



AN TÚDARÁS PÓILÍNEACHTA
POLICING AUTHORITY

**Final Report to the Minister in accordance with Section 62O (6) of
the Garda Síochána Act 2005 on the Garda Síochána response to
the Report of the Fennelly Commission of Investigation**

July 2018

Contents

1. Background.....	3
2. Summary of progress on actions arising from the Authority Report in October 2017.....	3
3. Conclusion	6

1. Background

The Minister for Justice and Equality wrote to the Policing Authority on 12 April 2017, requesting that the Authority oversee the implementation of the recommendations made in the Report of the Fennelly Commission ('the Fennelly Report') and provide progress reports on a quarterly basis, under section 62O(6) of the Garda Síochána Act 2005.

The main issue of concern as set out by the Minister was the putting in place of proper policies and procedures in relation to call recording; the use of technology to address the legitimate concerns regarding telephone recording; and the destruction of the recordings of calls still held by the Garda Síochána.

The Authority provided its first report ('the Authority report') to the Minister for Justice and Equality ('the Minister') in October 2017. In the Authority report there were five outstanding areas of concern identified with corresponding actions for follow-up with regard to four of these areas.

The Authority was not in a position to submit a progress report to the Minister in January 2018 as intended, because although work was underway, there was little evidence from the Garda Síochána of actual progress. The Department of Justice and Equality was informed that a report would be submitted once the necessary updates from the Garda Síochána had been submitted and considered.

Garda Síochána updates related to the actions arising from the previous Authority report have now been submitted and have informed this report to the Minister.

2. Summary of progress on actions arising from the Authority Report in October 2017

1. Destruction of non-999 calls

The action arising from the Authority report to the Minister in October 2017 was as follows:

"The Authority is of the opinion that the Garda Síochána and the Department should liaise directly with each other in relation to the issue of the destruction of the non-999 recordings and has informed the Garda Commissioner as such."

The Authority's Chief Executive engaged in writing with the Garda Commissioner over the course of Q1 2018 to progress this matter. This included notifying the Garda Commissioner of discussions with the Department and its understanding that it is for the Garda Síochána to clarify the legal position on this matter by obtaining legal advice from the Attorney General.

In a letter of 23 April 2018, the Garda Commissioner's office confirmed to the Authority that the Head of Legal Services in the Garda Síochána will refer the matter to the Office of the Attorney General in line with the view of the Department.

In a letter of 14 May 2018 to the Garda Commissioner, copied to the Department, the Authority expressed the view that it is appropriate for the Garda Síochána to liaise directly with the Department, subject to Attorney General's advice, in relation to any legislative requirement to support the destruction of the retained non-999 recordings. This was on the basis that the Authority had no oversight value to add. However, the Authority would expect to be advised of the outcome.

The Garda Síochána will liaise directly with the Department in the event that it emerges that legislation is required to facilitate the destruction of non-999 calls. The Authority would expect to be advised of the outcome.

2. Lawfulness of calls now recorded by the Garda Síochána

The action arising from the Authority report to the Minister in October 2017 was as follows:

“The Authority will follow up again with the Department of Justice and Equality to get an update regarding the outstanding legislative issue.”

In a letter to the Authority in April 2017, the Minister indicated that the Department of Justice and Equality would be considering those recommendations concerning the need to provide a statutory underpinning for the recording and retention of calls to Garda stations.

The Authority Executive confirmed in correspondence with the Department in February 2018 that this matter would be discussed within the context of the liaison meetings between the Authority and the Department. It is understood that this matter would continue to be considered by a Departmental Working Group.

The position with regard to the recording of calls by the Garda Síochána is further referred to in the Telecommunications Policy supplied by the Garda Síochána to the Authority on 23 May 2018, that the Garda Síochána may record non-emergency calls for service made to Garda telephone lines.

The legal basis for calls recorded by the Garda Síochána (including emergency 999/112 and non-emergency calls) is a matter for consideration by the Department of Justice and Equality within the context of the Departmental Working Group. In the circumstances, there is no other specific oversight required by the Authority on this point.

3. New policy on telecommunications

The action arising from the Authority report to the Minister in October 2017 was as follows:

“The Authority is recommending that the Garda Síochána finalise its new telecommunications policy in early January with a view that when it reports to the Authority on 12 January 2018 with the next update on these matters that it will be in a position to confirm to the Authority that this has been done. We will also be requesting that they:

- provide details of how it is intended to roll out the policy and to provide training; and
- ensure that the new policy meets the requirements of data protection legislation and in particular considers the possible impact of the General Data Protection Regulation, due to come into force in May 2018.”

The Garda Síochána submitted its Telecommunications Policy to the Authority on the 23 May 2018. On 18 June 2018, the Garda Síochána submitted supplementary information to the Authority concerning the policy roll-out, training and GDPR considerations for the telecommunications policy.

With regard to policy roll-out and training the Garda Síochána has informed the Authority that,

- The policy and procedures documents were published on the 15 May 2018, and both are available on the Garda portal.
- The documents have been emailed directly to each telecommunications technician to ensure they are aware of the policy and they have been informed that strict compliance is required.
- Briefing of Regional PAF meetings were to be part of the implementation plan for this policy. However, as it has now been decided under the policy that all matters are to be addressed to the Superintendent Telecommunications, the Garda Síochána consider that it may not be necessary to carry out the planned PAF briefings.
- As a control measure District Officers are required to apply in writing to the Superintendent Telecommunications, as described in the Procedures Document, before any access to the recording system is approved.

Concerning GDPR considerations, the Garda Síochána has informed the Authority that,

- Before publication, the policy and procedures documents were tested for human rights, ethics and legislative compliance, which includes data protection. The system is registered with the Office of the Data Protection Commissioner and details forwarded to the GDPR Office in the Garda Síochána.

The Authority has considered the Telecommunications Policy and the supplementary material supplied concerning roll-out, training and GDPR and has the following observations:

- The Telecommunications Policy indicates that recording takes place with regard to all emergency 999/112 calls and that the Garda Síochána may record non-emergency calls for service made to Garda telephone lines. The policy does not elaborate further on the categories of non-emergency calls that may be recorded or the criteria by which such calls will be identified.
- The policy indicates a business case must be made for any additional recording access but it does not address the criteria to be considered in deciding and authorising additional recording access, for example with regard to principles of legality, proportionality and necessity or with reference to the Garda decision-making model. As these criteria have not been articulated in the policy, it limits the extent to which these matters could have been the subject of human rights, ethics and legislative compliance testing carried out on the policy.
- The policy and supplementary information falls short of clarifying whether the GDPR Office in the Garda Síochána has assured itself with regard to the GDPR considerations concerning the contents of the Telecommunications Policy and how data subjects' rights are going to be made known to them.

With reference to the recommendation in the Authority report to the Minister in October 2017, a Telecommunications Policy has been received and is published. While this specific action is now

closed, the Authority will write to the Commissioner setting out its observations on the Telecommunications Policy.

4. Use of Technology to address concerns regarding telephone recording

The action arising from the Authority report to the Minister in October 2017 was as follows:

- “The Authority is recommending that the Commissioner assure himself in 2018 as to the effectiveness of this manual control through either the Internal Audit Service or Professional Standards Unit.
- The Authority is requesting an update from the Garda Síochána regarding what priority is being afforded to replacing or updating the NICE INFORM system and what next steps (if any) are being considered in this regard.”

The Garda Síochána submitted information on 18 June 2018 to the Authority concerning the above mentioned actions stating that,

- The Executive Director ICT has directed Superintendent Telecommunications to request the Garda Professional Standards Unit/Garda Internal Audit Unit to review the manual controls that are in place and to forward a report in due course.
- Any process to replace the current system would be considered following completion of the CAD/Control Room System RFT to ensure that any recording system procured would be compatible with the future control room system for the organisation.

With reference to the recommendation in the Authority report to the Minister in October 2017, the Authority regards this specific action as closed. The Authority will mainstream the broader governance issues surrounding the recording of calls alongside its monitoring of the roll out of the CAD II system and Control Room Strategy, both of which are contained in the Modernisation and Renewal Programme. The Authority will also seek to confirm that the PSU/Internal audit review takes place in due course and will assess the findings.

3. Conclusion

As noted earlier, two of the four actions outstanding from the Authority report to the Minister in October 2017 are more appropriately to be progressed by the Garda Síochána directly with the Department of Justice and Equality. The Authority would appreciate being advised of the outcomes.

With regard to the two remaining actions concerning the Telecommunications Policy, and the use of technology to address concerns regarding telephone recording, these actions are now closed insofar as the relevant policy has been developed and published, and key management decisions have been made. However, the Authority regards the Telecommunications Policy as somewhat weak. It will write to the Garda Commissioner setting out its observations on the Policy and requesting a timeframe for the completion of the Garda Professional Standards Unit or Internal Audit review of manual controls.

In due course, the Authority will assess those reviews. It will also mainstream the broader governance issues surrounding the recording of calls into its ongoing oversight work alongside its monitoring of the roll out of the CAD II system and Control Room Strategy, both of which are contained in the Modernisation and Renewal Programme.