



THE BAR OF IRELAND

The Law Library

Submission by Council of The Bar of Ireland to the Commission on the Future of Policing in Ireland

1st February 2018

The Council of The Bar of Ireland is the accredited representative body of the independent referral Bar in Ireland. The independent referral Bar are members of the Law Library and has a current membership of over 2,200 practising barristers.

It has a strong interest in all areas of the justice system and would be happy to contribute to any debate and a further, more detailed, submission, written and oral, on this topic in due course if so requested by the Commission.

Introduction

The greatest interaction between The Bar of Ireland and An Garda Síochána is in the Criminal Justice sphere and it is in that area that this submission will focus, although not exclusively so.

It is our submission that the principal way in which the interaction between An Garda Síochána and the Criminal Justice system can be improved are in the areas of efficient use of resources and of record-keeping.

Role of An Garda Síochána

The serving members of An Garda Síochána are its most valuable and useful asset. They are best deployed in roles which can be either exclusively or alternatively most efficiently carried out by attested members of An Garda Síochána. The more Garda hours spent engaging in Garda activities the more efficient An Garda Síochána will be. It seems to us that the duties of An Garda Síochána can be broken down into three broad categories as follows:

1. Duties which can only be performed by attested members;
2. Duties not required to be performed by members of An Garda Síochána but which are more usefully performed by attested members; and
3. Duties performed by attested members which are not required to be performed by such members and which provides no operational advantage when performed by attested members.

In making the following submissions, it is acknowledged that it is not always clear where the dividing line between the above categories falls, particularly as between the latter two categories. It is also acknowledged that where the line may lie is principally a function of management taking into account matters such as operational requirements. Where it is posited by Garda management that certain roles fall within the category of duties not required to be performed by members of An Garda Síochána but which are more usefully performed by attested members, such exceptions should only be made when management can demonstrate that there is good reason why the role should be performed by an attested member. It is submitted that roles currently performed by attested members that fall into the third category should be identified. Such functions should be removed from attested members as far as possible and given to civilian employees.

The purpose and benefit of increased civilianisation is to improve efficiency in the use of resources and to release highly-trained officers from roles that do not require police training, experience or powers to roles which do have such requirements.

It might be said that the essential duties of An Garda Síochána fall into three broad categories:

1. The prevention, detection and prosecution of crime;
2. The security of the State;
3. Community liaison.

Often these categories are overlapping and cannot be considered as stand-alone roles. For example, a large part of working to prevent crime involves community initiatives. When a Garda purports to identify a suspect in a criminal investigation, from CCTV for example, the Courts have a significant preference for the evidence of identification to come from a Garda who knows the suspect from community duties rather than from involvement in previous criminal investigation. Therefore, the work done by Gardaí working in the community can be of significant assistance to other Gardaí in their detection and prosecution of crime.

Reduction of time spent by members of An Garda Síochána in Court

Gardaí have an important role in almost all criminal prosecutions within the State. However, a significant amount of Garda time is taken up with Court appearances. Consideration should be given to rationalising the amount of time that Gardaí spend in Court. Some of the factors that lead to excessive Garda time being spent in Court relate to the manner in which the Court system operates and is outside the scope of this review. There are, however, factors that relate to the way in which An Garda Síochána operates.

The District Court is the most local of the Courts and the one in which less serious criminal offences are prosecuted. It is a Court of summary jurisdiction and it deals with purely summary criminal matters or indictable criminal matters not considered sufficiently serious to be dealt with in the Circuit Court. The Prosecutor in the District Court can be the Director of Public Prosecutions or it can be a member of An Garda Síochána. Where the prosecutor is the DPP, she will usually be represented in Court by the local State Solicitor or by one of the solicitors in her employment and, on occasion, by Counsel. However, where the prosecutor is the Garda, that Garda, or another Garda on his or her behalf, will be required in Court on each day on which the matter is listed. This will include days on which no evidence is to be heard by the Court. Consideration should be given to ways in which the attendance of individual Garda is not required on days when their evidence will not be heard. This will reduce the amount of time that individual Gardaí spends in Court and thereby increase the amount of time they have available in which to undertake other policing work.

Serious consideration should be given to the removal of prosecution work from members of An Garda Síochána and that all prosecution work be performed by solicitors in the employment of the Director of Public Prosecutions, local State Solicitors or by Counsel instructed on behalf of the DPP. It is noted that this was discussed by the Garda Inspectorate both in its 2015 report entitled *Changing Policing in Ireland – Delivering a Visible, Accessible*

and Responsive Service and in its 2014 report entitled *Crime Investigation*. The Inspectorate noted that most other jurisdictions have a prosecuting authority independent of the police service. It is acknowledged that such a change would require the provision of additional resources to the Office of the Director of Public Prosecutions. However, it is submitted that it would create efficiencies within the criminal justice system and in particular with regard to the increased deployment of members of An Garda Síochána to frontline policing duties. This is not to criticise Gardaí. Rather it is simply to observe that Gardaí are better employed in policing duties.

While the reduction of the time unnecessarily spent in Court by Gardaí is desirable, it is important that Gardaí obtain and maintain a familiarity with Courts and their procedures. The giving of evidence is a skill that, like any other, is improved by practice. It also assists a Garda in his or her investigative capacity to have an appreciation of the evidentiary needs of a courtroom.

Consideration should be given to increasing the use of certificate evidence for matters of formal proof thereby avoiding the need for Garda attendance in Court. This might require legislative change. Any such system would have to make provision for the attendance in Court of such Gardaí to give oral evidence where their cross-examination was important to the defence of an accused person.

Reduction of time spent interviewing suspects

The practice of writing out in longhand the questions asked and answers given in interview is still required many years after the video-recording of interviews began. In general, the practice is that a question is written down by one of the interviewing Gardaí and is then asked of the suspect. Whatever answer, if any, given by the suspect is then written down. The next question is then written down and asked and so on. This leads to a disjointed interview and one that lasts longer than if the questions and answers, if any, formed more of a conversation. Transcripts of the recorded interview could then be made by civilian clerical staff employed in each Garda Station if they are required for prosecution purposes. By reducing the amount of time spent by investigating officers in interview they would be afforded more time for their investigation or for other duties. This is a recommendation that has been made on many occasions for many years and is one that we now repeat.

Reduction of administrative duties

The amount of administrative duties that currently fall on Gardaí should be reduced to no more than is necessary or preferable to be done by attested Gardaí. All other administrative and clerical work should be performed by civilian staff. This again would free up the attested members to perform their policing duties. It must be stated, though, that duties such as the making of statements must remain the responsibility of the individual whose statement it is. We would also view the taking of statements from prospective witnesses as being an essential

Garda duty. It is a skill that, in general, Garda members are good at. The risks of statements being taken by inexperienced persons was recently seen in a particular high-profile trial.

IT improvements

An Garda Síochána appears to have no uniform system for the recording of much significant information. The Garda PULSE computer system appears to require significant modernisation and investment. Consideration should also be given to the manner in which Garda exhibits are required, tracked and managed and a uniform system should be devised by Garda management.

Benefit of civilianisation

The net effect of many of these suggestions is a significant civilianisation of An Garda Síochána. This is not to suggest in any way a dilution of the policing role. Rather it is to suggest that Gardaí be relieved of ancillary non-policing roles so that they can concentrate on the more important policing role. Non-core roles include those of human resources, accounting, legal, administrative and clerical. While there are many roles within An Garda Síochána to which particular sensitivity and confidentiality attach, so do many of the above-listed roles when performed in the private sector or in other areas of the public sector.

Security in Court buildings

We note that one area in which the Garda Inspectorate has previously suggested that An Garda Síochána divest itself of responsibility is the security of courtrooms. While the security of courthouses is now routinely provided by private security companies, including at the Four Courts and the Criminal Courts of Justice in Dublin, it is our view that An Garda Síochána should continue to provide security in courtrooms and courthouses. Members of An Garda Síochána have an authority, both moral and legal, that employees of private security companies do not have. Specifically, they have powers to give directions to leave a place and they have powers of arrest. We are concerned by an increase in assaults in court buildings including in the last year an assault on a judge and two assaults committed against members of the Bar.

Secondment and international competition for senior roles

Senior Garda roles within An Garda Síochána should be opened to international competition. This is in no way to suggest that the members of An Garda Síochána are not suitable or sufficiently competent to perform senior roles. Indeed, a knowledge of the communities and areas to be policed has its own advantage. The degree to which it is an advantage would be a matter for those responsible for any selection process. What international competition

does is to ensure that those selected for senior roles measure up to a wider pool of candidates.

In the area of policing commonly known as Crime and Security, there is a view that a person who is not an Irish national may not be appropriate for a senior role, and we understand those concerns. We would not however, rule out as a matter of principle, the prospect of such a person being the best candidate for such a role.

Greater consideration should also be given to the secondment of officers of all ranks both into and out of An Garda Síochána. The secondment of Gardaí to foreign police services and the secondment of officers from foreign services into An Garda Síochána allows Gardaí an insight into how other police services deal with issues being faced or yet to be faced by An Garda Síochána. It also promotes understanding between police services and the development of personal relationships which can, in turn, promote and assist cooperation on an international level.



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