal rights of the children and their dignity as human persons, for their vulnerability owing to their age and level of maturity and for the special needs of any of them who may be under a physical or mental disability”. Children can be inherently disadvantaged by the adversarial nature of the police station environment, and scholars have argued that in light of this, children require special protections.⁶⁰ It is also important that the European Court of Human Rights have found that procedural adaptations may be required to procedures to ensure that children can effectively participate, and that the right to effective participation applies at the investigation stage.⁶¹

⁵⁴ Kilkelly, *supra* n.17 at p.136

⁵⁵ *ibid* at p.142

⁵⁶ Smyth, *supra* n.42 at p.164

⁵⁷ Kilkelly, *supra* n.17 at p.150

⁵⁸ *ibid* at p.143 & 147

⁵⁹ Smyth, *supra* n.42 at p.160; Walsh, *supra* n.42 at p.8

⁶⁰ Parry, R.G., “Protecting the juvenile suspect: what exactly is the appropriate adult supposed to do?” (2006) 18(3) *Child and Family Law Quarterly* 373 at p.375

⁶¹ *Salduz v. Turkey* (2000) 49 EHRR 19; *Martin v. Estonia* (2003) EHCR App. No. 35985/09

Children are entitled to have either a parent or guardian or, in their absence, another adult nominated by the member in charge of the Garda station to be present with them while they are being questioned and while they are making a written statement.⁶² The European Child-Friendly Justice Guidelines, however, state that children should be allowed to contact and have present a person that the child trusts in the absence of a parent.⁶³ Efforts should be made to allow the child a choice about the adult they wish to have present in the absence of their parent, but in all cases, the adult should be capable of carrying out the role effectively.

A crucial issue here is the right of access to a lawyer. The right to access legal advice is set out in the Children Act 2001,⁶⁴ and is also a Constitutional right.⁶⁵ While the courts have found that the actual presence of a solicitor during the interview is not necessarily required,⁶⁶ Garda policy has changed in recent years to allow the presence of a solicitor on a discretionary basis if a suspect requests this.⁶⁷ The Gardaí have a role to play in ensuring that children and their parents are given enough information to allow them to exercise this entitlement adequately. They should be notified in language they can understand of their entitlement to seek legal advice.

Finally, where children are detained in Garda custody, the statutory requirement under section 55 of the Children Act to treat children with respect for their rights and due regard for their vulnerability and any special needs is applicable. Section 56 of the 2001 Act further requires the Gardaí to ensure, as far as practicable, that children should not be allowed to associate with a detained adult, and should not be kept in a cell unless there is no other secure accommodation available. Article 37 of the UNCRC requires that children should only be detained as a last resort and for the shortest appropriate period of time,⁶⁸ and this applies equally to children detained in Garda stations. Detained children are particularly vulnerable, and given that Garda stations are not generally designed with the needs of children in mind, every effort should be made to ensure that the detention of children in these circumstances is a last resort. In all cases, efforts should be made to ensure that conditions are appropriate for children, that they are separated from adults, and that they have access to prompt and effective legal safeguards to enable them to challenge the legality of their detention at the earliest possible opportunity. Steps should be taken to ensuring that while in police custody, young people receive the necessary care, support and advocacy, including medical treatment, where required.

An Garda Síochána and Child Protection

Gardaí also have important duties under the Child Care Act 1991 relating to the protection of children.⁶⁹ Section 12 empowers a member of the Garda Síochána to enter any place and remove a child to a place of safety where they have reasonable grounds for believing that there is an immediate and serious risk to the health or welfare of the child, and that it would not be sufficient to await the making of an

⁶² Section 61 of the Children Act 2001

⁶³ Rules 28 &30, Part IV, Section C of the Child-Friendly Justice Guidelines

⁶⁴ Sections 57-58 of the Children Act 2001

⁶⁵ *D.P.P. v. Healy* [1990] 2 I.R. 73

⁶⁶ *J.M. (a minor) v. Member in charge in Coolock Garda Station* [2013] IEHC 251; [2013] 2 IR 175

⁶⁷ *An Garda Síochána, Code of Practice on Access to a Solicitor by Persons in Garda Custody* (Dublin: An Garda Síochána, April 2015) available at www.garda.ie at pp.8-9

⁶⁸ Article 37(b) of the UNCRC

⁶⁹ Child Care Act 1991 (No. 17 of 1991)

Emergency Care Order by Tusla, the Child and Family Agency, to ensure the child's protection. As soon as possible after the child is removed, under section 12, they should be delivered to the custody of Tusla, who then has responsibility for applying for an Emergency Care Order in respect of the child.⁷⁰

However, the use of these powers under section 12 was subject to scrutiny in recent years following incidents concerning Roma families where Gardaí removed children from their parents. This occurred following media coverage of a case in Greece where a blond-haired, blue-eyed girl was found to be living with a Roma family to which she had no biological link, generating accusations of abduction which were later determined to be unfounded.⁷¹ In the Irish cases, similar concerns were brought to the attention of Gardaí and two children were temporarily placed in emergency foster care while confirmation of their identity was established. In both cases, the children were found to be the natural children of the parents in question.

In a subsequent report, then-Ombudsman for Children, Emily Logan, concluded that while "An Garda Síochána cannot ignore concerns that are brought to its attention ... [i]t is necessary and appropriate to evaluate the source and nature of such concerns"⁷² and that any suggestions of concern for children "should have been evaluated far more critically by An Garda Síochána".⁷³ She recommended that a Garda Síochána protocol should be developed on the exercise of section 12 powers, which would provide detailed instruction on dealing with situations where section 12 is commonly used, and should "include specific guidance on the more unusual situations in which the identity of children is in doubt."⁷⁴

It was further recommended that an independent audit should be carried out into the use of section 12 powers by the Gardaí.⁷⁵ As a result, the Special Rapporteur on Child Protection, Dr Geoffrey Shannon, conducted this audit, and reported in May 2017, that while it was "unquestionably clear ... that members of [an Garda Síochána] are very concerned with ensuring the child's experience in Garda care is not traumatising",⁷⁶ this review raised a number of issues. In particular, the report found serious inadequacies with the Garda computer system, PULSE; significant deficiencies in training for new and existing members of an Garda Síochána in matters of child protection; and ongoing weaknesses in the relationships and co-operation between the Gardaí and Tusla, the Child and Family Agency.⁷⁷ Some of the recommendations arising from this report highlight the need for clear guidelines on the use of Garda powers under section 12 of the 1991 Act to be produced and made

⁷⁰ Section 12(3)-12(4) of the Child Care Act 1991, as amended.

⁷¹ <http://www.errc.org/blog/guilty-until-proven-innocent-injustice-racism-and-the-roma/88>

⁷² Logan, E., *Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013: Report of Ms Emily Logan*, at p.41 (available at <http://www.justice.ie/en/JELR/Emily%20Logan%20report.pdf/Files/Emily%20Logan%20report.pdf>)

⁷³ *ibid* at p.82

⁷⁴ *ibid* at p.110

⁷⁵ *ibid* at p.114

⁷⁶ Shannon, G., *Audit of the exercise by An Garda Síochána of the provisions of Section 12 of the Child Care Act 1991* (2017) at pp.xi (available at <http://www.garda.ie/Documents/User/Audit%20of%20Section%2012%20Child%20Care%20Act%201991.pdf>)

⁷⁷ *ibid* at pp.xii-xvi

publically available,⁷⁸ the need for comprehensive training on child protection and on diversity training,⁷⁹ and the need to publish statistics on an annual basis on the use of section 12 powers.⁸⁰ The report also recommended the establishment of Specialist Child Protection Units.⁸¹

These recommendations highlight the need for greater transparency and accountability mechanisms on the use of section 12 emergency powers, as well as the crucial need to ensure that all Gardaí are adequately trained in matters relating to child protection. Increasing levels of transparency through robust data collection mechanisms and public reporting systems would help to ensure that it is possible to review the use of section 12 powers in a regular and systematic manner, and would enhance Garda accountability for the use of these powers. The report also highlighted the need for specialised units to respond to child protection matters, but it is also important to ensure that *all* Gardaí receive adequate training on child protection, so that this expertise is mainstreamed in line with the widespread nature of child abuse and neglect, including child trafficking, as a societal concern.

Garda Handling of Sexual Crimes against Children

A further issue arises in relation to Garda handling of complaints involving sexual crimes committed against children. Children who have been the victims of sexual crime are especially vulnerable, and special care must be taken in Garda investigations in line with the particular circumstances of children. The UNCRC requires States to implement protective measures to protect children from all forms of abuse, including sexual abuse; these protective measures should include appropriate mechanisms for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.⁸² The UN Committee on the Rights of the Child has stressed that investigation of instances of violence must take place by professionals who have received comprehensive training, and should take a child rights-based and child-sensitive approach.⁸³ They highlight the need for “rigorous but child-sensitive investigation procedures” and emphasise that “[e]xtreme care must be taken to avoid subjecting the child to further harm through the process of the investigation.”⁸⁴ The Child-Friendly Justice Guidelines contain similar requirements, stating that “[i]n all judicial and non-judicial proceedings or other interventions, children should be protected from harm, including intimidation, reprisals and secondary victimisation”.⁸⁵

Through its work, the Child Law Clinic has become aware of three particular cases where young women who reported sexual crimes to the Gardaí did not receive the kind of care and attention that a professional investigation of their alleged crimes warranted. Key standards were not met and the issues identified as common strands in all three case studies examined by the Clinic included: children being compelled to make multiple reports to multiple agencies or agency staff and being subjected to repeated interviews; reluctance on the part of agency staff to believe allegations made

⁷⁸ *ibid* at p.xxi

⁷⁹ *ibid* at pp.xxiv-xxv

⁸⁰ *ibid* at p.xxvi

⁸¹ *ibid* at p.xxv

⁸² Article 19 of the UNCRC

⁸³ UN Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all forms of violence* (2011) CRC/C/GC/13 at para.51

⁸⁴ *ibid* at para.51

⁸⁵ Rule 11, Part IV, Section A of the Child-Friendly Justice Guidelines

by young people reporting incidents of sexual assault; questionable co-operation between the Gardaí and the HSE/Tusla and lengthy delays in investigations and follow-up. The result of these deficiencies in procedure was that significant further trauma was caused to the individuals involved.

This work has highlighted a number of factors that need to be present in Garda investigations of sexual crimes against children and young people. They include: a sympathetic attitude on the part of investigators; the need to take the child seriously; avoiding multiple interviews and video recording; timely investigation of complaints; a co-ordinated approach between the relevant agencies; and the need to keep the complainant informed about the investigation. Key recommendations highlight the need for greater focus on consistent implementation of existing policies in this area. The Scandinavian developed model of one-stop shop for child victims of abuse – the Barnahus/Children’s House model - has been identified as the Gold Standard in this area,⁸⁶ insofar as it provides children who disclose abuse with the opportunity to report their experiences, in a multi-professional, supportive and caring environment, and in a manner that is secure from an evidential point of view. The need for systemic reform and the introduction of these inter-agency models nationally is now urgently required. There is also a more basic need to ensure that existing standards are consistently applied. Regardless, reform is required to ensure that adequate systems are in place to ensure that these complaints are dealt with, with sensitivity, professionalism and the seriousness that the disclosure of sexual abuse and assault demands. Ensuring that children and young people who have already experienced abuse are not re-victimised or subjected to further trauma through the investigation process is a basic minimum standard that must be an absolute priority.

Accountability and Children’s Access to Complaints

Children, like adults, can complain about their treatment by the Gardaí through the complaints process established by Part 4 of the Garda Síochána Ombudsman Commission Act 2005.⁸⁷ It has been noted, however, that there is no provision for ensuring that the procedure followed when children make these complaints is age-appropriate or fully accessible by children.⁸⁸ Conway has suggested that it could be expected that complaints by children should be high, given the frequency of contact between young people and the police.⁸⁹ She notes that this is a particular concern given that they are often represented in mandatory referrals that concern incidents of deaths or serious harm.⁹⁰ GSOC’s Annual Report for 2016 noted that during 2016, there were a total of 246 cases identified where there was a potential risk to the welfare of a child, and 40 further files carried over from the previous year,⁹¹ however this does not indicate how many complaints were actually made by or on behalf of

⁸⁶ See *Child Protection in Iceland and the role of the Government Agency for Child Protection*, at pp.2-3 (available at <http://www.bvs.is/media/barnahus/child-protection-in-iceland-and-the-role-of-the-GACP.pdf>); see further Diesen, C., *Child abuse and adult justice: A Comparative study of different European Criminal Justice Systems handling of cases concerning Child Sexual Abuse* (Stockholm: Save the Children, 2002)

⁸⁷ Garda Síochána Ombudsman Commission Act 2005 (No. 20 of 2005)

⁸⁸ Kilkelly, *supra* n.17 at p.148

⁸⁹ Conway, V., “A sheep in wolf’s clothing? Evaluating the impact of the Garda Síochána Ombudsman Commission” (2009) 43 *Irish Jurist* 109

⁹⁰ *ibid.*

⁹¹ Garda Síochána Ombudsman Commission, *2016 Annual Report* (Dublin: Garda Síochána Ombudsman Commission, 2017) at p.39

children. Kilkelly has further noted that the low numbers of complaints by young people to GSOC may reflect a lack of awareness amongst young people about the possibility of accessing this process and/or a lack of trust or faith in the system.⁹² It is crucial to ensure that children have adequate access to these complaints mechanisms. This involves ensuring that the procedures involved in making a complaint are made appropriate to children, and that awareness is raised amongst children about their entitlement to make a complaint. Ensuring that children are given information about the complaints processes open to them and that these complaint processes can respond to them effectively and in an age-appropriate way is necessary if children's rights are to be adequately realised and their interests protected. Ensuring that these mechanisms also have the trust of young people will be much more difficult to achieve. In this regard, consideration should be given to establishing a young person's advisory group in GSOC so that appropriate steps can be identified in line with the experience and perspective of young people.

Conclusion

A number of issues relating to children should be given serious consideration in the context of the review by the Commission on the Future of Policing in Ireland. Children have high levels of contact with police, and this contact is often characterised by serious vulnerability and protection needs on the part of the child and/or the potential for antagonism when the child is coming into conflict with the law. Key areas that may merit further consideration have been discussed above, and include:

- The nature and quality of the interactions between Gardaí and young people when they come into contact on the street or in their communities;
- The Diversion Programme, including access to legal safeguards, and increased transparency and accountability in the Programme;
- The legal safeguards provided to children when they are interviewed or detained by the Gardaí;
- The duties of Gardaí in relation to child protection and in the investigation of child abuse and sexual assault;
- Complaints mechanisms for children.

Admittedly, most of these issues are presented from the adult rather than the young person's perspective and it is particularly important that the experiences and views of children and young people are taken into account in the work of the Commission on the Future of Policing. The right of the child to be heard in all matters affecting them is set out in Article 12 of the UNCRC, and is a core provision of international human rights law as it relates to children. The importance of this principle is highlighted in the place it has been given recently in national policy in relation to children. Both *Better Outcomes, Brighter Futures: National Policy Framework for Children & Young People 2014-2020*⁹³ and the *National Strategy on Children and Young People's Participation in Decision-Making 2015-2020*⁹⁴ highlight the importance of ensuring that children's voices are heard in matters affecting them. It is therefore important that children are consulted in the process of the current review of the Future of Policing in Ireland. Hearing children's voices on issues such as contact with the Gardaí on the

⁹² Kilkelly, *supra* n.17 at p.149

⁹³ Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The national policy framework for children & young people 2014-2020* (Dublin: Stationery Office, 2014)

⁹⁴ Department of Children and Youth Affairs, *National Strategy on Children and Young People's Participation in Decision-Making 2015-2020* (Dublin: Stationery Office, 2015)

street, their experiences of the Diversion Programme and being interviewed by the Gardaí, their experiences of contact with the Gardaí in relation to protection matters, and their experiences of complaints mechanisms are crucial to ensure that any review Garda practice relating to children is informed by children's experiences and voices. Consultation with children has the potential to greatly enhance any recommendations made going forward around the contact Gardaí have with children in the course of their work. The Child Law Clinic, in collaboration with the Cork Life Centre, would be delighted to assist in supporting the Commission's work in this regard.