



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

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Assistant Commissioner
Dublin Metropolitan Region
An Garda Síochána
Harcourt Square
Dublin 2

27 August 2020

FAO: Sergeant Kieran O'Sullivan

Dear Assistant Commissioner,

Thank you for your letter of 13 August 2020. The Irish Human Rights and Equality Commission welcomes the opportunity to contribute to An Garda Síochána's evaluation of the management and use of the Anti-Spit Guard (ASG).

The Commission notes that the report of the Commission of Future Policing outlines as a first principle that 'Human Rights are the foundation and purpose of policing', and makes a range of recommendations relevant to this principle.

The Commission notes in this regard An Garda Síochána's obligations, as a public body, under the Public Sector Equality and Human Rights Duty, enshrined in section 42 of the Irish Human Rights and Equality Commission Act 2014. The Commission is of the view that the full implementation of this duty provides an opportunity for human rights and equality standards to be embedded in every aspect of policing. The Commission has recently published guidance on COVID-19 and the Public Sector Equality and Human Rights Duty.¹

¹ Irish Human Rights and Equality Commission, [COVID-19 and the Public Sector Equality and Human Rights Duty](#) (August 2020).



Below the Commission outlines a number of observations that are relevant to your evaluation.

Policies on the use of Anti-Spit Guards

The Commission notes that ASG were introduced as a lawful use of force by An Garda Síochána in April 2020² and that the primary objective of their use is to stop the transmission of infectious disease(s) such as Covid-19, and not as a restraint.³

The Commission notes the Garda Commissioner's statement that ASG are only to be used as last resort and in line with the Garda Decision Making Model, which includes at its centre An Garda Síochána's Code of Ethics and human rights.⁴ The Commission welcomes An Garda Síochána's provision of guidance, including the extent of deployment of ASG, and training for using ASG to members of An Garda Síochána and the policy that only Garda members who have completed this training may deploy ASG.⁵

The Commission's understanding is that the use of ASG is strictly limited to the current COVID-19 pandemic.⁶ The Commission would be concerned if the ASG is retained as a use of force option beyond the current public health emergency.⁷

² An Garda Síochána, [Continued High Compliance by Public With Health Guidelines](#) (28 April 2020) Press release.

³ Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (20 May 2020) at p.14.

⁴ An Garda Síochána, [Continued High Compliance by Public With Health Guidelines](#) (28 April 2020) Press release.

⁵ An Garda Síochána, [Continued High Compliance by Public With Health Guidelines](#) (28 April 2020) Press release.

⁶ Policing Authority, [Re: Report on the policing performance by the Garda Síochána in relation to the Health Act 1947 \(Section 31 – Temporary Restrictions\) \(Covid-19\) Regulations 2020 \('Covid-19 Regulations'\)](#) (20 April 2020) at p.5.

⁷ The Commission note that the Policing Authority has consistently stated that the use of ASG should be limited to the current emergency period. See Policing Authority, [Re: Report on the policing performance by the Garda Síochána in relation to the Health Act 1947 \(Section 31 – Temporary Restrictions\) \(Covid-19\) Regulations 2020 \('Covid-19 Regulations'\)](#) (20 April 2020) at p.5; Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (06 May 2020) at p.2.



Human rights and equality concerns

The Commission notes and shares the concerns stated by the Policing Authority in relation to the use of the ASG, specifically:

- the procedures on the use of ASG are silent on the use of ASG on children aged 12-18;⁸
- data gaps in the reporting of the use of the ASG. There is an absence of disaggregation of data on the grounds of ethnicity, race, and national origin.⁹ There is an inadequate collection of data with a high proportion of 'not specified' categories.¹⁰ There is missing data on the use of additional force,¹¹ whether medical assistance was sought,¹² perceived specific characteristic of the individual (signs of a learning difficulty),¹³ and length of time the ASG was deployed.¹⁴

The Commission is of the view that without comprehensive, quality and transparent data it is not possible to effectively review the ASG.

⁸ Policing Authority, [Re: Report on the policing performance by the Garda Síochána in relation to the Health Act 1947 \(Section 31 – Temporary Restrictions\) \(Covid-19\) Regulations 2020 \('Covid-19 Regulations'\)](#) (20 April 2020) at pp.5-6.

⁹ Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (20 May 2020) at p.15.

¹⁰ Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (25 June 2020) at p.18.

¹¹ Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (06 May 2020) at p.12.

¹² Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (25 June 2020) at p.18.

¹³ Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (25 June 2020) at p.18.

¹⁴ Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (25 June 2020) at p.18.



Human rights concerns in other jurisdictions

The use of ASG in the UK have been criticised, and have been as 'dangerous, degrading and unjustified'¹⁵ and 'cruel and dangerous'¹⁶ as they restrict breathing and can cause extreme stress and has led to a number of deaths in custody. There is particular concern around their use on vulnerable groups, including children.¹⁷

In relation to Covid-19, there is evidence from Northern Ireland that the use of ASG does not prevent the risk of spread of infection.¹⁸

The Commission queries the adequacy of the evidence available on the effectiveness of the ASG as a public health measure.

Standards in policing

In the context of the Covid-19 pandemic, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have stressed that States must place human rights first in decision-making and every measure adopted by the authorities of a member state should be based on a thorough assessment of its concrete implications for the human rights of all persons concerned.¹⁹

The CPT have stated that the time around the apprehension of an individual is a high-risk period for ill-treatment.²⁰ Police officers may legitimately use force in the apprehension of an individual. However, such force should be used only if it is lawful and strictly necessary, and it should not be

¹⁵ Liberty, [The Rise of Spit Hoods: Dangerous, Degrading and Unjustified](#) (21 February 2019).

¹⁶ Amnesty International UK, [Spit hoods 'little more than glorified sack' which can be 'cruel and dangerous'](#) (06 September 2016), Press Release.

¹⁷ Liberty, [The Rise of Spit Hoods: Dangerous, Degrading and Unjustified](#) (21 February 2019).

¹⁸ Amnesty International UK, [Northern Ireland: Police spit hoods may increase risks of spread of COVID-19; PSNI should suspend use](#) (24 June 2020), Press Release.

¹⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic](#) (09 July 2020) at p.1.

²⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches](#) (2019) at para. 64.



excessive.²¹ The CPT have highlighted three procedural safeguards (the right of access to a lawyer, the right of access to a doctor and the right to have the fact of one's detention notified to a relative or another third party of one's choice) that person should be informed of from the outset of when a persons is deprived of their liberty.²²

The Commission again welcomes the opportunity to engage with the Garda Síochána on its evaluation of the management and use of the Anti-Spit Guard, and remains available to engage further with An Garda Síochána during the course of the evaluation.

Yours sincerely,

Laurence Bond
Director
Irish Human Rights and Equality Commission

²¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches](#) (2019) at para. 64.

²² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches](#) (2019) at para. 66.