



16 April 2014

**Review of the effectiveness of the legislation  
relating to oversight of An Garda Síochána  
by the Oireachtas Joint Committee on Justice, Defence and Equality**

**Submission by the Irish Council for Civil Liberties (ICCL)**

## **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 an independent 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 which 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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## A. Introduction

1. Since its foundation in 1976 by Mary Robinson and others, the Irish Council for Civil Liberties (ICCL) has campaigned consistently for a more accountable and human rights compliant police service.
2. In 2006, in the immediate aftermath of the publication of the reports of the Morris Tribunal to Inquire Into the Conduct of Certain Gardaí in the Donegal Division, the ICCL published “Implementing Morris, An Agenda for Change; Placing Human Rights at the Core of Policing” (copy enclosed). In that report, the ICCL commented critically on certain matters related to the oversight of policing that it considered were not adequately addressed by the Garda Act 2005.

Since 2006, 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.

3. The ICCL greatly welcomes this opportunity to contribute to the review by the Oireachtas Joint Committee on Justice, Defence and Equality of the effectiveness of the legislation relating to oversight of An Garda Síochána.

This submission focuses on the need for reform of the Garda Act 2005 in relation to the work of the Garda Síochána Ombudsman Commission (GSOC) and of the legal relationship between the Garda Commissioner and the Minister for Justice and Equality.

The ICCL considers that there is a need for an independent Garda Authority and questions whether there remains a need for a Garda Inspectorate as currently constituted under the 2005 Act. It also calls for the creation of a new National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations Convention Against Torture (OPCAT), with a mandate to include the independent and unannounced inspection of Garda stations.

The submission concludes with a number of recommendations.

4. The ICCL hopes that this short submission will be of assistance to members of the Oireachtas Joint Committee on Justice, Defence and Equality and would be happy to appear before the Committee at any public session at which this matter is examined.

B. Effectiveness of current legislation

a. Reform of the Garda Síochána Ombudsman Commission

5. 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.
6. Over the years, GSOC has suggested that the 2005 Act might be amended to allow for the "leaseback" of complaints for investigation by members of An Garda Síochána. More recently, GSOC appears to have softened its stance on this issue, speaking instead of the alternative categorisation of some complaints as "service failures" (to be examined by An Garda Síochána) or the reintroduction of "preliminary inquiries" that might be carried out by An Garda Síochána.
7. The ICCL wishes to make clear that it opposes fundamentally any reform of the Garda Act 2005 that would lead to an increased number of complaints against Gardaí being handled, in one form or another, by members of An Garda Síochána rather than by GSOC itself.

On the contrary, in the interests of restoring full public confidence in the integrity of Ireland's police complaints system, the ICCL considers that any reform of the 2005 Act in this area should specify that, as is the case in Northern Ireland, **all complaints against Gardaí must be independently investigated by the Garda Síochána Ombudsman Commission.**

Naturally, this will have resource implications and the human and financial resources made available to GSOC should be strengthened accordingly.

8. One specific area where the ICCL agrees with GSOC that reform is required is in relation to **section 106** of the 2005 Act which provides that:

"106.— (1) For the purpose of preventing complaints arising in relation to a practice, policy or procedure of the Garda Síochána or of reducing the incidence of such complaints, the Minister may request the Ombudsman Commission to—

- (a) examine the practice, policy or procedure,
- (b) report to the Minister within such period as he or she may specify on the results of the examination, and
- (c) include in the report the Commission's recommendations for achieving that purpose.

(2) The Minister may make a request under subsection (1) on his or her own initiative or following a recommendation by the Ombudsman Commission that the practice, policy or procedure be examined.

(3) On making a request under this section, the Minister shall inform the Garda Commissioner in writing of the nature of the request, including—

- (a) the specific practice, policy or procedure to be examined, and
- (b) the reasons for requesting the examination.

(4) The Ombudsman Commission shall—

- (a) examine the practice, policy or procedure and make the report in accordance with the Minister's request, and
- (b) provide the Garda Commissioner with a copy of the report.

(5) The Minister may publish all or part of any report received under this section from the Ombudsman Commission."

9. Section 106 has significant preventative potential, enabling the review of systemic matters that may underlie a pattern of complaints. However, at present, this power can only be activated by GSOC on the request of the Minister for Justice.
10. 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 2005 Act 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.
11. 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.

b. Reform of the Legal Relationship Between the Garda Commissioner and the Minister for Justice and Equality – the need for a Garda Authority

12. **Section 20(1) (a)** of the 2005 Act empowers the Minister to set out "policy priorities" for the Gardaí in performing its functions and to issue "written Directives" to the Commissioner. **Section 21(1)** requires the Garda Commissioner to submit three-year strategy statements to the Minister for approval that must take account of, among other factors, "relevant government policy". Moreover, the Garda Commissioner must submit annual policing plans to the Minister for approval.
13. Clearly, what is missing from current Garda accountability structures is civic oversight in the form of an independent policing authority such as the Policing Board in Northern Ireland. An independent Garda Authority could 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 Garda Commissioner would be accountable on an annual basis, and the appointment of senior Garda officers, up to and including the Commissioner.
14. Once established, a Garda Authority could play a role in setting priorities and monitoring compliance with human rights principles. The Authority, with the input and consultation of the Commissioner, could also draw up the strategic and annual policing plans. The Commissioner could then be held accountable by the Authority, not by an elected politician, for the performance of his or her functions in accordance with the strategy plan and annual plan.

c. Do we need a Garda Inspectorate?

15. **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, the Garda Inspectorate is a creature of the Minister.

16. In the view of the ICCL, if the other enhancements to the oversight of policing recommended in this submission (including that in section d. below) were to be adopted, it would become questionable whether it is necessary to retain the Garda Inspectorate in its current form.
17. If GSOC were to have the power, on its own initiative, to conduct reviews of practices, policies and procedures, this aspect of the Inspectorate’s work could be assumed by the Ombudsman Commission. Other dimensions of the advisory/oversight role of the Inspectorate could be allocated to a newly-created and independent Garda Authority. As regards the provision of advice on internal operational matters, perhaps this is best retained within the Department of Justice / An Garda Síochána, consideration might be given to enhancing the role of the existing Garda Síochána Professional Standards Unit (PSU).

The ICCL recognises the exceptionally high calibre of the international policing experts who have worked for the Garda Inspectorate but considers that, in future, its functions might be better allocated to independent domestic bodies and, in some operational instances, to An Garda Síochána itself.

d. The need for a new independent inspection mechanism

18. One final significant gap in our existing legislation is the absence of any provision relating to the independent inspection of Garda stations and, more particularly, the inspection of conditions of detention on Garda premises.

In 2007, Ireland signed the Optional Protocol to the United Nations Convention Against Torture (OPCAT) which, among other things, requires the creation of an effective “National Preventative Mechanism” (NPM) with the power independently to inspect all places of detention, including Garda stations. However, Ireland has not ratified the OPCAT treaty and, so far, has taken no discernible steps towards the creation of a NPM.

The Inspection of Places of Detention Bill, which is intended to give legislative effect to OPCAT, is not listed as a legislative priority and this leaves a significant gap in protection for persons deprived of their liberty in Ireland.

C. Recommendations

- **Provision be made in the Garda Act 2005 for all complaints against members of An Garda Síochána – from whatever source – independently to be investigated by the Garda Síochána Ombudsman Commission (GSOC);**
- **Section 106 of the Garda Act 2005 be amended to empower GSOC to examine practices, policies or procedures on its own initiative, without requiring prior Ministerial approval;**
- **Section 87(3)(a) of the Garda Act 2005 be deleted, thereby ending the exclusion of the Garda Commissioner from the investigative mandate of GSOC;**
- **A new and fully independent Garda Authority be created and consequent legislative amendments be made to the provisions in the Garda Act 2005 governing the legal relationship between the Garda Commissioner and the Minister for Justice;**
- **Part 5 of the Garda Act 2005 be deleted and the current functions of the Garda Inspectorate be reallocated to GSOC, the new Garda Authority and the Garda Síochána Professional Standards Unit;**
- **Enactment of the Inspection of Places of Detention Bill be accorded a high legislative priority; the Optional Protocol to the United Nations Convention Against Torture (OPCAT) be ratified and an effective National Preventive Mechanism established, with a mandate including the independent and unannounced inspection of places of detention on Garda premises.**