

Irish Council for Civil Liberties
An Comhairle um Chearta Daonna

**ICCL Submission on the Garda
Síochána Bill 2004**

February 2005

Contents

Executive Summary	4
1. Introduction	6
Part 2: Garda Síochána	8
Part 3 – Establishment and Functions of Garda..	22
Síochána Ombudsman Commission.....	22
Part 4 – Complaints, Investigations and Other Procedures	25

The ICCL

The Irish Council for Civil Liberties (An Chomhairle um Chearta Daonna) is an independent, non-governmental membership organisation that works to promote and defend human rights and civil liberties. It was founded in 1976 by, among others, Mary Robinson, Kader Asmal and Donal Barrington.

Since its foundation the ICCL has consistently campaigned in the sphere of civil liberties and human rights reform. The ICCL has also been very active in a wide range of constitutional reform campaigns.

It has also championed the rights of minorities including gay and lesbian rights, travellers' rights, women's rights, and the rights of refugees and asylum-seekers.

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Executive Summary

- The ICCL broadly welcomes the publication of the Garda Síochána Bill 2004 which provides the basis for the biggest review of the gardaí since the inception of the State. While the Bill is a vast improvement upon the initial published scheme of the Garda Síochána Bill 2003¹, the Minister for Justice, Equality and Law Reform² has not followed Northern Ireland's experiences of police reform.

Functions of the gardaí

- Section 7-(4) explicitly recognises that “the Garda Síochána shall have regard to the importance of upholding human rights” and this is a welcome development. However, the Bill does not obligate members of the gardaí to carry out state functions (investigation and prosecution of crime) without discrimination.

Personnel and Organisation

- Even though the gardaí are supposed to be an independent public body free from political interference, the Bill gives the Government the power to appoint all senior members of the gardaí.
- The ICCL is against the establishment of a volunteer service as proposed in the Bill. Members of the gardaí are conferred with powers which permit them to

lawfully infringe on the rights of citizens and we harbour serious concerns at the conferring of these powers to volunteers.

- The Minister may by regulation establish a Code of Ethics that includes standards of conduct and practice for the gardaí. However, this Code of Ethics will have no meaning for practice because it will not be fully enforceable.
- There is no mention of garda training in the Bill.

Roles of the Minister and Garda Commissioner

- Section 19 radically alters the relationship between the Minister for Justice and the Garda Commissioner. It allows the Minister to determine and revise police priorities for policing and makes the Garda Commissioner directly accountable to him/her. The Garda Commissioner will have to consider “relevant government policy” when deciding upon policing priorities.
- We argue that the Garda Síochána Bill 2004 runs the risk of overcentralising and politicising the gardaí, which would ultimately undermine its independence. There is no other public body in Ireland composed of more than 10,000 individuals who can utilise a broad range of discretionary powers. We do not believe that it is acceptable to allow one Ministerial position to exert such huge influence over the gardaí.

¹ Published in November 2003.

² Hereinafter referred to as the ‘Minister for Justice’.

- Institutional innovation is necessary to maintain the independence of the gardaí and provide some form of civic oversight. Comparable to the Northern Ireland Policing Board, the ICCL recommends that a National Garda Board should be established to monitor and manage the gardaí.

Co-operation with local authorities and arrangements for obtaining the views of the public

- The Bill provides for the establishment of ‘joint policing committees’ involving members of the gardaí, local politicians and local authorities. These committees will be expected to review levels/patterns of crime, disorder and anti-social behaviour in their area.
- In contrast to community policing models elsewhere, no specific provision is made for independent community representatives. With no role in setting policing priorities in their areas, these committees may further marginalise local minorities.

Garda Síochána Ombudsman Commission

- Part 3 provides for the establishment of a new Garda Síochána Ombudsman Commission. The Bill proposes that the Ombudsman Commission will consist of three members instead of one and does not follow the Northern Ireland model. The appointment of a single Ombudsman as head of the complaints body, would lead to greater public confidence in the institution, by providing a clear public persona in the position.
- The Bill makes no provision to allow the Ombudsman Commission to train its own staff and it gives the

Minister a discretionary power to transfer staff from the Garda Complaints Board to the new complaints body.

Complaints, investigations and other procedures

- Part 4 on complaints, investigations and other procedures causes most concern for the ICCL. The principle role of the Ombudsman Commission is to investigate and supervise complaints. However, unlike the current Garda Complaints Board, the Ombudsman Commission will have no role in determining whether a member if the gardaí has breached the internal disciplinary code.
- Presenting members of the public with an unnecessary maze of procedures and bureaucracy, the Ombudsman Commission will be heavily dependent on the Garda Commissioner to function effectively. The Ombudsman Commission may have to rely on members of the gardaí to undertake investigations because of lack of funding and will have to seek permission from the Garda Commissioner before conducting searches of garda stations.
- The overall appearance of the complaints system is that it repackages the old system and is designed to protect the gardaí. It is in the best interests of the gardaí to rebuild public confidence. However, the proposed system lacks transparency/accountability and constitutes a significant retreat from the current procedure.

1. Introduction

1.1 The ICCL broadly welcomes the publication of the Garda Síochána Bill 2004 which provides the basis for the biggest review of the gardaí since the inception of the State. Recognising that the Minister for Justice, Equality and Law Reform³ has considered many of the ICCL's and the Human Rights Commission (HRC)'s⁴ recommendations, the Bill is a vast improvement upon the initial published scheme of the Garda Síochána Bill 2003.⁵ By way of example, the new Bill includes provisions requiring the gardaí to have regard to the importance of human rights when exercising their police powers.⁶ The attestation for new members of the Garda Síochána also includes an obligation to pay due regard to human rights and equal treatment.⁷

1.2 Although the Bill provides solid foundations for garda reform, the proposed changes must go much further. No consideration has been given to the establishment of an independent Garda Board, which would provide civic oversight and more accountability. Training and recruitment remain unaddressed and the obligation to uphold human rights should be stronger, whether in stated functions or in an enforceable Code of Ethics. The Bill also runs the risk of overcentralising and politicising the gardaí, and this may ultimately undermine its independence. Furthermore, while the Bill provides a platform for community involvement through joint policing committees, their functions and membership are too narrow to guarantee effective community policing. Finally, we have many serious reservations about the proposed Garda Síochána Ombudsman Commission.

³ Hereinafter referred to as 'the Minister'.

⁴ www.ihrc.ie

⁵ Published in November 2003.

⁶ Refer to section 7(4) of Garda Síochána Bill 2004.

⁷ Section 15.

'Patten Principles'

1.3 As indicated in an earlier policy paper⁸, the work carried out by the Patten Commission is the most comprehensive study of police structures ever undertaken in a common law legal system.⁹ Recommendations (or 'Patten Principles') in the report represent best international practice in policing, and the ICCL's paper recommends that the 'Patten Principles' should form the foundations of Garda reform. A failure to follow the Patten Principles could lead to a breach of the Good Friday (Belfast) Agreement, 1998.

Good Friday (Belfast) Agreement, 1998

1.4 Framed by an obligation to provide "at least equivalent level of protection of human rights" North and South, the Belfast Agreement's human rights provisions are intended to strengthen and enhance human rights protection for the peoples living in the island of Ireland. The ICCL believes that reform must at a minimum meet the same human rights standards as are provided for in Northern Ireland legislation. Any less than this would result in a breach of the Government's commitments under the Agreement.

⁸ ICCL (2003) *Police Reform: Why Patten Should Apply Here and How This Can Be Achieved*, ICCL: Dublin. www.iccl.ie

⁹ The Independent Commission on Policing for Northern Ireland. (1998) *A New Beginning: Policing in Northern Ireland, Report of the Independent Commission on Policing for Northern Ireland*, accessible at www.belfast.org.uk/report.htm

Outline of document

1.5 This document comments on three different sections of the Garda Síochána Bill 2004. Primarily focusing on the Garda Síochána, the first section relates to Part 2 of the Bill. In this section we comment on general issues, personnel and organisation, the roles of the Minister and Garda Commissioner, co-operation with local authorities and arrangements for obtaining views from the public as well as offences and disclosure of information. Centring on the establishment and functions of the Garda Síochána Ombudsman Commission, the second section relates to Part 3 of the Bill. Finally, the last section of the document is on Part 4 which covers complaints, investigations and other procedures.

Part 2: Garda Síochána

Chapter 1: General

A new 'police service'

2.1 Section 6 of the Garda Síochána Bill describes the police force of the Garda Síochána as a 'police service' and we welcome this change. This semantic distinction reflects the shifting perception of the police as a service, to serve and be accountable to the people. For the ICCL it is essential that this new vision be maintained throughout the Bill, to ensure that the gardaí are truly a service for civic society and not just an arm of government.

Functions of the Garda Síochána

2.2 The functions of the gardaí are located in section 7 and are described as providing policing and security services for the State with the objective of: (a) preserving peace and public order, (b) protecting life and property, (c) protecting the security of the State, (d) preventing crime, (e) bringing criminals to justice, including by detecting and investigating crime and, (f) regulating/controlling road traffic and improving road safety.

2.3 The gardaí, as with all agents of the State, have an obligation to carry out their functions in compliance with international human rights obligations. We therefore welcome that this is explicitly recognised in section 7-(4) which states, "the Garda Síochána shall have regard to the importance of upholding human rights" when performing its functions. However, this section should also include a non-discrimination clause, as gardaí are not required to carry out all their functions without discrimination under the Equal Status Act (ESA), 2000. Although the ESA outlaws discrimination in relation to the provision of goods and services, only certain garda functions are covered such as: a Garda witnessing a passport application, giving directions or taking a complaint. The Equality Tribunal has decided that the investigation and prosecution of crime are state functions carried out by the gardaí for the benefit of the public and society as a whole and not a service.¹⁰

¹⁰ See for example the Equality Officer's Preliminary Decision Number: Dec – S2001-011, File Ref: ES/2001/074. Date of Issue: 17 October 2001.

- 2.4 The reference to ‘human rights’ in section 7(4) is not enough to ensure that the gardaí will carry out all their functions without discrimination. Moreover, the gardaí should not be exempt from carrying out their functions without discrimination. Other Irish public bodies such as the health boards and welfare authorities have not been given the same exemption.
- 2.5 The ICCL recommends that the Minister amend the Equal Status Act 2000 to give the Equality Tribunal the authority to consider alleged cases of discrimination. The UK took a similar course when it enacted the Race Relations Act 2001. However, the Minister could also amend the Garda Síochána Bill to ensure that the ‘code of ethics’ for the gardaí includes an obligation not to discriminate when carrying out its functions. In addition, the Garda Síochána Ombudsman Commission must be able to investigate breaches of the code (refer to paragraph 2.11).

Recommendation

- Insert in section 7-(4):

the gardai should carry out their functions without discrimination on the grounds of: gender, marital status, family status, sexual orientation, religious belief, age, race, membership of the Traveller community and disability.

Chapter 2: Personnel and Organisation

- 2.6 Chapter 2 of the Garda Síochána Bill relates to personnel and organisation, which are both of vital importance for the reform of the Garda Síochána. The ICCL makes recommendations in relation to the appointment of senior gardaí positions, volunteer members and the Code of Ethics.

Appointment of senior gardaí positions

- 2.7 A clear division in powers exists in the Garda Síochána Bill with regard to the appointment of gardaí to different ranks. Section 9-(1) entrusts the Government with the power to appoint the Garda Commissioner, and section 10-(1) the power to appoint Deputy and Assistant Garda Commissioners. Section 13-(1) also enables the Government to appoint any number of persons to the rank of chief superintendent, while section 13-(2) allows the Garda Commissioner to appoint individuals to the ranks of garda, sergeant and inspector.
- 2.8 Recalling that the Garda Síochána is an independent public body and free from political interference, the ICCL considers it unacceptable for the Government to directly appoint all senior members of the gardaí. Transparency and accountability are important principles in any area of public service.

2.9 The Civil Service and Local Appointments Commission¹¹ recruits for senior positions in an open and transparent manner within: the civil service, local authorities, health boards, harbour authorities, fisheries boards and vocational education committees. The Commission's Garda Recruitment Unit is only responsible for recruiting trainees for the gardaí. The ICCL questions why the Bill leaves appointments to senior ranks of the gardaí to the Government, when an independent body appoints other senior members of public bodies? This function should be given to an independent body and in the event of a National Garda Board being established, the Board should have role in the appointment of the Garda Commissioner and other senior positions.

Recommendation

- Recruitment and appointment of the Garda Commissioner, together with other senior garda members should be undertaken by an independent commission/panel. In the event of the establishment of a National Garda Board, these functions should be carried out by the Board.

¹¹ www.publicjobs.gov.ie

Volunteer members

2.10 Section 14-(1) allows the Garda Commissioner to appoint persons as volunteer members of the Garda Síochána to assist with exercising its policing functions. In the ICCL's previous submission on the published scheme, it was highlighted that any person designated to use powers of arrest, is as accountable under human rights law for the use of their powers, as is a member of the gardaí.¹² We also noted that no person should be conferred with powers of arrest unless provision had been made for consistent and suitable training. Although the new Bill requires volunteers to undergo prescribed training [section 14-(2)], section 14-(3) gives volunteer members the same powers, immunities, and privileges as ordinary gardaí members while on duty. Section [14-(4)] in which the Garda Commissioner will be expected to submit proposals to the Minister for the training of volunteers and regulations concerning their recruitment and training.

2.11 We retain serious concerns at the conferring of police powers to volunteers. The powers conferred on the gardaí are ones that by their nature permit them to lawfully infringe on the rights of citizens to a degree that a normal citizen would not be allowed. The powers are conferred on the gardaí in order to carry out specific functions, and on the basis that the gardaí are fully accountable for the use of

¹² ICCL (2003) *ICCL Submission on Scheme of the Garda Síochána Bill 2003*, pp. 13.

those powers. Concerns over accountability of the gardaí are the subject of the Bill too. However we are concerned that while on the one hand the Bill is proposing measures to improve accountability, it is creating a parallel police force without the requisite training or accountability.

2.12 The ICCL believes that the delivery of an effective, efficient and human rights compliant police service requires a range of functions and skills within a police service. Not every task which a police force must discharge needs to be carried out by a trained Gardai officer i.e. there are administrative, analytical and management roles which could be filled by skilled individuals not trained as officers. Improving the capacity of the gardaí in this way is preferable to the creation of a volunteer police service. The ICCL recommends that a volunteer force is not established.

Recommendation

- Delete section 14.

Code of Ethics

2.13 The Minister may, by regulation, establish a Code of Ethics that includes standards of conduct and practice for members of the gardaí [section 16-(1)]. It is the ICCL's view that a Code of Ethics is vital for an effective standard of conduct and practice within the Garda Síochána. The establishment of a Code of Ethics should be a clear obligation and not a discretionary undertaking. We recommend that 'may' in section 16-(1) is replaced with 'shall'. In Seanad Éireann, the Minister stated that he may be willing to take this recommendation on.

2.14 We welcome the fact that section 16-(3) requires the Garda Commissioner to consult with the Equality Authority, the Human Rights Commission, Ombudsman Commission and any person/body appearing to have an interest in the matter. This section enables expert/watchdog bodies to have a direct input together with individuals/organisations from civic society. Moreover, the Commissioner must also consider any recommendations from the Council of Europe.

2.15 Policing practice will not benefit from this provision if the Code of Ethics is not fully enforceable. Frankly what is the point in investing time and resources developing a Code of Ethics when it is not a disciplinary offence for gardaí to breach it? The Code will have no meaning for practice. It has been advised by the HRC¹³, that a Code of Ethics should be enforceable under Part 4 of the Bill and we support this recommendation.

Recommendation

- Delete ‘may’ in section 16-(1) and replace with ‘shall’.
- The Code of Ethics should be enforceable in Part 4 of the Bill.

Training

2.16 The Bill does not cover the area of training for the Garda and this is a huge oversight. It was recognised within the Patten Report, that “training was one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel”. In direct response to the Patten’s recommendations, a ‘Course for All’ was devised for all members of the Police Service for Northern Ireland.

2.17 It is essential that comprehensive human rights training is mainstreamed throughout all Garda educational programmes, and constitutes an integral part of all training focusing on the exercise of police powers. The European Convention on Human Rights (ECHR) also needs to be a central component within this programme as well.

Recommendation

- Education and training for the gardaí should be dealt with in Part 2 of the Garda Síochána Bill 2004.
- The ICCL calls for comprehensive human rights training to be mainstreamed throughout all Garda educational programmes (pre-service and in-service) and also constitute an integral part of all training regarding the exercise of police powers.

¹³ See No. 3 HRC (2004) *Observations on the Garda Bill 2004*, Recommendation, www.ihrc.ie/ accessed 14.05.2004.

Recruitment

2.18 If the Irish Government is really committed to garda reform, then the Bill must include additional sections on recruitment. As set out in the ICCL's previous report¹⁴, there is a serious issue of under-representation of all members of society in the Garda Síochána. In particular, there is an under-representation of women, members of the Traveller community and the migrant community. Regard should also be had to the representation of recruits from working class/marginalized urban areas, and how the rural/urban representation breaks down. The less representative the Garda Síochána is of the communities it polices, the harder it is to secure an inclusive community partnership approach to policing. The ICCL considers this important for enhancing the capacity of the gardaí to perform its functions effectively.

Recommendation

- In the interests of equality and creating a representative police service, existing recruitment and promotional practices should be reviewed.
- Positive action measures should be considered in recruitment to increase the representation of different socio-economic backgrounds, women and marginalised minorities in Irish society, including black and ethnic minorities.

¹⁴ Refer to ICCL (2003) *Police Reform: Why Patten Should Apply Here and How This Can Be Achieved*, pp.34-35 www.iccl.ie

Chapter 3: Roles of Minister and Garda Commissioner

2.19 Section 19-(1) provides that the Minister for Justice may: (a) determine and revise priorities for policing and (b) establish and revise 'performance targets'. Section 19-(2) also obligates the Minister to consult with the Garda Commissioner before determining these priorities and targets. The Minister must then submit priorities and targets to each House of the Oireachtas [section 19(3)]. The Garda Commissioner is also expected to outline the measures to the Minister aimed at reaching priorities and targets

Centralisation and Politicisation

2.20 We argue that the Garda Síochána Bill runs the risk of overcentralising and politicising the gardaí, which would ultimately undermine its independence. Robert Peel laid down the foundations of modern policing within a common law tradition in 1829. These foundations were designed to ensure that the police were seen as the people's police and not a tool of government.¹⁵

2.21 By allowing the Minister to set priorities for the Garda Síochána, by making the Commissioner accountable to the Minister and utilising the dubious and vague language 'government policy', the gardaí's protection from potential political interference is diminished.

¹⁵ Lewis, C. (1999) *Complaints Against Police: The Politics of Reform*, Hawkins Press: Sydney, pp. 15.

2.22 It has been noted that there is no other public body in Ireland composed of more than 10,000 individuals who can utilise a broad range of discretionary powers which can have very serious implications for human rights: such as liberty, privacy and bodily integrity.¹⁶ Is it really acceptable to allow one Ministerial position to exert such huge influence over the gardaí?

2.23 It might be suggested that making the Minister accountable to the Houses of the Oireachtas is an important step in strengthening democratic accountability. However, in his seminal study, Professor Walsh revealed how parliamentary scrutiny has sometimes been ineffective in holding the Minister and the Garda Commissioner to account. Walsh's work reveals that in general the Minister was only accountable for the allocation for manpower and resources to the gardaí and could not account directly for the Garda Commissioner. The new measure appears to ameliorate the situation but also fails to recognise there are major Dáil weaknesses.

2.24 Political party politics drive and control law and policy making. Opposition party parliamentarians who have been elected to represent the viewpoint of the people, experience difficulties in understanding the implications of legislation coming before the Houses of the Oireachtas. This is due to inadequate resourcing and time constraints. The Government is able to use the resources of the civil service in order to defend its policies or legislative plans, while the opposition has to rely on its own political party resources and outside groups to mount a challenge.

2.25 What is clearly missing from the sections mentioned is civic oversight. Institutional innovation is necessary to maintain the independence of the gardaí and provide some form of civic oversight.

¹⁶ Walsh, D. (1999) *The Irish Police: A Legal and Constitutional Perspective*, Roundhall/Sweet & Maxwell, pp. 367.

National Garda Board

2.26 The ICCL believes that an opportunity to provide long lasting, transparent, accountable structures for the gardaí will be lost if consideration is not given to the establishment of a Garda Board, tasked with ensuing greater public accountability and civic oversight of the Garda Síochána.

2.27 The Garda Board would be similar to the Policing Board in Northern Ireland¹⁷, which is tasked with maintaining the police force. That Board monitors overall police performance, having regard to such issues such as the efficient spending of resources by police management and compliance with the Human Rights Act 1998. The Board is governed by the Police (Northern Ireland) Acts 2000 and 2003.

2.28 We believe that the Northern Ireland model broadly represents the proper role that should be played by a Garda Board. The Board would also have an oversight role in issues such as 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, such as the Commissioner. In respect of appointments, they would still require the approval of government or the Minister, but a more open and transparent system of appointment, removed from

ministerial discretion and political influence, would greatly add to the status and independence of senior Garda management.

2.29 If established, a National Garda Board would play a role in setting priorities. The Minister would set long-term priorities and any policy directives and the Board would have a direct role in setting medium term objectives. The Garda Board, with the input and consultation of the Commissioner, would draw up the strategic and annual policing plans. Further, the Garda Commissioner would report to the National Garda Board.

2.30 The Commissioner would then be held accountable by the Board for the performance of his or her functions in accordance with the strategy plan and annual plan. In the advent of a Board being established, the Board should have a role in the appointment of the Commissioner and other senior members of the gardaí.

2.31 It is the ICCL's view that the Northern Ireland model is not very political. Although the Northern Ireland Policing Board does include representatives from political parties (the joint policing committees as proposed in chapter 4 of the current Bill would include different political party representatives) it also includes independent community representatives. This provides a certain degree of balance and ensures that all members of society has some input into the management of the gardaí.

¹⁷ www.nipolicingboard.org.uk

Recommendation

- We recommend that section 19 is completely rewritten and should include new provisions establishing a National Garda Board. This new independent body would be comprised of political representatives, together with members of civic society which the Garda Commissioner would be directly accountable to. The Board would responsibility for setting long-term priorities for the gardaí and for recruitment.

Strategy Statement and Annual Policing Plans

2.32 Every three years the Garda Commissioner shall submit a three year strategy statement to the Minister for approval [section 20-(3)]. In preparing the Statement, the Garda Commissioner must consider:

- (a) relevant government policy
- (b) priorities determined by the Minister under section 19
- (c) resources excepted to be available to the Garda Síochána for the period to which the statement relates, and
- (d) the need to ensure the most beneficial, effective and efficient use of those resources

The Minister for Justice may make changes and before the plan is submitted before the Houses of the Oireachtas.

2.33 The Garda Commissioner shall prepare an annual policing plan setting out proposed arrangements for the policing of the State for the following year [section 21-(2)]. In preparing a policing plan, the Garda Commissioner needs to consider:

- (a) the priorities determined and performance targets established under section 19
- (b) the strategy statement in operation under section 20 during the year to which the plan relates
- (c) relevant directives issued under section 22
- (d) the resources expected to be available to the Garda Síochána for that year and the proposed allocation of those resources
- (e) relevant government policy

2.34 The ICCL recognises the importance of strategy statements and annual policing plans for good management. In section 20-(1) on the strategy statement, the ICCL believes that the need to protect and defend the human rights of each individual should be balanced against “the need to ensure the most beneficial use of resources”. The ICCL also advises that the Garda Commissioner consider the views and recommendations garnered from consultation processes with civic society when preparing both documents.

2.35 The ICCL is particularly critical of the requirement upon the Garda Commissioner to consider relevant government policy when preparing the strategy statement and annual policing plans. Remembering that it is essential for the gardaí to remain free from political interference, the dubious and vague language “relevant government policy” should be deleted.

Recommendation

- In section 20-(3), insert the “promotion and protection of human rights, in particular, the European Convention on Human Rights”.
- In section 21-(3) delete (a) “relevant government policy”.
- In section 21-(2) delete (e) “relevant government policy”.

Requirement to supply information

2.36 Section 19-(4) (b) requires the Garda Commissioner to supply statistics and information to the Minister for Justice within a specified timeframe. In the interests of broader accountability, there is no reason why this information should not be available to other publicly elected representative in Dáil Éireann as well.

Recommendation

- In section 19-(4) insert after section (b):

(c) supply that information to any elected member of Dáil Éireann within a specified time.

Functions of the Garda Commissioner

2.37 Section 23-(1) outlines the main functions of the Garda Commissioner which are to: (a) direct and control the Garda Síochána, (b) manage and control the gardaí, (c) advise the Minister on policing and security matters, (d) perform any other functions that are assigned. The Garda Commissioner must have regard to six factors when performing his/her functions none of which involve human rights concerns. The ICCL believes that the Commissioner must also have due regard to human rights standards when discharging his/her functions.

Recommendation

- In section 23-(2), after (f) insert:

(g) the promotion and protection of human rights, in particular, the European Convention on Human Rights.

Chapter 4: Co-operation with local authorities and arrangements for obtaining the views of the public

2.38 Section 31 provides that the Minister for Justice, after consulting with the Minister for Environment, Heritage, and Local Government, shall issue guidelines on the establishment of joint policing committees to local authorities and the Garda Commissioner. These communities will be comprised of members of the gardaí, local authorities, members of the Oireachtas, persons nominated by other public authorities and others persons provided for in the guidelines.

2.39 The ICCL recognises that the Minister has already made significant amendments to this section. Indeed, this section now includes more detail on the running/management of these committees. However, no specific provision is made in the Bill for the inclusion of independent community representatives and the ICCL recommends that section 31 be amended to take account of this.

2.40 Section 32 allows for the establishment of these committees in order to act as a forum where matters relating to policing can be discussed and recommendations formulated in the local authority area. In particular these Committees will be expected to review the levels and patterns of crime, disorder and anti-social behaviour in the area (including patterns and levels of alcohol and drug abuse), together with factors underlying and contributing to the levels of crime, disorder and anti-social behaviour in the area.

2.41 The ICCL welcomes the establishment of local policing committees because they could act as the cornerstone for delivering community policing. However, the ICCL is clear that the current provisions are too narrow in their function and membership to realise this potential. For example, the joint policing committees could have a role in setting policing priorities for their area and monitoring policing. Moreover, in the area of alcohol and drug abuse, the committees could also play a role in holistic and multi-agency responses.

2.42 The community-policing model in Northern Ireland is somewhat different. District Policing Partnerships (DPPs) have been established throughout the jurisdiction and involve independent community representatives. DPPs are responsible for setting policing objectives for their own locality and offer a measure of accountability to their own communities.

2.43 The ICCL also believes the new committees proposed in their current form will further marginalise local minorities such as Travellers. Research carried out by Pavee Point¹⁸ revealed that most racism and discrimination practiced against Travellers occurred at a local authority level. Efforts should be made to ensure that Travellers and other ethnic minorities are represented on these committees. A failure to do so will exacerbate existing tensions.

¹⁸ O'Connell, J. (1998) *Travellers in Ireland: An Examination of Discrimination and Racism*, Pavee Point: Dublin.
www.paveepoint/pav_irerac.html

Recommendation

- The ICCL recommends that sections 31 and 32 should be revised to involve independent representation from the local community and minorities.
- Independent community representatives should be recruited through an open and transparent system.
- These committees should have a role in setting policing priorities for their district and monitoring police performance.
- As well as crime, disorder and anti-social behaviour, these committees should also keep under review the promotion and protection of human rights.

Arrangements for obtaining views of the public

2.44 Section 34-(1) provides that the Garda Commissioner shall make arrangements for obtaining the views of the public about matters concerning policing and the state of crime. While this is an extremely positive development, the section could also state that these views will be used to set policing priorities. Joint policing committees would seem like a useful method to obtain views from the public.

Recommendation

- In section 34-(1), insert:

The Commissioner will pay regard to views obtained from the public to set priorities for policing in the Strategy Statement and Annual Policing Plans.

Chapter 8: Offences and Disclosure of Information

2.45 Section 52 provides for an offence of causing disaffection among members of the gardaí, or any act calculated to induce a member of the Garda Síochána to withhold their service or commit a breach of discipline. Section 55 provides for an offence of disclosure of information and requires the gardaí not to disclose information obtained in the course of performing their duty if they know this information is likely to have a “harmful effect”.

2.46 The ICCL noted its concern about the disclosure of information in our submission on the published scheme. Although the ICCL made a case for the regulation of information disclosure by the gardaí, we argued that any restrictions must be compatible with Article 10 of the ECHR which provides that everyone has the right of freedom of expression. We said that restriction must be related to a permissible aim and be necessary in a democratic society in that it must fulfil a pressing social need, and be proportionate to the aims being pursued.

2.47 We still maintain that these two sections place too much of a restriction on the right of freedom of expression. In particular, we believe section 52 may be used against gardaí who are involved in a management dispute or unionised action. Moreover, section 55 describes the various situations where the disclosure of information may have a harmful effect and we welcome this change. However, the Bill still fails to protect “whistleblowers” - members of the gardaí who disclose information regarding corruption and abuse. Furthermore, it is the ICCL’s view that judicial supervision should be relied on when the Minister/Garda Commissioner fail to decide whether a Garda should not be prosecuted because he/she disclosed information regarding corruption or abuse.

2.48 Penalties for committing both offences are extremely high and were amended by the Minister in the Seanad. A person guilty of an offence under subsection 52 (1) is liable to:

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

The ICCL is very clear that the punishment for this offence is not proportionate and should be revised.

Recommendation

- In section 55, include new exemption to protect whistleblowers that make a disclosure to expose corruption or a breach of rights.
- Revise penalties in section 52, section 53 and section 54.

Part 3 – Establishment and Functions of Garda Síochána Ombudsman Commission

- 3.1 Section 57 provides for the establishment of the Garda Síochána Ombudsman Commission. The Ombudsman Commission will consist of three members who will be appointed by the President and on the nomination of the government and through resolutions from Dáil Éireann and Seanad Éireann (section 58). We welcome the fact that some of the ICCL’s recommendations were taken on board in relation to the makeup of the Commission. For example, the Bill ensures that no ex-members of the gardaí can sit on the Commission.
- 3.2 When this Bill was being discussed in the Seanad, the Minister explained his rationale for introducing a three-member Ombudsman Commission. The Minister explained “providing for three members increases the chance that an internal debate will take place before any decision is made which is in itself a good thing”. The Minister also argued that Ireland is a much bigger country than Northern Ireland and this would pose too much of a burden upon one person. In addition, the Minister said that if only the Ombudsman Commission only consisted of one person they would be exposed to public scrutiny.
- 3.3 The ICCL disagrees with the Minister’s reasoning on this. Firstly, in terms of the quality of decision-making, the existence of a three-member body is more likely to lead to

disagreement. Secondly, all three members will be expected to review each case together. How would this relieve a burden upon one person if all three have to look at the same case anyway? Thirdly, the ICCL believes that the Ombudsman should be exposed to public scrutiny. It is extremely important that the Ombudsman Commission is identifiable in the public eye. This would enhance the effective operation of the body or enhance public confidence in the system, we believe that an Ombudsman model, as recommended by the HRC, should be adopted.

3.4 The ICCL believes that the best model for an independent complaints mechanism is that of an Independent Ombudsman based on the Hayes Review¹⁹ and the Patten Report. It is the ICCL's view, that this is the best model and is to be preferred to the three-person Inspectorate proposed in the Garda Síochána Bill.

3.5 The appointment of a single Ombudsman as head of the complaints body, would lead to greater public confidence in the institution, by providing a clear public persona in the position. The office would also be, and would be seen to be, more independent and possess the necessary authority to ensure accountability. In the words of the Hayes Review a credible complaints body must be "open, fair, easily understood and widely accessible". In the context of police accountability, the Ombudsman model runs the risk of being viewed as a re-packaging of the Garda Complaints

Board or at least a weaker body than an Ombudsman because of the division of responsibility between a committee as oppose to lying with a single individual. The complaints mechanism established must provide a least equivalent accountability of the gardaí, as does the Ombudsman for the Police Service of Northern Ireland (PSNI).

3.6 The ICCL believes that a central element to ensuring public confidence in the complaints body will be the conviction that the body is truly independent. The high esteem in which the current Northern Ireland Police Ombudsman²⁰ is held, owes a lot to the fact that the vast majority of the community have confidence in the independence of her office. One contributing factor is the method of appointment to the complaints body.

3.7 Although the appointment process in the Bill involves both Houses of the Oireachtas, which may lead to greater transparency and fairness, this measure does not go far enough. New appointments to the body should be publicly advertised and candidates interviewed and evaluated on the basis of criteria which is in the public domain. There should also be an independent selection panel that interviews the candidates and makes recommendations to the Oireachtas and to the Government.

¹⁹ Hayes, M. (1997) *A Police Ombudsman for Northern Ireland: A Review of the Police Complaints System in Northern Ireland*, Belfast:

²⁰ www.ni-ombudsman.org.uk/

3.8 The appropriate staffing of the complaints body is another important aspect to its independence. The staff of the complaints body must be independent in their function and appointment.

3.9 Section 64-(1) provides the Minister for Justice with a discretionary power to transfer the staff of the Garda Síochána Complaints Board to the new complaints body. The ICCL recommends that this section be deleted in its entirety as it gives the impression that the new complaints board is simply a “repackaging” of the old system. Current staff of the Garda Síochána Complaints Board should of course be eligible to apply for employment to the new body through open and public procedures.

Recommendation

- We recommend that the Ombudsman Commission be reduced to one person.
- The Ombudsman Commissioner should be recruited through a public advertisement and selected by an independent selection panel.
- Delete section 64-(1).

Officers of the Ombudsman Commission

3.10 Section 65-(1) allows the Ombudsman Commission to designate persons as officers of the Commission. Section 66-(1)(a) makes provision for the Ombudsman Commission to make arrangements with the Garda Commissioner to engage members of the gardaí to work with the Commission. Moreover, section 66-(1)(b) enables the Commission to engage police officers from police services from outside the State.

3.11 The ICCL is concerned that the gardaí will be wholly relied on to undertake investigations on behalf of the Commission. At present the Bill makes no provision for the Commission to train its own independent investigators. It has been suggested that the Commission may be forced to rely on gardaí as investigators if it is not properly resourced.²¹ In the ICCL’s previous submission on the published scheme, we noted the importance of resourcing for the complaints body. As pointed out by the Northern Ireland Police Ombudsman, “there must clearly be a sufficient budget... this is in the interest of the state”. Failure to provide adequate resources to conduct independent investigations can lead to costly and expensive outlay at a later stage to remedy the wrongs caused by a failure to investigate.

²¹ Walsh, D. (2004) “A Critique of the Proposed Garda Complaints Procedure” delivered to a seminar organised by Amnesty International (Irish Section) and the ICCL, *Garda Síochána Bill 2004*, Holiday Inn Hotel, Dublin 2.

Recommendation

- Provision should be made in the Bill to enable the Ombudsman Commission to train its own independent investigators.
- The Ombudsman Commission must be properly resourced in order to carry out its functions. The Bill should recognise this by including a new section stating “the Minister for Justice, Equality and Law Reform shall provide the Ombudsman Commission with resources to carry out its objectives, functions and powers under section 60-(1) of this Act as required”.

Part 4 – Complaints, Investigations and Other Procedures

Introduction

- 4.1 In the ICCL’s previous submission on the published scheme, we made a case for the new complaints body being given all the immunities and powers of the gardaí for the purposes of investigations. We also recognised that there may be circumstances where the complaints body will refer a case to the Garda Commissioner. However, we called for the complaints body to seek the complainants consent for this action. Further, we were also very critical of proposals for the new body to only undertake investigations addressing allegations of death and serious injury.
- 4.2 While several of the ICCL’s original concerns have been addressed in the Garda Síochána Bill 2004, we harbour many reservations on this section of the Bill. We must remember that it is in the best interests of the gardaí to rebuild public confidence, particularly since the interim findings of the Morris Tribunal. The Government is now primarily responsible for the reform of the gardaí through the new Bill; it is the Government and not the gardaí who will lose public confidence if the new measures fail to deliver. Repackaging the old complaints board will do nothing to build public confidence, and there is a danger that the Ombudsman Commission may turn out to be little more than what we have already. The public needs a

clear and simple procedure for making complaints against the gardaí. Instead the Bill presents us with a maze of procedures and bureaucracy that runs the risk of collapsing. The proposed Ombudsman Commission is also heavily dependent on the Garda Commissioner in order to function effectively. The overall appearance is that the complaints system, rather than offer the public a form of redress and accountability, is designed to protect the gardaí.

Time limits

- 4.3 A procedure for making a complaint against a member of the gardaí is outlined in section 75 of the Bill and section 76(1) specifies a six-month time limit for making a complaint. Six-months is simply not enough time specified for making a complaint and we recommend that the time limit be extended to 12 months. This extension would allow people with literacy difficulties, emotional problems associated with the incidents/events or who are seeking advice with just enough time to make a complaint.

Recommendation

- In section 76(1), delete “six months” and replace with “twelve months”.

Criteria for determining the admissibility of complaints

- 4.4 Section 79 provides for the application of specific criteria by the Ombudsman Commission when determining the admissibility of complaints. The Commission must consider if the complaint against the garda constitutes a breach of discipline by a member of the gardaí.

- 4.5 The code of offences under the old Garda Complaints Board procedure was one of its main weaknesses. For example, the complaints code and the Garda Síochána’s internal disciplinary code were almost identical. It has been pointed out that since a complaints procedure is aimed at the police-public interface, complainants are not concerned with internal disciplinary matters.²² In order to move away from the old system, we recommend that section 79 is revised and that the Code of Ethics is enforceable in this section. We further recommend that a failure to carry out garda functions as set out in section 7 should also be included in this section.

Recommendation

- Completely revise section 79 and make a breach of the Code of Ethics relevant criteria for the determining the admissibility of complaints. A failure to carry out garda functions as set out in section 7 should also be included.

²² Walsh, D. (1997) *ibid*, pp. 269.

Notification of complaints and preservation of evidence

4.6 Section 80-(3) provides that the Commissioner must inform a member of the Garda Síochána of an admissible complaint. In accordance with due process the Garda should be aware if there is an admissible case against him/her, and the Bill does give the Commissioner the power to postpone notification until after the preservation of evidence [section 81-(1) (b)].

Resolution and investigation

4.7 Once a complaint has been deemed admissible there are a number of possible options for the Ombudsman Commission to choose when addressing complainant's allegations:

- Resolution of a complaint through mediation where both parties are willing to participate [section 82-(1)]²³.
- Referral to the Garda Commissioner for investigation through internal disciplinary procedures [section 86-(1)].
- Investigation of complaints concerning death of, or serious harm to, a person [section 83-(1)], either through informal [section 87-(1)] or formal investigative [section 90-(1)] procedures.
- Ombudsman Commission can refer complaints not resolved or involving a serious offence or which warrant further investigation [section 84-(1)]. These

²³ This option is reliant on the Ombudsman Commission drafting guidelines for this procedure.

complaints can be referred to the Garda Commissioner, or dealt with by the Ombudsman Commission through one of its investigation channels.

Referral to the Garda Commissioner

4.8 Section 86-(1) outlines the procedure by which the Garda Commissioner shall deal with complaints referred to him/her by the Ombudsman Commission. The Garda Commissioner will appoint a member of the Garda Síochána to investigate the complaint and the Ombudsman Commission can supervise the investigation.

4.9 The ICCL acknowledges that the possibility must exist for the complaints body to refer cases to the Garda Commissioner for investigation. However, it is also the case that a complainant may not wish their complaint to be referred to the Commissioner and we therefore believe that this possibility should only be exercised with the consent of the complainant. In addition, we are concerned that the Ombudsman Commission will be unable to supervise these investigations due to a lack of funding. In fact, there is a strong possibility that the Ombudsman Commission will be forced to refer complaints to the Garda Commissioner because of inadequate funding. Referral to the Garda Commissioner should only occur if it is the most appropriate avenue for resolving a complaint. Further, the HRC had recommended that a panel of garda investigators should be established to deal with such cases and this is not recognised in the Bill, and the ICCL supports this recommendation. The HRC also recommends that a complaint should only be referred to the Garda

Commissioner if it does not relate to an offence or serious misconduct.

Recommendation

- Insert new section providing that no complaint will be referred to the Garda Commissioner without the consent of the complainant.
- The Bill should make provision for a panel of garda investigators to deal with cases referred to the Garda Commissioner for investigation.
- Complaints relating to serious offences or misconduct should not be referred to the Garda Commissioner under for investigation.

Informal investigation

- 4.10 The procedure for informal investigation of complaints by the Ombudsman Commission is delineated in section 87-(1). Providing for a member of the Garda Síochána under investigation with an opportunity to be heard in person or through a legal representative, this section also allows the individual to present evidence and make submissions.
- 4.11 The Ombudsman Commission's powers under this procedure generally only relates to the provision of information [section 88-(1)]. Persons who possess information or a document that is relevant to an investigation can be compelled to provide it to the Ombudsman Commission.

Formal investigations

- 4.12 Section 83-(1) specifies a different procedure for the investigation of complaints where a serious offence has been committed. Section 90-(1) provides designated investigating officers of the Ombudsman Commission with the same immunities, privileges and powers as ordinary investigating members of the gardaí. We recognise that this is a significant change from the Minister's previous published scheme on the Bill and we welcome this.
- 4.13 The ICCL has very serious reservations about this section of the Bill and we believe that it needs to be completely redrafted. The Ombudsman Commission needs to enjoy full autonomy to determine which complaints should be subject to formal investigation. In addition, the Commission should have a broad range of powers and should be able to tailor its own investigation depending on the nature of the complaint. The Ombudsman Commission also needs to be more independent of the Garda Commissioner in order for it to function for effectively.

Reporting the Ombudsman Commission's findings

4.14 The principal role of the Ombudsman Commission is to investigate or supervise investigations of complaints. Following each investigative procedure, the findings are to be reported to the Garda Commissioner to be dealt with through the gardaí's internal disciplinary regulations. Where the investigation relates to a serious offence, the Ombudsman Commission may refer a report to the Director of Public Prosecutions.

4.15 Section 115-(1) provides that the Minister for Justice, after consulting with the Garda Commissioner and with the approval of government, produce disciplinary regulations for the Garda Síochána. A disciplinary board may be established to carry various functions, however, the Ombudsman Commission has no role in any of this. Unlike the current Garda Complaints Board, the Ombudsman Commission has no role in determining whether a member of the gardaí has breached the internal disciplinary code. We believe that the current system therefore lacks transparency and independent and constitutes a significant retreat from the current procedure.²⁴

Recommendation

- In section 107-(5), the Ombudsman Commission should be given a role in determining whether a member of the gardaí has breached the internal disciplinary code.

²⁴ Professor Keogh also made this point in his recent paper on the complaints procedure.

Search of Garda Síochána stations

4.16 Section 91-(1) concerns searches of Garda Síochána stations where the Ombudsman Commission is investigating serious offences (murder and serious harm). Searches of garda stations can only be authorised by the Ombudsman Commission where the investigating officer with reasonable cause, suspects the member under investigation to be guilty of an offence, and has reasonable grounds to suspect there may be evidence in the station [section 91-(2)]. However, the Commission must first notify the Garda Commissioner and Minister for Justice before it can authorise an officer to conduct a search [section 91-(3)]. This section gives the Garda Commissioner the power to object to a search for reasons relating to the security of the state. In these circumstances the Ombudsman Commission can request the Minister to consider the objection [section 91-(1)] and the Minister may issue give permission, together with issuing specific instructions. The Ombudsman Commission's officer may then enter a garda station one week after the issuing of the authorisation.

4.17 While it is acceptable to protect information relating to the security of the state, on balance the ICCL believes that this provision may be open to abuse and the Garda Commissioner and Minister may curtail the efficacy of investigations. If investigating officers were treated as the equivalent of the gardaí, the HRC notes that, “investigating staff of the Ombudsman Commission will be bound by the same duties as members of the Garda Síochána, which will include the Official Secrets Act, 1963, and that any warrant for search of a station will be restricted to material relevant to an instant complaint”.²⁵ The government could choose instead to seal files which are of national security importance and we therefore recommend that this section be deleted.

Recommendation

- Delete section 91.

Examination of certain practices, policies and procedures by Ombudsman Commission

4.18 The Minister for Justice may request the Ombudsman Commission to examine practices, policies and procedures of the gardaí, in order to prevent and reduce complaints [section 98-(1)]. For the ICCL, this measure should not just be another discretionary undertaking for the Minister for Justice. Again, this provision gives the Minister too much power as it will allow him/her to prevent the Ombudsman Commission from examining and scrutinising certain practices and policies. In an effort to ensure greater transparency and independence, the Ombudsman Commission must have the power to initiate their own investigations into garda practices, policies and procedures.

Recommendation

- In section 98-(1) delete “the Minister may request the Ombudsman Commission to” and replace with: “the Ombudsman Commission may”.

Offence of providing false or misleading information

4.19 Section 102-(1) makes it an offence to knowingly provide false or misleading information to the Ombudsman Commission. The penalty for committing this offence on summary conviction is a fine not exceeding €2,500 or imprisonment for a term not exceeding six months, or both. The ICCL is concerned that this provision is excessive and may be used by members of the gardaí to deter potential complainants from making a complaint.

²⁵ HRC (2004) *ibid*, pp.15.

Part 5 – Establishment and Functions of Garda Síochána Inspectorate

5.1 Part 5 of the Garda Síochána Bill provides for the establishment of a new Garda Síochána Inspectorate. Section 107 provides that the Garda Síochána Inspectorate shall consist of three members to be appointed by Government. Former members of the gardaí will not be eligible to be appointed.

5.2 The main objective of the new Inspectorate is described in section 109(1).

The objective of the Garda Síochána Inspectorate is to ensure that the resources available to the Garda Síochána are used so as to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards are comparable police services.

5.3 In the UK a similar body exists, Her Majesty's Inspectorate of the Constabulary. However, this body employs police officers and non-police officials. The Inspectorate is charged with examining and improving the efficiency of the Police Service in England and Wales.

5.4 The ICCL is supportive of any measures which would improve the efficiency of the gardaí. We envision that this new body will consist of civil servants and provide a new arm of management for the Minister. However, we have a number of concerns with the new Inspectorate as proposed by the Minister for Justice. We believe that this new body may run the risk of undermining the effectiveness of the new Garda Síochána Ombudsman Commission. Because both bodies are comprised of three members, we believe that they may become confused in the public mind. We recommend that the Minister amend Part 3 of this Bill to provide for a one member Ombudsman Commission.

5.5 The ICCL is also concerned that this new body will be accountable to the Minister for Justice. This will allow him/her to exert even more political control over the gardaí. We recommend that the Garda Síochána Inspectorate be accountable to a National Garda Board.

Recommendations

- Amend Part 3 of the Bill to allow for a one member Garda Síochána Ombudsman Commission.
- Make the Garda Síochána Ombudsman Commission accountable to a National Garda Board.