

AFTER HOURS PAGING SERVICE: 086 254 0442

Submission to the Commission on the Future of Policing in Ireland

As criminal defence solicitors, we engage with An Garda Síochána on a daily basis. We acknowledge that the Gardaí play a vital role in our society in upholding the laws of our country and, as part of the criminal justice system, form a key part in a successful, functioning democracy.

We welcome the establishment of the Commission on the Future of Policing in Ireland, however, we believe that there are various improvements which could be made to An Garda Síochána in order to continually strive to ensure that we have a fair and balanced system of policing in our country. A properly functioning police force protects both the interests of the individuals who come into contact with An Garda Síochána, and the members of An Garda Síochána themselves.

We set out below what we submit are key areas for consideration within An Garda Síochána:

1. *Accountability within Garda Stations*

a. A statutory right of attendance for lawyers during interviews

The current legal position as to the right of solicitors to be present during Garda interviews of people detained in Garda custody remains uncertain. Although there is case law on the matter, the Government has yet to legislate on the issue, which is unacceptable for both solicitors and members of An Garda Síochána. It is well established in both Irish and international case law that an individual is at their most vulnerable in a police station, and accordingly a right of access to a lawyer at this stage of the criminal justice process is a fundamental human right. However, without the right being extended in Ireland to include the right to have a lawyer present during any questioning of a detained person by the Gardaí in the Garda station, the right is essentially being rendered ineffective and is in our view a major failing of our current system of policing.

b. Mandatory cameras

In order to ensure visibility of the treatment of all persons detained in Garda custody, we submit that mandatory CCTV cameras should be installed in all custody suites and other areas of Garda stations as appropriate. The cameras would serve an important dual purpose of ensuring that all detainees are dealt with in the correct manner, and to act as an independent clear record in the event of complaints regarding excessive use of force by members of An Garda Síochána.

c. Treatment of persons with mental health difficulties

From our experience of advising people with mental health difficulties in the Garda station, we submit that all members of An Garda Síochána should receive appropriate training in respect of dealing with mental health issues in custody. We have experienced situations where there has been a refusal to postpone an interview in circumstances where we have had grave concerns regarding an individual's mental state and fitness for interview. Whilst we respectfully acknowledge that there are certain urgent situations which require the Gardaí to proceed with their questioning without delay, and protocol is available to assist in such circumstances, we submit that in the majority of dealings with persons with mental health difficulties, consideration be given to

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dealing with the situation on a more balanced, measured and less urgent basis which is more appropriate for the circumstances.

d. Right to Information in Garda stations

The EU Directive 2012/13/EU on the Right to Information in Criminal Proceedings entitles an accused person to know and be informed of the allegation made against him. As solicitors we frequently encounter a blanket refusal by the Gardaí to provide any information prior to the interview of a detained person. In our view, such refusal flies in the face of fairness to an accused person and the equality of arms between the accused person and State. We urge the Commission to examine the systems used by members of An Garda Síochána in assessing what information is, and should be, disclosed to solicitors and detainees in Garda custody.

2. *Improved efficiency and use of resources*

a. System of disclosure

In respect of the system of legal disclosure as part of criminal prosecutions, we submit that major improvements could be made in terms of efficiency and more sensible use of technology. One example of current inefficiencies is the practice of individual Gardaí personally serving one or two pages of disclosure on a solicitor by physically attending the solicitor's office. We ask the Commission to consider whether greater emphasis should be put on the use of technology in streamlining and improving the overall system of disclosure.

b. Memorandum of interview

It is standard Garda practice during a cautioned interview of an individual to take a handwritten memorandum for the given purpose of having a full and accurate account of the interview. We submit that this practice is inefficient, outdated and unnecessary; every interview is recorded on DVD which makes the requirement for an almost verbatim memorandum defunct. We believe it would be more sensible and better use of Garda resources for the Gardaí to take whatever notes as they feel necessary for their investigation during interview, and to not unnecessarily prolong an interview, and by association a detention, by the obligation of a detailed memorandum. We accept that this may necessitate an amendment of the Judges Rules.

3. *Interaction with juveniles*

a. Dealing with juveniles in custody

Under the current model, we believe that most Garda stations are not adequately equipped to deal with juveniles present in Garda custody. In accordance with the Children Act 2001, where possible, juveniles should not be held in a cell whilst in the Garda station. Unfortunately our experience is that the majority of juveniles in custody are detained in cells, which are considered unsuitable for their age, and requests to hold them elsewhere are declined. We ask that the Commission consider whether this is a practice occurring consistently across all Garda stations and whether measures can be put in place to appropriately assist the members of An Garda Síochána in accommodating juveniles.

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b. Inferences during interview

Under the Criminal Justice Act 2007, Gardaí are entitled to invoke inferences in certain interviews whilst questioning a detained person. Given the complexity of the legislation, which is acknowledged by An Garda Síochána by virtue of the special procedure which the Gardaí follow whilst conducting an inference interview, we firmly submit that there are no circumstances which justify invoking inferences whilst questioning a juvenile. We have experience of Gardaí invoking such inferences with children as young as 14 years old.

c. Juvenile Liaison Programme

The Juvenile Liaison Programme is an excellent system which, if run correctly, has the potential to divert many juveniles away from the courts system and dealt with in manner more appropriate to rehabilitating and helping young people. However, the current programme could be applied more consistently and in a more transparent manner. As a juvenile's defence solicitor, we are not privy to the decision making process involved or the reasons why a child is deemed ineligible. We believe it should be a statutory requirement that a juvenile receives legal advice prior to engagement with the Juvenile Liaison Programme, and that there is a responsibility on the Gardaí to be as open and transparent as possible in their dealings under the programme. In doing so, we submit that there could be a significant reduction in the number of children before the criminal courts.

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