



2nd of February 2018

Commission on the Future of Policing in Ireland
St. Stephen's Green House,
Earlsfort Terrace,
Dublin, D02PH42.

Re: Law Reform Commission Proposed New Programme of Law Reform

Dear Commissioners,

The Irish Criminal Bar Association is a non-profit association of those barristers who practice in criminal law. We count among our members those who prosecute and defend criminal cases at all levels of the criminal justice system.

We are aware that the Bar Council of Ireland has made submissions to you and of the content of those submissions. We endorse those submissions without reservation. On behalf of our members, we would also add the following.

As referred to in the Bar Council submission, when suspects are being interviewed, there is a practice of writing out the questions asked and answers given in long hand. These hand written notes are then typed out and served on the defence early in the conduct of the criminal prosecution. This practice dates from the articulation of the Judges' Rules in 1912. The significance of those rules has not been entirely lost to modernity as sometimes suspects make admissions outside of garda custody and it is appropriate that evidence of those admissions be governed by rules of practice designed to limit the possibility of error or fabrication. To this end, the Judges' Rules remain adequate.

However, where interviews are video recorded, the requirement to write out the questions and answers adds significant work and time to the interview process. Without making any criticism of the gardaí taking them, the notes taken are often incomplete and require comparison with the video of interview in almost all cases. It mostly falls on counsel to conduct this comparison and it is often a lengthy and torturous task. It adds significantly and unnecessarily to the workload required to properly represent either the prosecution or defence in criminal cases.

It is our view that the interests of all concerned - accused, gardaí and lawyers - would be better served by dispensing with this requirement where an interview is being recorded.

Following interview, a civilian typist could generate a transcript of the interview from the recording at greater speed, cost and accuracy than at present. One anticipates that the cost of using typists in this way would be more than offset by shortening interviews, thereby freeing up garda resources, and in repurposing the typists that are already used to type up the hastily scribbled memos of interview.

We also wish to stress the need for open and accountable policing. Often our members, dealing with a volume of individual cases, reach views on aspects of garda practices, their efficacy and their effects on the rights of citizens. These views are even sometimes afforded a certain eminence in public discourse. However, while such views are often informed by considerable experience, they are no substitute for publicly available information and data in promoting rational and considered public discourse on policing and the use of police powers.

It is our view that garda procedures and policies should be publicly available unless their publication may have a real impact on the garda capacity to investigate crime. It appears to us that this is the case in the UK and broadly throughout the US. Here, attempts to obtain those materials or otherwise establish the procedures that ought to have been followed in a particular case, is often at the mercy of the prosecuting garda whose case one seeks to undermine. The same inquiries can yield disparate results in different cases.

An example of an area where garda practice is both a pragmatic and modern approach to investigating crime but also contains significant risks of injustice through the want of transparency, is the use of what is called “G-Tube”. This is a part of the PULSE system where CCTV footage can be uploaded for viewing by all gardaí with access to PULSE. Where an offence is caught on CCTV, the offender is unknown, and the footage clearly shows the offender’s face, it is used to see if gardaí outside of the investigation recognise the offender. However, in prosecutions taken from the investigations in which a suspect is generated by “GTube”, it appears that gardaí may be reluctant to acknowledge the role of “GTube”, it is unclear whether there are any protocols or safeguards on its use and the nomination of a suspect. Certainly, once a suspect is nominated by gardaí from GTube, there does not appear to be a practice of having any eyewitnesses to the offences concerned partake in an identification parade, allowing for an objective testing of the identification of the suspected offender. This practice creates cases where the guilt or innocence may be predicated on the word of a single garda purporting to recognise an offender absent safeguards against mistake, undue influence or cognitive bias.

The use of “GTube” is an undeniably useful investigative tool. However, as with other areas of practice, clear and transparent guidelines would not harm its effectiveness. They would instead create protections against error or misuse.

We are also of the view that data should be gathered and available on the use and utility of certain individual investigative steps, i.e. the use of: stop and search powers, search warrants, access to mobile phone data, inference provisions in garda interviews, formal and informal identification procedures, and the taking of DNA or other samples/prints. Those individual

steps often require gardaí to interfere with the rights of individual citizens in service of the public good. Yet where they do not result in a prosecution, the invocation of those powers is almost never questioned. In support of such openness, we would point to how analysis of drink driving is helped by knowing the total number of breath tests administered, the number of prosecutions commenced, and the number of convictions ultimately obtained.

The provision of greater data and information, and the greater transparency this should bring would allow for greater understanding of the utility or inadequacy of the powers available to gardaí, and procedures adopted by them. .

It is recognised that the investigation of crime is often and complex, demanding and unforgiving pursuit. To that end, where transparency is sought of investigative failings, this is not done with a view to creating an environment in which policing is carried out defensively, out of concern for the disciplinary consequences of making mistakes. Every practitioner of every profession makes mistakes, and gardaí are no different. Identification and recognition of those mistakes, and their causes, is central to improving Irish policing. The sooner mistakes are recognised, the easier their consequences are remedied.

If any queries arise from the foregoing, or if we can be of any further assistance please do not hesitate to contact us.

Yours sincerely,



Eoin Lawlor
Chairperson

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