



THE BAR  
OF IRELAND

*The Law Library*

# **SUBMISSION ON GARDA SÍOCHÁNA CODE OF ETHICS**

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**10<sup>th</sup> MAY 2016**

## **INTRODUCTION:**

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 make a more detailed submission, written or oral, on this topic in due course if so requested by the Policing Authority.

## **SUBMISSION ON GENERAL PRINCIPLES OF FOR CODE OF ETHICS:**

The Council notes that the Policing Authority is to establish a Garda Síochána Code of Ethics by 31<sup>st</sup> December, 2016 in accordance with S.17 of the *Garda Síochána Act, 2005* (as amended).

Given that such Codes of Ethics have now been introduced for Police Forces in other jurisdictions, it appears appropriate to the Council that An Garda Síochána would also have a Code of Ethics in this jurisdiction and such is required in any event under s.17 of the *Garda Síochána Act, 2005*. Accordingly, the Council of The Bar of Ireland is supportive of the Policing Authority's initiative in this regard and looks forward to considering a draft text of the Code of Ethics in due course.

Any examination of the workings of a draft Code of Ethics for An Garda Síochána should ensure that they can apply in a clear manner alongside the duties of each member of the Garda Síochána under the Constitution, the relevant legislation and the Garda Regulations. It is important that the Code of Ethics does not cause confusion either to the members of the force itself or to the general public. The paramount duty is to adhere to the law and that is the primary ethical value which should underpin the work of An Garda Síochána in enforcing the law of the State itself.

The establishment of Codes of Conduct/Ethics for Police Forces in other jurisdictions appear to have utilised the United Nations Code of Conduct for Law Enforcement Officials. That document addresses the following areas:

- general principles of dignity and respect (Art. 2);
- the use of force (Art. 3);
- confidentiality (Art. 4);
- prohibition of torture and cruel, inhumane or degrading treatment (Art. 5);
- protection of persons in custody (Art. 6); and
- corruption (Art. 7).

Article 8 addresses the need to prevent and report breaches of the code.

A Garda Code of Ethics might usefully include provisions relating to these issues.

A number of official Reports have been carried out in recent years in respect of An Garda Síochána. Even though some of those Reports may appear to be of historical significance only and have been addressed in legislative changes and other steps taken by An Garda Síochána, nevertheless it appears to the Council that they may inform consideration of the topics to be included in a Code of Ethics.

As an illustration, a number of the Reports from the Morris Tribunal highlighted the importance of the proper recording by members of An Garda Síochána of their work and the duty to make those records available for inspection and disclosure.

The importance of proper records of a Garda's work appears to the Council to be a matter which should be considered in light of its overall importance to the administration of justice where cases are prosecuted in the courts themselves. This arises in relation to Garda notebook entries, statements from witnesses, the seizing, retention and retrieval of relevant documentation and exhibits and associated matters where such issues may be important in a Garda investigation and any subsequent criminal prosecution for a variety of reasons.

Further, the Superior Courts have addressed the issue of the duty to seek out, preserve and disclose materials, both helpful to the prosecution and to a suspect or accused person, in a number of well-known judgments in recent years and the ethical dimensions of that requirement might also be considered.

In addition, the importance of ensuring that relevant persons, including superior officers in An Garda Síochána and/or the Director of Public Prosecutions, are informed of matters which might affect their consideration of Garda investigations or criminal prosecutions appears to the Council to be something that might feed into the work of the Policing Authority in developing a draft Code of Ethics.

The Police Service of Northern Ireland Code of Ethics addresses police investigations. It provides that all persons shall be treated with respect, that investigations should be conducted impartially and also outlines that all persons under investigation are presumed innocent. These matters might also be considered.

Furthermore, the importance of ethical standards with respect to surveillance techniques and operations was the subject of consideration in the Morris Reports and might be considered as part of an assessment concerning data protection and privilege issues.

The Council is also aware that a number of official Reports are likely to be published by the Government in the near future. They include the MacLochlainn Commission of Investigation into the death of Ronan MacLochlainn in May 1998 and the O'Higgins Commission of Investigation Report may be published in the near future.

The Fennelly Commission is continuing its work and it may also provide a further report in 2016. There is also a review being undertaken at the moment by the former Chief Justice, Mr. Justice John Murray, into access of certain phone records. All of these Reports might inform the Policing Authority in its work on a draft Code of Ethics and they might be considered by the Policing Authority when published.

The Council notes that the Code of Conduct for England and Wales includes provisions which deal with the use of force, confidentiality and the challenging and reporting of improper conduct. The Council considers that the Policing Authority should examine that issue in the context of the official reports that have been mentioned above and see if such matters need to be incorporated into any of the Code of Ethics.

Finally, the importance of ensuring that due respect and proper treatment of persons of minority cultural and/or ethnic backgrounds should inform the Policing Authority in its consideration of the draft Code of Ethics and, where appropriate, form part of the Code of Ethics itself. The duties of An Garda Síochána towards victims of crime should also infuse the Policing Authority's consideration of these matters

**CONCLUSION:**

The Council of The Bar of Ireland would be happy to provide a more substantial submission on any of these matters and, if invited, address the Policing Authority to assist it with its deliberations in due course.