



**Response of the Irish Council for Civil Liberties
(ICCL)
to the Public Consultation
on Establishing an Independent Policing Authority**

30 May 2014

About the Irish Council for Civil Liberties (ICCL)

The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

Founded in 1976 by Mary Robinson and others, the ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included campaigns resulting in the establishment of the Garda Síochána Ombudsman Commission, the legalisation of the right to divorce, more effective protection of children's rights, the decriminalisation of homosexuality and introduction of enhanced equality legislation.

We believe in a society that protects and promotes human rights, justice and equality.

What we do:

- Advocate for positive changes in the area of human rights;
- Monitor Government policy and legislation to make sure that it complies with international standards;
- Conduct original research and publish reports on issues as diverse as equal rights for all families, the right to privacy, police reform and judicial accountability;
- Run campaigns to raise public and political awareness of human rights, justice and equality issues;
- Work closely with other key stakeholders in the human rights, justice and equality sectors.

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1. Introduction

Since its foundation in 1976, the Irish Council for Civil Liberties (ICCL) has campaigned consistently for a more accountable and human rights compliant police service.

In 2006, it produced the report *“Implementing Morris, An Agenda for Change; Placing Human Rights at the Core of Policing in Ireland”* in which it called for the creation of an independent policing authority to provide civic oversight of policing in Ireland.

For the past eight years, the ICCL has been represented on the Garda Commissioner’s Strategic Human Rights Advisory Committee (SHRAC), on which it serves as an independent member alongside the Equality Authority, the Irish Human Rights Commission, Amnesty International (Irish Section) and senior operational members of An Garda Síochána. Matters on which the ICCL has provided advice to SHRAC include: the development of a human rights monitoring framework and auditing tools; training and development and human rights proofing of policy and practice.

The ICCL welcomes the opportunity to contribute to this public consultation on establishing an independent policing authority, a development that it considers is long overdue.

2. Options for the establishment of an independent Policing Authority

a. Functions and responsibilities

What is missing from current Garda oversight structures is civic oversight in the form of an independent policing authority. The new authority should have an oversight role on issues including the allocation of Garda contracts, management performance, the setting of clear performance goals to which the Commissioner would be accountable on an annual basis, and the appointment of senior Garda officers, up to and including the Commissioner.

Once established, the policing authority should play a role in setting priorities and monitoring compliance with human rights principles. The authority, with the input and consultation of the Commissioner, should also draw up the strategic and annual policing plans. Further, the Commissioner should be held accountable by the authority for the performance of his or her functions in accordance with the strategic and annual policing plans.

b. Appointment and membership

If it is to break the historic cycle of unwholesome Ministerial influence on policing, Ireland's new policing authority must be fully independent. This means that particular attention should be paid to the appointments process and to the qualities that authority members will bring to the role.

A transparent and fully independent recruitment process should be used to appoint the members of the authority. This should go beyond merely calling for expressions of interest and preferably should be conducted by the Public Appointments Service (PAS). Following the model proposed in the Irish Human Rights and Equality Commission Bill 2014,¹ the relevant Minister should be obliged to recommend candidates proposed by PAS to the Government for appointment and the members should be formally appointed by the President of Ireland, after a resolution of both Houses of the Oireachtas.

In line with the approach adopted in Scotland, the ICCL considers it is essential that only persons who genuinely have skills and expertise relevant to the functions of the authority be appointed to it.² Subject to that caveat, membership should be diverse and drawn from a cross-section of society, including the public, private and not-for-profit sectors. A particular effort should be made to encourage applications from members of vulnerable or disadvantaged groups with a direct interest in the improvement of existing policing practices.

The Council considers that it would be preferable if the new authority were to consist exclusively of independent members (as is the case in Scotland) rather than a mixture of independent members and politicians nominated by their parties / groupings (as is the case in Northern Ireland). The Policing Board of Northern Ireland was established in a very particular historical political context that is not replicated in this jurisdiction and the ICCL considers that political engagement with policing is best retained within existing Oireachtas structures (see section c. below).

c. Relationship with the Department of Justice, Government and the Oireachtas

To ensure that the new policing authority will play its part in addressing some of the systemic dysfunctions identified by Sean Guerin SC in his recent report,³ it will be essential that its relationship with the Department of Justice be robust.

¹ See section 13 of the Irish Human Rights and Equality Commission Bill 2014.

² See section 2(2) of Part 1 of Schedule 1 of the Police and Fire Reform (Scotland) Act 2012.

³ Report by Mr Sean Guerin SC on a Review of the Action Taken by An Garda Síochána Pertaining to Certain Allegations Made by Sergeant Maurice McCabe. Available at: <http://www.merriionstreet.ie/wp-content/uploads/2014/05/Final-Redacted-Guerin-Report1.pdf>

The ICCL considers that the ongoing review of the extent to which the Department of Justice is fit for purpose should consider explicitly which powers and functions currently vested in the Garda Policy Division of the Department should be transferred to the authority.

As regards the authority's relations with Government / the Minister for Justice, the ICCL considers that the authority should take the place of the Minister in exercising equivalent powers to those currently contained in Section 20(1) and (2) of the Garda Act 2005 Act (setting out "priorities" for the Gardaí in performing its functions; establishing "performance targets" for the Commissioner) and in Section 21 of that Act (receiving "strategy statements" from the Commissioner for approval). Statutory references to the Garda Commissioner being obliged to take account of "relevant government policy" should be excised from the 2005 Act.

The new authority's relationship with the Oireachtas should take place within existing parliamentary oversight structures. The authority should present its annual report to the Oireachtas Joint Committee on Justice, Defence & Equality, to which it might be invited, from time-to-time, to outline its key priorities, objectives and related strategies. The use of the resources of the authority should be overseen by the Oireachtas Committee of Public Accounts, with the Chair of the authority or its Chief Executive being appointed as accounting officer for that purpose.

d. Implications for the Garda Síochána Ombudsman Commission (GSOC) and the Garda Síochána Inspectorate

Ireland is one of a small number of jurisdictions fortunate enough to enjoy a system of independent investigation of complaints against the police. However, although the Garda Act 2005 (Parts 3 and 4) places GSOC on a solid legal footing, aspects of GSOC's powers have proven problematic to operate in practice.

The ICCL considers that the capacity of GSOC to contribute to the prevention of future Garda misconduct would be enhanced if section 106 of the Garda Act 2005 were to be amended to permit the Ombudsman Commission to carry out reviews of practices, policies or procedures on its own initiative, rather than solely at the Minister's behest.

Another significant gap in GSOC's powers is that, at present, it is precluded by section 87(3)(a) of the 2005 Act from carrying out investigations into "a complaint in so far as it relates to the general direction and control of the Garda Síochána by the Garda Commissioner". In view of the ICCL, recent events amply demonstrate the need to end this exclusion of the Garda Commissioner from the investigative mandate of GSOC.

Part 5 of the Garda Act 2005 establishes the Garda Síochána Inspectorate. Although the Inspectorate has produced some very useful reports, it is not an independent body with the requisite powers to compel compliance with its recommendations on best practice.

As section 117(2) of the 2005 Act makes clear, the functions of the Inspectorate are:

“(a) in furtherance of its objective to carry out, at the request or with the consent of the Minister, inspections or inquiries in relation to any particular aspects of the operation and administration of the Garda Síochána,
(b) to submit to the Minister—
(i) a report on those inspections or inquiries, and
(ii) if required by the Minister, a report on the operation and administration of the Garda Síochána during a specified period and on any significant developments in that regard during that period,
and
(c) to provide advice to the Minister with regard to best policing practice.”

In other words, as currently constituted, the Garda Inspectorate is a creature of the Minister. The ICCL recognises the exceptionally high calibre of the international policing experts who have worked for the Garda Inspectorate but considers that, in future, the Inspectorate’s policing oversight functions would be better allocated to GSOC and to an independent policing authority.

Once GSOC has been granted the power, on its own initiative, to conduct reviews of practices, policies and procedures, this aspect of the Inspectorate’s work could be allocated to the Ombudsman Commission. Any residual aspects of the current advisory/oversight role of the Inspectorate could then be assumed by the new policing authority.

3. Recommendations

The ICCL recommends that:

- **an independent policing authority be established, with the following functions:**
 - **an oversight role in the allocation of Garda contracts; management performance and the setting of clear performance goals to which the Commissioner would be held accountable;**
 - **supervise the appointment of senior Garda officers, up to and including the Garda Commissioner;**
 - **set priorities and monitor compliance of An Garda Síochána in accordance with human rights principles;**
 - **in consultation with the Garda Commissioner, draw up strategic and annual policing plans.**
- **a transparent and fully independent recruitment process be used to appoint the members of the authority;**

- **only persons who genuinely have skills and expertise relevant to the authority be appointed to it; subject to this caveat, membership to be diverse and drawn from a cross section of society, including public, private and not-for-profit sectors. A particular effort be made to encourage applications from members of vulnerable or disadvantaged groups;**
- **the ongoing review of the extent to which the Department of Justice is fit for purpose consider explicitly which powers and functions currently vested in the Garda Policy Division are to be transferred to the independent policing authority;**
- **the policing authority assume equivalent powers to those currently vested in the Minister by virtue of sections 20 and 21 of the Garda Act 2005;**
- **the authority's relationship with the Oireachtas take place within existing parliamentary oversight structures, with an information link to the Oireachtas Joint Committee on Justice, Defence & Equality and an accounting connection to the Oireachtas Committee of Public Accounts;**
- **GSOC be empowered, on its own initiative, to conduct reviews of policing practices, policies and procedures and assume the analogous review functions of the Garda Inspectorate;**
- **the Garda Inspectorate, which is not an independent body, be abolished and any residual aspects of its current advisory/oversight role be allocated to the new policing authority.**