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31 January 2018

Commission on the Future of Policing in Ireland
Second Floor
St. Stephen's Green House
Earlsfort Terrace
Dublin DO2 PH42
Ireland

Dear Sirs

I write to you in relation to the current consultation on Police Reform. I note the Terms of Reference.

My comments are enclosed together with two relevant documents.

I am happy to provide any further information that is of interest.

Best regards

[redacted]

Encs.

[redacted]

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Commission on the Future of Policing in Ireland

January 2018

Policing in Ireland has changed. Like many things, it has been the subject of many changes, changes which are predominantly positive. These changes and examples of their impact might be summarised under a few headings.

An urban country

Ireland was once made of of villages and townlands where people lived and worked. Now it is concentrated in towns and cities, with a commuting population. This has changed the nature of communities and it has changed the nature of policing and the nature of crime. This has many consequences. It is no longer possible for everybody to simply know the local Garda. The Garda does not have the same deep connections with local community figures that he or she might once have had. Crime is no longer typically confined to or investigated within a local area. It typically spreads itself over a larger geographical area.

A peaceful country

Ireland's policing is no longer dominated by the national security agenda resulting from the Northern Ireland Troubles. The Garda adopted to national security policing in a particular way. National security very properly became a priority and the force equipped itself to cope with the extraordinary demands that it threw up. It resulted in a situation where individuals in the force might have felt that they could take any action they needed to take to protect what they perceived in national security. National security is a matter of politics as much as policing, and barriers blurred as a result. Perhaps the lowest point of this system were the facts that are narrated in Peter Murtagh's book 'The Boss', in which a former justice minister who had also served in the Garda appeared to use the force as his own personal gopher service. This eventually concluded with the Kennedy and Arnold scandal.

There were also high points. Much heroism was shown in fighting terrorists. Great sacrifices were made to keep Irish people safe, at great personal cost and with little reward.

But now Ireland is largely at peace. Now we need steady, independent, evenhanded policing.

A prosperous country

Ireland is now in general terms a wealthy country. Just 30 years ago, within the memory of all the managers of today's police service, the situation was very different, and Ireland was one of the poorest countries in Europe. This rapid change must have many consequences in terms of the types of crime that are committed and the people who commit them. But perhaps a more serious consequence is the change for recruitment. Whereas before a career in the Garda Siochana was a great career with good opportunities good pay

and perquisites like a special healthcare scheme, that is now no longer the case. There are many alternative careers available to talented young people, and many of them are less stressful and require less moving around than the role of a Garda. At every level, there is an opportunity for skilled people to look outside the service to further their career. But the service is very limited in how it can recruit and induct experienced people from the greater workforce, even if these people have skills that are highly relevant.

A global country

Ireland used to be a genuine island, with limited enough links to the outside world. There were few immigrants. Now Ireland is part of a bigger global picture. The concept of Irishness itself has been broadened. This has many negative consequences in terms of the types of crime that may be committed, but it also has positive consequences. There is new talent available for instance, and new technology which can be applied to the job of policing. We can learn about what has been tried and what has worked in other countries.

A digital country

Like everywhere else, there is a whole world of online behaviour that is separate from the geographical realm. Practically every serious crime now has some sort of online element, whether that be phone records or emails and online purchases. New skills are needed to deal with this. These skills are needed across the organization, not just in some specialised unit.

The style of policing in Ireland

Ireland has a particular 'style' of policing which historians might say evolved in response to the situation after the civil war. Irish policing, in its dealing with the gneral public is cooperative where possible, corrective where necessary, and as much as feasible, non-punitive. An optimistic view (though one that some would dispute) is that the focus is on the spirit of the law rather than the letter of regulations.

It required great skill and experience to deploy the style effectively, to ensure that making allowance and exercising discretion did not degenerate into turning a blind eye or selective enforcement. It depended on the local Garda knowing the people he policed personally. We need to look seriously at this style and see how it can be moved forward and into the new world.

A new vision for Policing in Ireland

Policing in Ireland needs a new vision to meet the needs of a changing Ireland. I would suggest that the service be oriented as folows:

- a human rights service

Garda Siochana is the primary enforcer and protector of human rights in this country. We are all dependent on the Garda to protect our rights. 'Rights' are a complicated area, but at the most basic level the Garda's job is to make sure people are left alone and that their lawful wishes are respected. The Garda's planning should be oriented on this objective of protecting human rights. It needs to find practical ways to protect those who for whatever

reason (legal, economic, physical or otherwise) cannot protect their own basic rights.

It is only tenable to act to protect human rights on the basis of a strong ethical foundation. The way it polices is as important as the results it delivers in terms of enforcement and crime rates.

It must treat people (victims, suspects, criminals and the members of the force themselves) with dignity and respect.

It must be honest, with the public and with itself.

It must not behave in an underhand manner.

It should put ethics at its core. Ethics is not just about acting within the law. It means acting properly and justly. As an example of an approach elsewhere, in the United Kingdom, an ethics system has been put in place to consider issues that arise in policing that prompt ethical concerns and to put forward practical solutions. (see attached document.

- a digital service

Pen and paper policing is over. This has many consequences. In particular, there are many functions that Garda personnel are performing that could and should be done online. It is totally unreasonable for instance that Gardai should have to manage the distribution of passport forms and driving licence forms. It is questionable whether they need to be involved in the endorsement of such forms, especially when the people involved are totally unknown to them (one of the consequences of urbanization). Checking driving licence and insurance details are also functions that do not really need to be confined to the local Garda station anymore.

Equally, the core functions need to be carried out in a 'digital' manner. Crime and investigation needs to be accounted for in a way that will lend itself to analysis and improvement. Investigation itself needs to use the tools available to the full. And again, this is not about setting up specialised units. It is about increasing the general capability level.

- a process-driven service

Rather than being based alone on the skills of an experienced Garda who knows his community in depth, policing needs to be process-based. There needs to be a process for dealing with the various eventualities that arise. The process needs to be applied appropriately, but it needs to be followed. The process should reflect the positive ethos of Irish policing.

An example of how this might be done is policing enforcement. Garda stop motorists are stopped for offences like driving through a bus gate at a time that is not permitted. Drivers are 'spoken to' and are often not financially penalised for their behaviour. There are many advantages to this lenient system for the motorist and for enforcement generally. But it is hard work for the Garda involved and it is a sink on Garda resources. A streamlined process which provided for written warnings to motorists and the owners of vehicles involved in first-time occurrences of these offences would have much the same effect but would greatly reduce the time burden for Gardai.

- a measured and managed service

Measurement and management are critical. The failure to adequately measure crime has led to controversy before with the CSO refusing to publish statistics. How can anyone manage a service as large and diverse as the policing for Ireland without statistics that show what is working and what is not? The foundation for policing action and investment has to be a firm grip of what is actually happening on the ground, not supposition or anecdote. Honesty and transparency have to be the basis for measurement, not 'making the numbers' or 'form-filling'.

The numbers have to be the basis for the management of the service. There has to be a focus on getting value for money and on delivering a better service which provides better results. This is a difficult thing to do in a large organization. The expertise to do this to a high level is not necessarily available within the force today.

- an accountable service

There needs to be accountability. The first step to this is information, so the stakeholders know what is actually happening. It is all too easy to condemn generally good policing because of one particular incident. On the other hand, it is all too easy to praise poor policing, because of a few good stories or some positive PR.

There have been failures of accountability in the past. When things went wrong, no one at management level seemed to be found responsible. Sometimes this was an accident of management, a result of being too busy to concentrate on the development of proper structures and procedures. But sometimes the lack of accountability seemed to be by design. The 'car tyre' controversy was one example. The findings of various Tribunals present other examples. A current example of a lack of accountability is the operation of CCTV systems in rural areas which are paid for through local community intiatives. These systems are supposed to be operated under the auspices of the Garda Siochana, but it is not clear at all how the Garda Siochana is accountable for how they are used or whether they are appropriate to local policing needs, and indeed for how they are to be financed over the long term. Equally, surveillance systems like data retention (the retention of private data for the purposes of investigating crime) and ANPR (automatic number plate recognition, a system for collecting registration details of passing vehicles using video cameras) have been implemented with little accountability.

But how to make a police service accountable is a difficult problem. Police forces are in principle accountable to their communities, certainly, but the question is one of how the *custodes* are made accountable. Who is in charge of making the service accountable, what resources are available to do so, and how is this person him- or herself accountable for their behaviour? Is this person truly independent from the force which it is supposed to keep accountable? Are its arrangements really practical?

Somewhat similarly, it is difficult for management within a policing service to keep others accountable. For example, the exercising of discretion is ultimately part of the policing role, but how does management, which may be operating from a far remove, actually ensure that that discretion is being applied appropriately? The controversies about penalty points and random test-

ing illustrated this. The information was at hand to demonstrate the abuse, but there was no will, and perhaps no means to enforce authority in relation to unacceptable practices. Ultimately this will involve major changes in the form that policing takes, to make it more process-oriented and more measurable, but great management skill is also needed to ensure this multi-level accountability.

Solving this problem needs to be 'baked in' to our policing system. Accountability has to be considered at every level of policing. Considerations of confidentiality or bias cannot ultimately be allowed to stand in the way of ensuring that those who police us (and others involved in policing) can be held properly to account.

Conclusion and Next Steps.

Policing in Ireland has a difficult road ahead. The challenges are very large, perhaps much larger than they appear. The level of change is not just technical or even strategic. A fundamental shift in the service at a fundamental level is required. The first step is honesty and frankness. There has to be an end to lip service. Everyone needs to start telling things the way they are. Accountability has to be something that happens at every level, not just something that happens in a board room once a year. Making people accountable, and being accountable is not easy, but it is essential. Everybody involved in policing has to play a role. We can't let things 'slip' any longer.

References

Murtagh P, Joyce J, *The Boss.* Gill (see extract)

College of Policing, *UK. Ethics Committees - Terms of Reference* - http://www.-college.police.uk/What-we-do/Ethics/Documents/Ethics_Committees.pdf

Extract - 'The Boss'

Prologue

It was 2.20 in the morning, and there was a suspicious number of cars parked outside Keaney's pub. The two guards on routine night patrol pulled off the Boyle to Ballyfarnan Road and stopped. Garda Tim Griffin, the older of the two, took the front door. Garda Jim Mooney went around the back. Griffin's knock on the front door was answered almost immediately by Michael Keaney. Inside, there were eleven customers.

The guards had them cold.

One man made a half-hearted attempt to escape, dodging around the bar and into the kitchen. He ran into Garda Mooney and was ushered back into the bar. The gardai produced their notebooks, began writing down names and asking for explanations. Several of the customers said that they had been at a Fianna Fáil meeting: one added that he had been canvassing for Sean Doherty earlier that night. It was February 6th, 1982. The surprise general election campaign, caused by the downfall of Garret FitzGerald's coalition government on January 27th, was nearing its half-way point.

Michael Keaney was convinced that the garda raid and the election were connected. Earlier that night, the local Fianna Fáil TD, Sean Doherty, had arrived at his pub after a party meeting in nearby Ballinafad. Keaney believed that someone from Ballinafad had phoned the gardai to tip them off about the after-hours drinking, and that the caller's motives were political. But there had been some misunderstanding: Doherty and the party activists with him had come to Keaney's in the belief that a second campaign meeting was to be held there. Doherty left around closing time when it became clear that there was no meeting. Some of his group stayed on, however, and they were still there when the gardai arrived.

Keaney's belief that the raid had been sparked off by political opponents reflected his general view of local events. He was a returned emigrant who had given vent to his nationalist feelings by joining Fianna Fáil and becoming secretary of his local cumann, after years in England and Belfast. It was apparent to any casual visitor to his pub where his party, and his personal, allegiances lay. The pendulum on a wall clock was covered with an election sticker showing Doherty's picture against a tricolour.

The pub itself was a typical Irish hybrid. The two-storey building had living accommodation upstairs, a small shop at one end of the ground floor, the bar in the centre, and a "singing lounge" tacked onto the other end. In the car park in front there was a lone petrol pump. Business was not great, however. It was five miles from Boyle in north Roscommon, an area of low hills and lakes with damp beauty and sparse population. It was near to the picturesque Lough Key but on the wrong side of the lake to benefit greatly from the holiday centre and forest park on the southern shore.

Keaney had to keep his year-round customers happy, and to him that meant allowing some after-hours drinking. But that policy had landed him in regular trouble. In his first year the pub was raided by the gardai on three occasions. He got away with a warning the first time: the second and third raids led to court hearings and two endorsements on his publican's licence.

Just after Christmas, 1980, he was raided for the fourth time. It was the Sunday night between Christmas and the New Year and the guards arrived about 11.30, only an hour and a half after the official closing time. Kearney was outraged: it was the holiday season and it was not really the middle of the night. He was so upset he phoned Sean Doherty, then the junior Minister for Justice in Charles Haughey's first Government, at his home in Cootehall, just four miles away. Doherty agreed to see what he could do about it.

Doherty did not waste much time. He phoned the garda station in Boyle looking for the policeman who had carried out the raid. The garda was not there at the time but he returned the Minister's call shortly after 3 a.m. Nothing more was heard of the raid.

Keaney had not had any other encounters with the law since that incident. Now, in February 1982 and in the midst of the general election campaign, eleven people had been caught drinking in his bar more than three hours after closing time. He decided to use his political contacts again, to ask Doherty to do something about his fifth raid.

Nobody could have foreseen the consequences.

Ethics Committees

An explicit commitment to integrity is absolutely essential to the legitimacy of policing. **Our behaviour, actions and decisions must always consider public interest. We value public trust and confidence in policing as an institution, and to earn this we need to be open to scrutiny and transparent.** We recognise also that professional ethics is far broader than integrity alone. It incorporates the requirement to give an account of one's judgments, acts and omissions. In simple terms it is not only about doing the right deed but also about doing it for the right reason.

In recent years the actions of a small number of Police Officers has led to a heightened focus on the integrity of police officers and of police forces. The Service has led the response, ensuring that it has investigated and dealt with many of the specific issues and will continue to do so. National policies and guidance documents have been produced to ensure consistency in a number of areas, including gifts, hospitality and secondary employment and the College of Policing published the Code of Ethics.

One of the measures taken by a number of forces, to be more transparent and demonstrate their commitment to integrity, is the introduction of Ethics Committees. The remit of an Ethics Committee is to **promote the highest standards of ethical conduct, providing a focus for education into ethical issues, a source of support for others and ensuring compliance with organisational values.**

The development of Ethics committees was undertaken by a 'Proof of Concept' group consisting of eight forces: Cleveland, Durham, Essex, GMP, Northamptonshire, South Yorkshire, Staffordshire and Wiltshire. In her capacity as National lead for Professional Ethics and Professional Standards, CC Cheer led on this work.

Ethics Committees offer an opportunity for the Police Service to develop a structured environment in which to discuss and debate some of the most difficult and contentious issues we face. They have the potential to improve and strengthen the delivery of policing services to the public and to be seen to be taking the recent integrity challenges seriously. Ethics Committees are advisory groups and not decision making bodies; and will examine current as well as historic matters. They may be asked, in certain circumstances, to advise on live operations or events, or examine a decision maker's application of the National Decision Model (NDM). Their remit is to discuss and provide advice about ethical issues not just to scrutinise the application of policy and procedure. The Committees add value and provide something in addition to the current audit and scrutiny processes.

DRAFT

ETHICS COMMITTEES - TERMS OF REFERENCE

Purpose

The Ethics Committees are responsible for enhancing trust and confidence in the ethical governance and actions of Cleveland Police and the Office of The Police and Crime Commissioner. Responsibility is both internal and external in focus and may include representation from strategic partners. They will discharge responsibilities by;

- Promoting the highest standards of ethical conduct.
- Provide a focus for education into ethical issues.
- A source of support to others.
- Ensure compliance with organisational values.

Objectives

To effectively discharge their function Ethics Committees will consider the following:

Policy and Procedure

- Provide advice to those engaged in the development or review of force policy and procedure.

- Ensure policy and procedure reflects the stated values of the force and police service.

Decision Making

- Review the decision making of others.

- Provide 'live' support to decision makers.

Leadership

- Set the ethical standards expected of all leaders.

- Support and if necessary challenge the ethical conduct of leaders.

Culture

- Develop organisational values.

- Promote the purpose and adoption of value based action and decision making throughout the force.

- Ensure force values support the diverse nature of the policing environment.

Conduct

- Support those engaged in or affected by misconduct investigation, especially those who challenge conduct (whistle-blower).

- Ensure investigations are conducted ethically and in compliance with relevant process and force values.

- Consider potential ethical conflict in relation to matters such as procurement, hospitality, allowances/expenses and personal association.

People

- Staff performance in upholding the values of the force and police service.

- Inter-personal relations, for example behaviour that may fall short of the conduct threshold but indicate a failure to afford an individual dignity or equality in treatment.

This is not a prescriptive list of objectives. It may be appropriate for the committees to adopt a flexible approach to the level of support and challenge undertaken and the breadth of responsibility to meet the fluid policing environment.

It is not envisaged that all relevant matters will be referred to the committees, there should however be a mechanism by which referrals can be made.

Framework

The framework for delivery should be structured so as to support decision makers and leaders on ethical issues. Whilst they should not be viewed as having the power to direct or regulate, the committees will be expected to advise and act as fierce advocates for the public. The following should be considered;

Operational

This will be achieved through an internal ethics board (use of the term board differentiates between operational and strategic groups). This may not necessarily be a stand-alone entity and it may be appropriate if it were to be a sub-set of a relevant existing group e.g. Integrity and Transparency. Leadership should however be at a senior level e.g. Chief Constable/Deputy Chief Constable.

The ethics board should be representative of the force structure including representation from the Office of the PCC. If the board is derived from members of an existing group, additional independent members will be sought.

The Chair will be responsible for determining the agenda. Submission of agenda items will be through the force corporate meeting framework or in some cases an individual may identify or request potential agenda items. Where possible requests will be supported by a written submission, which will include reference to the Code of Ethics, the 'force ethical decision making matrix' and any other supporting material. The confidential reporting system may also be used to raise concerns regarding the ethical conduct of others. In such cases the Head of Professional Standards will refer the matter to the Chair for consideration.

A quorum will be 5 members (inclusive of the Chair). The Chair may exclude from whole or part of the meeting any member considered to be closely associated with the agenda item(s).

The board will follow the force corporate meeting framework, however it will be expected to present a report of findings and any recommendations made.

Meetings should be frequent (quarterly) and follow an agreed published timetable. Urgent or operational matters can be addressed by delegated members.

Strategic

The strategic committee must have the ability to challenge Chief Officers/PCC. A degree of independence from the force is therefore very desirable. How this will work in practice will be influenced by local environmental issues. It may be appropriate to seek involvement from such areas as; Higher Education (University), Health, College of Policing, Legal/Financial/Audit, Independent Volunteers. The committee should where possible be representative of the diverse nature of the local policing environment. It may not be appropriate to involve political figures or institutions.

The strategic committee need to meet less frequently. It may be desirable to only remit those matters directly relating to Chief Officers/PCC and those where there has been significant public disclosure or interest.