

**Submission of IHREC (Designate) to the
Cabinet SubCommittee on Justice on the
Establishment of an Independent Policing
Authority**

May 2014



I. Introduction

- 1) The Irish Human Rights Commission (“IHRC”) was established pursuant to the Human Rights Commission 2000. Its functions include reviewing the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and making recommendations to Government thereon. The Irish Human Rights and Equality Commission Bill 2014 envisages the merger of the Equality Authority and the IHRC into a single enhanced body whose functions will include the functions of reviewing law and practice and making recommendations to Government thereon.
- 2) The IHREC (Designate) welcomes the opportunity to make the present written Submission to the Department of Justice and Equality and welcomes the commitment by Government for the establishment of an independent Policing Authority.
- 3) Accountability in the policing structure of the State has been a significant theme in the work of the IHRC since its inception and a number of policy statements and legislative observations have been published which underline the importance of a human rights compliant police service in the State.¹ This is unsurprising given the IHRC’s genesis in the Good Friday Agreement and the influence of the Patten Report and attendant policing reforms introduced in Northern Ireland. The principle of equivalence of rights North and South is a key principle in the Good Friday Agreement.
- 4) Significantly, the IHRC commissioned a substantial piece of research by Professor Dermot Walsh in relation to human rights and An Garda Síochána, which was published as a book in 2009 entitled *Human Rights and Policing in Ireland: Law Policy and Practice*.² Many of the issues examined in that book, and previous contributions on policing matters by the IHRC, have relevance to the matters being considered in the context of developing an independent Policing Authority.
- 5) The IHRC and its sister body, the Equality Authority, are represented on the Strategic Human Rights Advisory Committee of An Garda Síochána (“SHRAC”), which is chaired by an Assistant Garda Commissioner. The establishment of SHRAC is part of the efforts of An Garda Síochána to incorporate and mainstream human rights and equality protections in the policies and procedures of the organisation. The IHRC and the Equality Authority also engage in training of Gardaí, although this is not as yet formalised in the Garda training curriculum.

¹ See for instance, *A proposal for a New Garda Complaints System*, IHRC, December 2002; *Observations on the Scheme of the Garda Síochána Bill 2003*, IHRC, November 2003; *Observations on the Scheme of the Garda Síochána Bill, 2003*, IHRC, February 2004; *Policy Statement: Human Rights Compliance of An Garda Síochána*, IHRC, April 2009.

² *Human Rights and Policing in Ireland*, Walsh, Dermot, Clarus Press, 2009.

- 6) This submission makes proposals on the establishment of an independent Policing Authority, in particular, it will consider the functions and responsibility of the Authority, the appointment and membership of the Authority, its relationship with Government and the Oireachtas; and the possible implications for An Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate.

II. Functions and Responsibility of the Policing Authority

- 7) The independence of the police service from executive control is central to the credibility and the capacity of the police service to protect human rights. The IHRC has previously stated that effective oversight bodies, coupled with transparency and engagement with the community, are core mechanisms of human rights accountability. As far back as 2004, in considering the Garda Síochána Bill preceding the 2005 Act, the IHRC argued that the vesting of oversight and appointment functions with an independent and representative agency, such as a Police Authority, as recommended by the Patten Report, could make a valuable contribution to the promotion of human rights within Irish policing.³
- 8) Issues of national security policing should be overseen by an independent body. The IHRC has previously recommended that GSOC be permitted to examine complaints against gardai even where issues relating to national security are involved. Apart from complaints from members of the public, the Authority should be authorised to oversee issues relating to national security policing, including stipulating policies and procedures which should apply where national security policing impacts on the fundamental rights of individuals. The Authority should also have a liaison role with any Oireachtas committee which has competence in the area of national security policing review. The presence of independent bodies to provide oversight on this issue is a requirement of the European Convention on Human Rights and lessens the risk that the State may be found in violation of the Convention in particular cases.
- 9) The IHREC (Designate) would draw attention to the fact that the issue of police accountability is given detailed expression in the European Code of Police Ethics.⁴ Section VI of the European Code of Police Ethics is exclusively concerned with accountability and control of the police.⁵ Article 59 of the European Code provides that “[t]he police shall be accountable to the state, the citizens and their representatives. They shall be subject to sufficient external control.” Likewise, the Patten Report emphasises the importance of the police being accountable to the citizens as well as the State.⁶ The Patten Report identifies five aspects to accountability: (1) democratic accountability, by which the police are accountable to the elected representatives; (2)

³ See, *Observations on the Garda Síochána Bill, 2004*, at p. 1.

⁴ *The European Code of Police Ethics*, Council of Europe Recommendation, Rec (2001) 10.

⁵ See also Articles 12, 16 and 17 of the European Code of Police Ethics.

⁶ Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999.

transparency, by which the community is kept informed; (3) legal accountability in the event of abuse of police powers; (4) financial accountability; and (5) internal accountability, by which officers are accountable within a police organisation.⁷ The Patten Report states that “[a]ll these aspects must be addressed if full accountability is to be achieved, and if policing is to be effective, efficient, fair and impartial”⁸ There is an additional aspect of accountability which is increasingly evident in the years since the publication of the Patten Report, namely the responsibility of the State Parties to the European Convention on Human Rights to ensure that proper accountability structures exist within their police forces to ensure: effective investigations following suspicious deaths (Article 2); proper planning and oversight of police operations to address foreseeable risks of human rights violations (Articles 2, 8, 13) and proper complaints mechanisms following any human rights violations that can occur at the hands of police (Article 13 when read in conjunction with Articles 2, 3, 8 and 14).

- 10) In particular, the IHREC (Designate) recommends that the Policing Authority should include within its statutory remit, the following functions and responsibilities:
- (a) Supervise the functioning of the Garda Commissioner’s Office and supervise the discharge of functions by the Commissioner including supervision of national security policy and practice;
 - (b) Appoint, supervise and, where appropriate, discipline senior management within An Garda Síochána, including the Garda Commissioner, the Deputy Garda Commissioner and Assistant Garda Commissioners.⁹ Such office holders should be fully accountable to the Authority for the performance of their functions and be liable for removal from office by this body if warranted;
 - (c) Establish policies or procedures for An Garda Síochána, including the issuing of policy Directives;
 - (d) Cause to be published and made accessible to the public all sections of the Garda Code and Garda operational policies and procedures, with the exception of certain clearly-defined tactical and/or security-related procedures;¹⁰
 - (e) Review the adequacy and appropriateness of the policies and procedures which underpin the operation of an effective policing service;
 - (f) Monitor and address human rights and equality compliance by An Garda Síochána at every level of its operations and align breaches of service/discipline or criminal offences identified by GSOC and which would also

⁷ *Ibid*, at p. 22.

⁸ *Ibid*.

⁹ In addition, there should be express provision for the consideration of external applicants to such posts.

¹⁰ An Garda Síochána are currently outside the scope of the Freedom of Information Act, 2000. It is noted that freedom of information legislation in Northern Ireland requires the police service to publish their written policies. As a result, considerable progress has been made in Northern Ireland regarding the publication of police policies and codes of practices.

reveal a breach of human rights or a discriminatory act with disciplinary procedures within the force.¹¹

- (g) Review the adequacy of standards in relation to the training of An Garda Síochána and the structures, policies and procedures for assessment and development of those standards, with a very specific emphasis on training in human rights and equality;
- (h) Set objectives and performance targets for An Garda Síochána and monitoring and reporting on the achievement of those targets, including in relation to human rights and equality compliance;
- (i) Ensure An Garda Síochána continuously improves performance;
- (j) Consult with the community to obtain their views on policing and make arrangements to ensure their co-operation with the police in preventing crime.
- (k) Liaise with the National Preventative Mechanism established under the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (OPCAT) and ensure that its recommendations relating to policing services are addressed.

In order to discharge these functions, the Authority should be ensured a stable and sufficient budget over which it has autonomous control. The Authority should have control over the selection and appointment of its own staff.

III. Appointment and Membership of the Authority

- 11) To ensure that the independence of the Policing Authority from the executive is real and not illusory, the members of the Authority should be chosen and appointed through an open and transparent process. To ensure a stable mandate the appointment of members should be expressly set out in the legislation and members should serve for a specific duration. Although, the mandate may be renewed, it is recommended that the diversity of its members is ensured. The policies, procedures and criteria for the selection and terms of appointment of the members should be documented and readily available to aid transparency and attract appropriate candidates.
- 12) In addition, the composition of the Policing Authority and the appointment of its members should be in accordance with a procedure which allows for a pluralist and independent Authority, which may be ensured by the appropriate oversight and input of the Oireachtas. There should be representation from different sectors of society, including minorities and representatives from the community more generally.¹² The Authority should also be gender balanced. There is also scope for political

¹¹ It is noted that the Irish Human Rights and Equality Commission Bill, 2014 includes a duty on public bodies at section 42 to “have regard to” the elimination of discrimination, promotion of equality and to protect the human rights of its members, staff and the persons to whom it provides services, which will also apply to An Garda Síochána.

¹² The nine grounds covered by the equality legislation may be a useful reference in this regard, as well as taking into account the needs of certain geographical communities.

representatives to be on the Authority, although such representatives should not form a majority. There should also be a representative from the Department of Justice and Equality.

IV. Its relationship with the Government and the Oireachtas

- 13) The Authority should have an organic link, and be directly accountable to the Oireachtas, rather than a Government Department. There is limited usefulness in severing the Commissioner's linkage with the Minister for Justice and Equality, if it is intended to restore this linkage at the Authority's level. Consideration should be given for a separate vote for the Authority to ensure it can discharge its functions. The Authority should be in a position to feed into the everyday detailed work of Parliament, particularly the Joint Committee on Justice, Defence and Equality and the mooted subcommittee on Human Rights and Equality. The Authority can in this way be accountable to Parliament in the discharge of its functions.

V. Implications for GSOC, the Garda Síochána Inspectorate and the Confidential Recipient

- 14) The functions of the Police Authority must be calibrated in such a way as not to encroach or undermine the work of GSOC, but rather should compliment and support it. The Policing Authority should have a defined relationship with GSOC that reinforces the independence of the latter, while allowing the Policing Authority to bring to the attention of GSOC matters of concern that might warrant an investigation by GSOC. In particular, there should be alignment of disciplinary procedures which flow from GSOC investigations including, where serious allegations arise, the placing of officers under suspensive sanction (such as placing the member concerned on administrative leave pending judgment in criminal offences.)
- 15) The IHREC (Designate) has recommended that GSOC be insulated from Ministerial control and that it be independent in its functioning and budget. Rather than reporting to the Minister, it is recommended that GSOC be structurally linked to the Authority to allow for the implementation of its recommendations to be reviewed by the Authority. However, GSOC should itself be accountable to the Parliament by appearing before Parliamentary committees as required.
- 16) The Garda Síochána Inspectorate, established under Part 5 of the Garda Síochána Act, 2005, would need to be realigned with any new Policing Authority, in order to ensure that reporting procedures are through such an Authority and not the executive as is the case at present. The functions of the Inspectorate should be set out in amending legislation with issues of structural or systemic concern capable of being referred to the Inspectorate by the Authority.

- 17) Similarly the Authority should be functionally linked to the Office of the Confidential Recipient, whether that office is merged with another body or remains stand-alone. In particular, issues of systemic importance arising from confidential reporting by members should be capable of being captured in the Authority's ongoing review of policing practice and its development of policy and practice to strengthen human rights and equality observance within the Service. Such confidential reporting should also be capable of corroborating complaints made by members of the public to GSOC, subject to procedural safeguards relating to the use of confidential information provided.

V. Conclusion

In conclusion the IHREC (Designate) would make the following recommendations:

- 1. That the State establish an independent oversight authority in respect of the operation of An Garda Síochána that would ensure public confidence and trust in An Garda Síochána and minimise political influence in the operational aspects of the work by An Garda Síochána;**
- 2. That the Authority's statutory remit should include the functions and responsibility as set out at paragraph 9 (a) to (k) of this submission;**
- 3. That the appointment of members to the Authority is through an open and transparent process, with the appropriate oversight of the Oireachtas**
- 4. That the appointment of its members should be in accordance with a procedure which allows for a pluralist and independent Authority;**
- 5. That the Authority is independent from Government, and that it is democratically accountable to the Oireachtas;**
- 6. That the Authority should have a defined relationship with GSOC that ensures GSOC maintains independence, but at the same time allowing for monitoring of GSOC recommendations by the Authority on all matters of concern which may warrant an investigation by GSOC.**
- 7. That the Authority should have a defined relationship with the new National Preventive Mechanism mooted under OPCAT.**
- 8. That the Authority should be functionally linked to the Office of the Confidential Recipient.**