



AN TÚDARÁS PÓILÍNEACHTA  
POLICING AUTHORITY

**Submission to the Department of Justice and Equality on the  
report of the Commission on the future of Policing in Ireland**

**26 October 2018**



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## Overview

The Report of the Commission on the Future of Policing contains recommendations which have the potential to be truly transformational if they are fully embraced resulting in a better policing service for the community. It also contains recommendations that need some more work before an assessment can be made. Much progress on Garda reform could and should be made on an administrative basis without waiting for infrastructure or legislative change. Identifying those reforms, sequencing them sensibly and driving their implementation would represent a real advance.

Regarding oversight, the Authority believes that the recommendations represent a significant retreat from a principle of empowered, independent, external oversight, the reasons for which are not articulated.. The proposed oversight landscape will, the Authority believes, be made considerably more crowded and less effective with the likelihood of confused accountability. The Authority sees risks in the proposals of which the Government will wish to be mindful.

The imperatives regarding public confidence in the Garda Síochána, which caused the Government to decide in April 2014 to establish a Policing Authority, endure, and indeed are again confirmed in the report of Mr. Justice Charleton. In this regard, while endorsing the 10 principles set out by the Commission in its proposed new Framework for Policing, Security and Community Safety, the Authority considers that there is a missing principle which is at the heart of many of the views expressed in this submission, namely that governance, accountability and oversight of policing must be empowered, external, independent and publicly exercised.. This is because policing is unique and different to any other service the state provides. In delivering its duty to protect the community, the Garda Síochána has coercive and intrusive but necessary powers over us all, it has the capacity to impact on the rights and liberties of the individual and officers appropriately have independence and absolute discretion in discharging those powers. With such power comes the need for particularly robust and transparent accountability mechanisms

Public confidence in Garda accountability, and Garda responsiveness to being accountable, derives from the status, independence and powers of the oversight bodies. The interests of the policing organisation may not always be aligned with the broader public interest in having performance assessed in public. Clarity as to who has the duty, authority and opportunity to challenge and take a view in the public interest is critical. The Authority welcomes proposals to enhance the independence and transparency of the Garda Síochána Inspectorate and would welcome a recommendation to merge the Inspectorate with the Policing Authority. However, it has difficulty appreciating what residual added value oversight role the PCSOC as described can bring in the event that the Government decides to remove key oversight functions and return and confer such oversight to the Department of Justice and Equality and an internal Governing Board of the Garda Síochána respectively.

By any definition, oversight is inherent in governance and accountability. The proposal to artificially segregate it, and put key elements into internal mechanisms that are not transparent and by definition cannot be truly independent represents a significant policy shift. It is a closed loop.

It has been suggested to the Authority that the recommendations are analogous to the HSE/HIQA or the operation of semi state organisations. In several respects, the organigram<sup>1</sup> shows that they are not. In any event, the Authority cannot over emphasise that these comparisons ignore the powers invested in policing

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<sup>1</sup> Page 53 of the CFP report

and the accompanying onus on a democracy to ensure appropriate checks and balances that are independent and robust. Public confidence is bolstered when these activities are transparent and undertaken in plain sight.

While the Commission understandably set out its stall as considering the future, the Authority has in mind the past and the present (e.g. Tribunals, Garda performance issues, the Garda Cultural Audit). In responding to this report it has considered how matters addressed by it over the past three years, such as establishing a Garda Code of Ethics, independently setting performance targets for the Garda Síochána, false breath tests, inappropriate penalty point notices, questionable homicide investigations might have been handled in the proposed new structure. Having regard to the standard model of State boards as recommended by the CFP, including their fundamental fiduciary responsibility to act in the best interest of the organisation, the Authority is not persuaded that transparency, accountability and public confidence would have been enhanced had such a structure been in place. While the Garda Síochána needs to be business-like, it is not a business. In the Authority's view, the need for open and public accountability vested in an independent, empowered, external body remains.

In relation to the proposals regarding appointments and promotions in the Garda Síochána, the Report does not reflect the extent of the Garda Commissioner's existing involvement in the Authority's selection of senior officers. Nonetheless, the Authority understands the logic of the recommendation to return responsibility for promotion competitions to the Garda Commissioner. However, it considers that this should be implemented only in relation to Superintendents and Chief Superintendents, and only after it can be established that the members of the Garda Síochána have confidence in the selection processes which are already the responsibility of the Commissioner. In line with many other police services and the senior civil service, it considers that the promotion of Chief Officers (Assistant Commissioners and above) should not be carried out by the Garda Organisation, but rather by an empowered oversight body.

It is not clear which body is to be charged with amending the Garda Code of Ethics. It was intended that as a living document it would be amended, but the Authority considers it premature, given the slow pace of embedding the existing Code.

Mindful of the history of Garda reform, the Authority welcomes the recommendation to place the implementation of the Commission's report under the auspices of the Taoiseach's Department and suggests that the implementation process might begin by mapping and testing the recommendations by reference to key questions and the outcomes expected by Government. The Authority stands willing to assist in any way it can, so that the result for Ireland is a professional, impartial, constantly improving police service that deserves and enjoys the trust and support of the people.

## **1. Introduction**

The Policing Authority has prepared this document in response to a request by the Minister for Justice and Equality on 28 September 2018 for its views on the recently published Report of the Commission on the Future of Policing (CFP). He invited Authority Views on the report as a whole, but chiefly on those aspects which are of direct relevance to the Authority. The invitation particularly sought the Authority's views on the proposed oversight architecture and for that reason, considerable emphasis has been given to that request within the document. The submission is also prepared in accordance with the Policing Authority's statutory functions including the requirement to advise the Minister for Justice and Equality with regard to matters relating to policing services.

Of its nature, the published report is high level and the Authority does not have the benefit of access to the CFP detailed archive papers, analysis, evidence and risk analysis underlying its recommendations. In preparing this submission therefore, the Authority has striven to understand or question the rationale or import of some of the observations and recommendations as presented and would welcome an opportunity to better understand the full range of outcomes desired by Government to enable it to assess how the various recommendations will advance the attainment of those outcomes.

The Authority came into existence as an expression of public policy and legislative action that reflected and was prompted by the concerns of the community and Government as to the state of policing in Ireland at that time. These concerns were informed by a series of high profile reports, tribunals and Inspectorate recommendations. The legislation that established the Authority was a clear statement of the need for active oversight to be independent, external and publicly exercised. The Authority believes that there has been significant confidence building in the past 3 years, arising from, in no small part, the public accountability required of the Garda Síochána during that period. It also believes that it has been the persistent, robust and public nature of that oversight that has built that confidence and lent credibility to the oversight process.

The proposals contained in the CFP report represent a significant repatriation of oversight. The Authority does not believe that the concerns that existed in 2015 have dissipated and the context in which policing oversight is undertaken has changed to merit such a retreat.

## **2. Risks and Key Questions for consideration.**

- The Oireachtas Committee on Justice and Equality in July 2018 recommended that *“Steps should be taken to ensure there is a “single pair of eyes” on Garda performance”*. The proposals bring new layers and risks of confused and misaligned accountability.
- A State Board is, generally speaking, put in place to put matters at ‘arm’s length’ from the Government. The State Board is then obliged to “Lead and Direct the business of the Body. During the debates on the establishment of the Policing Authority, the Oireachtas was advised, on legal advice, it was not possible to give certain powers to the Authority because policing is an executive function of Government. In this context, will it be possible to legislate for a “standard State board” for the Garda Síochána.
- In the Standard State Board model, the Board leads and directs, the CEO accounts to the Board, and the Chairperson to the Minister. Have the risks for policing governance in particular of having both the Commissioner and the Chair accountable to the Minister been considered? Can these risks be successfully mitigated in a closed loop?
- The drivers for police reform are well ventilated viz. public and political concerns about policing governance and performance, the police/political interface and the slow pace of reform. In this context how will the public interest and the community voice be served by a Garda Síochána State Board whose principle fiduciary responsibility must be to the interests of the organisation? This is not a new issue for the public sector.
- The culture of the Garda Síochána has come in for critical comment from Tribunals, Commissions and the members themselves. This was referenced as an influencing factor in the policy decision to move certain key cultural levers away from both the Garda

Commissioner and the Department of Justice to an independent civilian body. Have the risks of reinforcing that culture by moving functions back into both organisations been assessed? Are there reputational risks in bucking international trends for greater external oversight?

- The Implementation Group might find it helpful to explore why the legislative provision to establish a Garda Síochána Executive Board, chaired by the Commissioner with non-executive members was never implemented. The Authority proposed to the CFP that it would be revisited and on the face of it, it would seem to avoid some of the risks of the proposed full State Board model and remove any ambiguity about whether the Chair/Board or the Commissioner is actually in charge.
- The re-framing of policing as not only the responsibility of the police is interesting. Putting it on a legal basis on the recommended lines is likely to be a drafting challenge, and it would be useful in advance of so doing to examine whether there are risks for delivery and accountability inherent in diffusing responsibility.
- Departing from the standard Government policy in relation to pay determination, control of numbers and grades and ownership of estate appears to be central to the “corporation” model of governance, which is recommended. What are the risks to the coherence of the recommendations if those elements of the reform are not accepted?
- Will the observations and recommendations of Mr. Justice Charlton in the Disclosures Tribunal be addressed by the CFP approach, especially those regarding Garda culture and Garda behaviour?
- There are a number of recommendations that carry potential organisational risks for the Garda Síochána unless they are clarified quickly. In particular, the possibility of severance packages and the recommendations regarding “District” Policing. The latter would entail a reversal of recent Government and Garda Commissioner decisions which were premised on the Garda Inspectorate recommendations and endorsed by the Authority, to move to a Divisional functional model of policing.

### **3. Questions and Risks relating to National Security**

The report sets out innovative thinking in relation to national security, which has the potential to alter the balance in a positive way. However, more clarity on how the proposals would work in practice is needed.

- While the recommendation, to develop a multi-agency Strategic Threat Analysis Centre and create a National Security Co-ordinator is welcome, there is a risk of confusion, conflict and competing priorities – thus there would need to be considerable development of the detail of all of these concepts, and clear protocols developed to avoid this.
- The recommendations don’t address the key concern that there be a single pair of eyes to give public confidence that there is a similar standard of oversight and assurance that issues arising in policing are not also present on the security side
- If a ring-fenced budget is to be provided for security and intelligence capacity, who will oversee the spending of this budget, and what assurance will any of the proposed new oversight bodies have regarding the governance and internal control mechanisms for this budget?
- Whilst it agrees with the strategic collation and analysis of intelligence, and accepting that this is a complex environment, the Authority is keen to understand how roles and responsibilities might

be clarified between security intelligence and other intelligence. For example, there is a potential tension between organised crime and national security interventions if national security suspects are engaging in 'ordinary' crime activities for individual gain.

- As in any major incident, but in particular a major security incident, clarity of command is essential. The Authority is interested in the role of the National Security Co-ordinator and note that clarity in the relationship between this individual and the Garda Commissioner (inter alia) will be critical. In particular, the question of who is actually in command of, and accountable for, the response to a major security incident would require clarification.
- The delineation between national security and serious/organised crime is not always distinct. Policing activity in these areas will often engage ECHR, including Art. 8 (right to private and family life). Indeed, such operations and investigations will often involve the most intrusive and coercive powers available to police, which can impact on public confidence. Therefore, what access, if any, will the new Oversight Body's Human Rights Adviser have regarding such operations and investigations if it is to fulfil its role of assisting in assessing police compliance with human rights obligations?

#### 4. Recommendations with transformative potential

The CFP Report contains a range of recommendations that have the potential to positively transform the service delivered by the Garda Síochána. The Authority welcomes these as *“contributing to the achievement of a professional, impartial, constantly improving police organisation which deserves and enjoys the trust and support of the people”* - the vision of the Authority. It is also very welcome that many of the recommendations reinforce the outcomes of work undertaken by the Authority since its inception as reflected in the Authority’s submission to the CFP and the many reports requested by the Minister.

The report reiterates and emphasises many recommendations previously made by the Garda Inspectorate that were never implemented by the Department of Justice and Equality or the Garda Síochána. Many recommendations will take time to implement not least given that they require primary legislation. Some of the recommendations will require legislative change and significant investment but that should not inhibit their consideration.

The Authority has set out in the following table a number of key examples of potentially transformative recommendations identified in the CFP, which could be timetabled and put in order for detailed scoping work, and some of which that are capable of very early implementation.

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| <p>The Authority was the first body to publish (in April 2017) views and recommendations regarding the opening up of Garda recruitment at various levels, subsequently taken up by the Inspectorate and now the CFP. Open recruitment/lateral entry could be facilitated by regulation quickly and very small numbers, as part of a workforce strategy, would have the potential to be truly transformational.</p>  |
| <p>The removal of all prosecution decisions from the police, from the point of view of community confidence, integrity and efficient use of Garda time is an important Inspectorate Recommendation. It would benefit from an early cross agency analysis. The Authority would emphasise in particular the integrity benefits.</p>   |
| <p>The framing of policing as the protection of the human rights of all and the positioning of human rights as foundation and informing principle of policing policies, strategy and action can progress in the absence of legislative change. A clear, accessible and focused Garda Human Rights strategy, as recommended in CFP, will avoid a programmatic approach to human rights that frames it as the preserve or consideration of one section of the organisation.</p> |
| <p>The proposed codification of police powers of arrest, search and detention in statute is very welcome and will support the continued evolution of human rights based policing and empowering citizens. This is a medium term project but ought to begin early – perhaps a job for the Law Reform Commission?</p>   |
| <p>The reform of the disciplinary process of the Garda Síochána, taking account of the Charlton Report, could commence immediately since primary legislation is not required. It would benefit from being given a tight deadline and Industrial Relations facilitation.</p>   |
| <p>Considerable work has been done over many years on broadening the scope of the applicability of the Freedom of Information Act to the Garda Síochána. This could be ready for early implementation</p>   |

Strengthening of GSOC powers and proposals relating to the processes for dealing with service level complaints – this could be done immediately with a “GSOC Act” rather than awaiting the longer term amendments to the wider oversight architecture.

The proposed re-imagining of Education and Training including practical recommendations that can be immediately advanced with educational organisations with no need to await legislation. This is unlikely to be capable of being advanced by the Garda Síochána themselves given the understandable cultural attachment to the Garda College. Its impact is medium term but a target to begin, even a pilot, in the next academic year is not unreasonable.

Implementing the key recommendations from the Garda Inspectorate’s Report 10 on Crime Investigation to better align the alignment of the Garda Síochána’s investigative processes with international practice – many of these recommendations form part of the CFP recommendations.

Achieving the Government target of 2,000 Garda Reserve members presents a huge challenge but finalising the Garda Reserve strategy to articulate a vision for the role, purpose and value of the Garda Reserve could be done very quickly by the Garda Commissioner.

Development of a Garda Síochána Human Resources Strategy that sets out the respective role played within the organisation by Gardaí, Garda Reserve and Garda Staff has been called for many times by the Department of Justice and Equality, DPER and the Policing Authority. It is a critical building block that must be put in the first phase of implementation.

Augmentation of data analysis capability – nationally and at divisional level – can be met within the indicative numbers already approved by Government for civilian Garda staff.

Front line teams incorporating Garda members and staff - could be done immediately by the Garda Commissioner and would be a very positive signal. It will require significance Garda management commitment to performance manage teams.

Integrated training for Garda Members and staff where appropriate could be done immediately by the Garda Commissioner. It is notable that the Code of Ethics training is carried out on an integrated basis.

Recommendations relating to rosters, equality and diversity and technology, some of which are in process through MRP projects could all commence or continue implementation and be prioritised.

As previously requested by the Authority, the regulations governing the next selection competition for appointment as Assistant Commissioner can be quickly amended to provide for an open competition.

Updating the National Cyber Security Strategy – to be filled in

Development of a multi-agency Strategic Threat Analysis Centre and creation of a National Security Co-ordinator – to be filled in

District model of policing

The CFP recommends a district model of policing. There is a lack of an evidence base of detailed guidance for how the district model of policing would operate and how, in a complex workplace and policing environment, the district could be in any way self-sufficient. The Authority has particular concerns regarding accountability, autonomy and planning and how and where these would happen. The Authority was satisfied that the functional model recommended by the Garda Inspectorate with the Division as the basis management unit was a good one for a country of our size, and that Garda

management was making progress in that direction. The Authority would have a preference for this to continue, taking account of the varying sizes of Divisions and community needs. The Authority would also support the CFP view that there are too many Divisions.

## 5. Governance Oversight and Accountability architecture

Oversight is inherent in governance, and holding to account cannot be exercised without it. It is difficult to find any examples where a third category and by definition a third structure adds useful value, unless as an inspector or regulator with power for example to compel compliance, close a facility etc. Accordingly the complex architecture, as recommended appear to be somewhat contrived with the oversight functions of PCSOC appearing superfluous. There is also something of an inference in the Report that the challenge inherent in professional oversight (inspection, complaints handling and performance assessment) amounts somehow to blame. In this regard, Mr. Justice Charleton's remarks about the nature of the organisations before him may be worthy of reflection.

It is difficult to discern from the Report a persuasive reason for a governing State Board for the Garda Síochána on the lines proposed. Certainly, there is a serious deficit in managerial capacity in the Garda; certainly the Commissioner of the day would benefit from the advice of qualified professionals. There is no barrier at present which would prevent the Commissioner of the day addressing these deficiencies but a Board is not the appropriate governance response to such deficits, a fact evident from the Code of Practice for the Governance of State Bodies -quite the contrary.

The Report proposes that the purpose of the Board is to "...assist the Garda Síochána as an organisation to take responsibility for its own effective management and future direction." ...."help the Commissioner to reorganise etc. "... "....the police organisation could benefit from input...." *A State Board is not an assistant.* The Board of the Garda Síochána would be responsible for leading, directing and ensuring the effective management of the organisation.

Finally, there is the question of the Commissioner's accountability. The organigram in the Report sets out so many lines of "accountability" that the role of the State Board risks being undermined (and it omits a few – see Appendix 3). It also raises complex questions about how to assess the Commissioner's performance, a matter the Authority has previously addressed to the Department of Justice and Equality.

### New Oversight Governance and Accountability proposals

#### The proposed new Garda Board

There is a demonstrable difference between the duties of a police service and the nature of the services provided by other organisation with this model of board. Organisations regarded as having intrusive powers still fall far short of the breadth and impact of the powers invested in policing. The significance of the powers discharged by the Garda Síochána requires an oversight architecture that is

reflective and commensurate with those powers. This, the Authority believes, is the reason why there is not a structure comparable to that proposed in the CFP operating within policing elsewhere.

Members of this proposed Board, will under the Code of Practice for the Governance of State Bodies have a fiduciary duty i.e. the duty to act in good faith and in the best interests of the Garda Síochána. (See Appendix 1) Board members will owe their duties, first and foremost, to the Garda Síochána and not the citizen and consequently the focus is first and foremost inward looking in nature.

It has therefore to be questioned whether, when situations arise where there is a conflict between the desire to protect the organisation and transparent public accountability that, not only might there be a risk that the board would take a subjective view of the organisation's performance but its fiduciary duty would suggest that it is obliged to do so? There is consequently a risk that the proposed board structure would contribute to enhancing a culture of secrecy that needs to be eliminated rather than reinforced.

What is proposed is to move to this internal board many of the oversight levers currently under the remit of the Policing Authority, such as:

- Approval of strategy;
- Setting of policing priorities;
- Approval of annual policing plans;
- Senior Garda appointments; and
- Senior Garda removals.

The fact remains that, even if the Garda Síochána is managed and governed in a manner that is consistent with the highest standards of ethics and of integrity, there is still a risk of public perception to the contrary. The internal nature and private work of the board, supported by a Garda secretariat, of necessity loses the benefit of transparency. Whether this is real or perceived is immaterial. Public confidence requires the assurance of independent, empowered, transparent external oversight. The value of that external challenge is not only after the fact but also in the advance challenge to the organisation around its priorities and its plans, and whether and how they align with the needs of the community. In the absence of empowered influence on the priorities, there is a risk that they will be self serving.

In its submission to the CFP, the Authority had identified the need for a strong Executive Board with external experts to cover skills gaps in the current management structure to support the organisation. It would seem more appropriate that there be an Executive Board chaired by the Commissioner and including professionals across the appropriate range of management, governance, policing and security functions with clear responsibilities. This idea is not novel. It would seem that such a management structure, reporting to the Authority and to the Minister as appropriate, which was in fact enacted in a 2007 amendment to the Garda Síochána Act, but never commenced and later repealed, would be an appropriate model. Such a board is in no way incompatible with the existence of independent, external oversight, in anything they can be mutually reinforcing.

Overall, without recourse to the analysis and evidence base underlying the Commission's deliberations, the Authority is not convinced of the 'fit' of the proposal for a board as set out in the

report and consider that there are substantial issues which would benefit from further consideration and clarity.

**The proposed new Oversight Body – Policing and Community Safety Oversight Commission**

Set out below are the Authority’s comments and questions in relation to each of the proposed functions of the new Oversight body as set out in the table on page 47 of the report. Overall, the Authority is left with an impression that the new Oversight entity is mainly an Inspectorate with some “social partnership” type responsibilities, perhaps some regulatory responsibilities but no power. Questions arise in relation to many of the proposed functions and whether they will be meaningful, and it is notable that “oversight” is not included in the CFP diagram of functions. The intended lack of power seems even to be reflected in the title.

It is also notable that the proposals recommend functions, which exist in the Northern Ireland Policing Board, for example relating to community engagement and a Human Rights Advisor. However, the NIPB is an **empowered, independent body to whom the PSNI is accountable**. What will they achieve in a body with no power?

| Proposed functions of the new Oversight body  | Comments / questions  |
|---|---|
| <p><b>Fostering and monitoring inter-agency cooperation in the delivery of community safety and engendering a broad acceptance of community safety as a task for the community as a whole, not for the police alone.</b></p> <p><b>Overarching oversight to ensure inter-agency co-operation to be vested in a new Cabinet Committee.</b></p> | <p>It is not clear what is intended here nor how this would work in practice when the report specifically says that the new Oversight body would have no role in monitoring the work of health, social services or other agencies, each of whom has their own accountability structures. Is the intention a social partnership type structure?</p> <p>It is not clear how a legislative framework could compel cooperation by other agencies with the work of the oversight body and without it, this function would be meaningless.</p> <p>The Authority understands that in Northern Ireland, where a similar function was included that it proved ineffective.</p> |
| <p><b>Independent scrutiny of policing performance and assessing delivery against objectives.</b></p>   | <p>Post hoc scrutiny of the performance of an organisation against self-set policing priorities, performance targets and annual policing plan, where the Garda Board is responsible seems ineffective.</p> <p>Does the use of the word “scrutiny” instead of oversight here have significance?</p>  |

| Proposed functions of the new Oversight body   | Comments / questions  |
|--|---|
|  | Putting this alongside formalised scheduled quarterly meetings of the Oireachtas Committee on justice and Equality, which would have the same function, it is difficult to see the added value.   |
| <b>Supporting effective Joint Policing Committees or local community policing fora to work with police and other agencies to set local community safety objectives and priorities.</b>       | The Authority welcomes the expanded role regarding JPCs and local structures, but to be meaningful and effective there would need to be legislative authority given to the oversight body in relation to Garda performance and local authority performance and funding would need to be provided.   |
| <b>Supporting policy development by means of robust evidence-based research</b>  | Agreed.<br>Are any areas of Garda performance “off limits” as has been the case heretofore in relation to the Inspectorate and the Authority?   |
| <b>Promoting professional policing standards (including human rights standards), having regard to best international practice.</b>   | It would be good to understand what is envisaged in this role and whether the new Oversight body would have any power in relation to issuing and enforcing standards?<br><br>Is this a “Regulator” function   |
| <b>Carrying out inspections or inquiries concerning the delivery of policing services and advising on and monitoring the implementation of recommendations arising from such inspection.</b> | The Authority would welcome and support a full merger with the Garda Inspectorate and considers that there are substantial synergies to be gained from this move. It observes that since both organisations having built their brand it would be worthwhile to retain these brands in the naming of the new organisation, thus providing continuity and recognition by stakeholders – perhaps ‘The Policing Authority and Inspectorate’ would fit the bill. |
| <b>Human Rights Adviser</b>  | The Authority would be keen to explore this further; including what powers for example might be available to support Human Rights Audit findings. The experience with the Reports of the Garda Inspectorate suggests that without levers, human rights audit work would remain “advisory”   |

## 6. Practical examples

The following four examples raise questions as to whether these matters would have come to light in the absence of intrusive oversight but more importantly, whether they would have been framed in a manner that exposed the issues that are important for public confidence. There has been a suggestion in the Report that oversight was responsible for a blame culture that dented public confidence. It is the Authority’s view that while the behaviours and actions of the Garda Síochána organisation impacted public confidence, the fact that these issues were exposed gives confidence to the community that the appropriate checks and balances are in place and that there is appropriate oversight of policing.

|                         |  |
|-------------------------|--|
| <b>Breath Tests</b>     | The Breath Test issue was initially handled “in-house” by the Department of Justice and Equality and the Garda. The Garda Síochána response to the breath test issue wrongly conceived of it as a data issue and appeared unaware or reluctant to acknowledge the reasons as to why the issue dented public confidence, namely the implications regarding Garda behaviour, ethics and culture.                                   |
| <b>Code of Ethics</b>   | The Code of Ethics was required under statute to be established since 2005 Act and in the 10 years that elapsed, while energy was expended by many parties, it was never introduced. It was produced within the first year of the Authority’s existence and persistent, external and public oversight of its implementation has been required to ensure the organisation engages with embedding the code into everyday policing. |
| <b>Homicide</b>         | The issues surrounding the homicide data have been well rehearsed. They relate to two key elements – poor data quality and questions regarding the quality of the investigations undertaken. The Authority’s experience has been that without persistent and intrusive challenge, often in public, these matters were treated simply and solely as a statistical issue by the organisation.                                      |
| <b>Templemore Audit</b> | The Garda Síochána Audit Committee is a body internal to the Garda Síochána organisation with an external membership. The Audit Committee as evidenced in its 2016 Report highlighted its inability to address issues that it was not made aware of and it is a pertinent example that suggests that an external membership of an internal mechanism is no guarantor of effective governance.                                    |

## 7. Appointments

The Authority supports in principle the proposal that the Commissioner have responsibility for some Garda appointments, which currently reside with the Authority. However, while supporting a gradual restoration of responsibility back to the Commissioner over time starting with Superintendent, we strongly feel that the time is not yet right for this function to be returned to the Garda organisation due to the current lack of confidence in Garda promotion and selection processes.

The recent Culture audit provides ample evidence of the lack of trust in internal promotion processes noting that

*'the absence of a performance management and promotion system that is perceived to be fair, transparent and based on meritocracy is creating a sense of mistrust and disengagement across the organisation'* and recommending that <sup>2</sup>

*'Changing perceptions as to the fairness of the promotion system will take time but is, we believe, one of the very important symbols of change within the organisation that needs to be addressed'*. <sup>3</sup>

Similarly, the Charleton report comments, in the context of choosing senior officers that

*'the police should acknowledge, through proper promotion, the talent of those among them... The tribunal does not have to spell it out beyond a requirement that the promotions system should be freed from whatever ties it to not always promoting excellence.'*<sup>4</sup>

*'Since the post is key, it should no longer be seen as within the domain of choice of the head of our police force, the Garda Commissioner'*<sup>5</sup>

The CPSA Audit (2015) found *'a large number of respondents include remarks indicating they believe that the processes are characterised by nepotism, cronyism and favouritism.'*

The Authority's experience of running senior Garda selection competitions over the past two years shows the necessity to build structures and capacity to support the delivery of best practice recruitment and promotions processes to put a credible and fair process in place. Quite frankly, this work has been remedial and requires further evolution. In light of the Authority's experience we must question whether capacity or levels of confidence and trust in Garda selection systems have changed since this function was given to the Authority, which would justify returning this function to the Commissioner in the short to medium term, especially in light of the findings of the culture audit.

The Authority urges a cautious approach whereby this capacity be first evidenced in the delivery of systems for the Sergeant and Inspector ranks before restoring responsibility for more senior ranks and is of the opinion that a period of 5 years is required in order to build systems based on best practice, bed down expectations, rebuild credibility in the process and gradually transition responsibility for promotions to Chief Superintendent and Superintendent back to the organisation. Thereafter, it believes that appropriate independent elements in and independent transparent oversight of selection practices will continue to be a key factor in maintaining trust and confidence in promotions systems with clarity regarding responsibility for accountability and oversight of the system.

In the case of 'chief officers' (ie. Assistant Commissioner and above), it is noted that it is generally accepted practice, both in police services in other jurisdictions and in the broader public service, to select senior officers and officials on the basis of an independent external selection process. The Authority is not convinced of the advisability of departing from the established public service model based on an independent, expert and objective process. It is noted in any event that the Commissioner already has and should continue to have a substantial input to the process through consultation

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<sup>2</sup> Page 14 of the May 2018 Garda Síochána Culture audit

<sup>3</sup> Page 54 of the May 2018 Garda Síochána Culture audit

<sup>4</sup> Page 295 of the Charlton report.

<sup>5</sup> Page 299 of the Charlton report

regarding competency frameworks and job descriptions, briefing selection boards, having a nominee on selection boards and an opportunity to give a reference to candidates through the clearance process. Department officials have indicated that It is possible that the function would be restored to the Commissioner to be exercised through the Public Appointments Service. The Authority questions why a process which is being run successfully and which is actively changing perceptions of the fairness and meritocracy of these processes should not simply be left with the oversight body in common with other jurisdictions.

There is a risk that prematurely handing the senior appointments function back to the organisation will seal the very real perceptions of lack of meritocracy, fairness and transparency and that advancement really is about 'Who you know' and not who is the best person for the job. This will be an extremely demotivating factor for those who have experienced and welcomed the changes of the last two years and poses a serious risk of irretrievably setting back cultural change and the opportunity to build confidence in the promotion process of the organisation.

## **8. Transitional and Implementation phase**

The history of Garda Reform, and the Authority's experience, have shown that there is great scope for activity but the track record of delivery is weak. In this context, the Implementation Group will wish to consider where and by whom the actual work to develop recommendations into actionable plans will be done.

The Authority has gained considerable experience in assessing progress on Garda reform, which it would be pleased to share with the Group. What it has shown however, is that the devil will be in the detail and considerable care will be required to ensure that recommendations are developed and delivered as intended.

There is merit in expanding the membership of the Implementation Group to include the Policing Authority, the Garda Síochána Ombudsman Commission and the Garda Inspectorate, given the collective experience and expertise of these bodies in most of the issues central to the report and indeed to ensure that the perspectives of independent oversight are central to the implementation.

### Garda Inspectorate and Policing Authority

The Authority has been asked to comment on the transition in the context of a working assumption provided by the Minister that there will be a decision to merge the Authority and the Garda Inspectorate. The most important first step will be for the Department of Justice and Equality to provide assurance to the staff of both bodies. As with any change programme, constant and open communication is essential. Staff in both organisations have built up considerable knowledge and expertise and must continue to carry out statutory functions. The Garda Commissioner has assured the Authority of his active support for the current statutory oversight arrangements and a similar assurance from the Minister for Justice and Equality would be welcomed by the staff.

The two bodies already maintain close contact both formally and informally particularly in the context of assessing progress on the Inspectorate Reports. The Inspectorate is close to completing a report for the Authority on local policing, at the request of the Minister and the Authority has recently commissioned the Inspectorate for the first time to carry out a short focussed piece of work for it in relation to aspects of public order policing. This relationship could be built on, and the Authority would benefit from having access to additional policing expertise.

The Authority considers that, subject to the views of the Inspectorate and with the approval of the Minister, there are several steps that could be taken pending legislation, up to and including virtually a full merger on an administrative basis. For example:

- Practical steps such as co-location and shared back office (secretariat, press, audit etc. ) could be explored;
- The Chief Inspector could attend at all Authority meetings for most items;
- The Chief Inspector was previously invited to participate in meetings in public with the Garda Commissioner; this could be formalised into a standing arrangement.

#### Other Transitional proposals

- The Authority has previously raised the matter of opening up recruitment to various Garda ranks, including in relation to the ranks for which the Authority is the appointing body. It is strongly recommended that the “Garda Síochána Act 2005 (Appointments to the ranks of Assistant Commissioner, Chief Superintendent and Superintendent) Regulations 2016 be amended immediately to enable open recruitment when the next Assistant Commissioner position is being filled.
- The language in the Commission Report regarding local policing is being interpreted by some as reinstating the “District” as the basic organisational unit, contrary to current Government and Garda policy, which is working towards a Division model as recommended by the Inspectorate. Early clarity on this point is important.
- The Authority may action the recommendation to appoint a Human Rights Adviser on a transitional basis.

## **9. Conclusion**

The imperatives that prompted the establishment of independent external oversight endure in our view and will not be adequately addressed by the proposed architecture, especially from the point of view of independent, empowered oversight that can bring external challenge and influence that protects the public interest.

Very many transformational reforms can and should proceed on an administrative basis.

Management capacity needs to be strengthened by the recruitment and assignment of skilled professionals at the appropriate level, as proposed by the Policing Authority many times.

Internal governance, as commented on by the Effectiveness Review Group also needs to be strengthened and the Authority recommended the establishment of an Executive Board, chaired by the Commissioner, as previously provided for in legislation to which the Commissioner would appoint non-executive experts, as required, in domains where he felt he needs support.

As evidenced in the Culture Audit, the Authority does not believe that the capacity or levels of confidence and trust in Garda selection systems exist within the organisation that would justify returning the appointments function to the Garda Síochána at this time. A gradual transition premised on the delivery of robust systems initially for the Sergeant and Inspector ranks would be a prudent approach. The regulations governing the selection competition for appointment to Assistant Commissioner could also be amended to provide for open competition to this rank.

## **Appendix 1 – Extracts from the Code of Practice for the Governance of State Bodies**

### **Role of the Board**

The Board is collectively responsible for leading and directing the State body's activities. While the Board may delegate particular functions to management the exercise of the power of delegation does not absolve the Board from the duty to supervise the discharge of the delegated functions.

All board members have a fiduciary duty to the State body in the first instance (i.e. the duty to act in good faith and in the best interests of the state body).

The principal fiduciary duties are :

1. to act in good faith in what the Board member considers to be the interest of the company;
2. to act honestly and responsibly in relation to the conduct of the affairs of the company;
3. to act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law;
4. not to benefit from or use the company's property, information or opportunities for his or her own or anyone else's benefit unless the company's constitution permits it or a resolution is passed in a general meeting;
5. not to agree to restrict the Board member's power to exercise an independent judgment unless this is expressly permitted by the company's constitution;
6. to avoid any conflict between the Board member's duties to the company and the Board member's other interests unless the Board member is released from his or her duty to the company in relation to the matter concerned;
7. to exercise the care, skill and diligence which would be reasonably expected of a person in the same position with similar knowledge and experience as a Board member. A Board member may be held liable for any loss resulting from their negligent behaviour; and
8. to have regard to interests of the company's members.

The powers of governance and management of a company are delegated by the members of the company to the Board and the board owe their duties, first and foremost to the company.

## Appendix 2 – Oversight functions before and after

| Function   | Past  | Since 2016   | CFP   |
|--|---|--|---|
| <b>Annual Policing Priorities</b>                          | Set by the Minister in consultation with the Garda Commissioner                           | Set by Policing Authority, in consultation with the Garda Commissioner and approved by the Minister (with the exception of those items relating to National Security)                          | Set by the Internal Board in consultation with the Commissioner and PCSOC and with approval from the Minister   |
| <b>Annual Policing Plan</b>                                | Developed by the Garda Commissioner and approved by the Minister for Justice and Equality | Developed by the Garda Commissioner and approved by the Authority with the consent of the Minister (with the exception of those items relating to National Security)                           | Developed by the Garda Síochána and approved by the Internal Board after considering any relevant PCSOC recommendations and before submitting to the Minister for approval      |
| <b>Performance Targets</b>                                 | No measurable targets set   | Set by Policing Authority and approved by the Minister (with the exception of those items relating to National Security)   | Not specified but for consistency of approach with other functions, likely that the intended process will see targets set by the Internal Board with approval from the Minister |
| <b>Monitoring of performance against the Policing Plan</b> | Responsibility of the Minister for Justice and Equality                                   | Policing Authority on a monthly basis at Authority and Committee meetings. Transparency of process aided by publication of minutes, reports and questioning of Garda representatives in public | The extent of the role of each body is unclear although PCSOC has a role in scrutiny of the Policing Plan   |
| <b>Garda Síochána Statement of Strategy</b>                | Developed by the Garda Síochána and approved by the Minister for Justice and Equality     | Developed by the Garda Síochána and approved by the Authority, with the consent of the Minister (except for those items relating to National Security)   | Developed by the Garda Síochána and the extent to which each body is consulted or has an approval role is unclear   |
| <b>Oversight of the reform programme</b>                   | Responsibility of the Department of Justice and Equality                                  | Oversight of the implementation of the Inspectorate Report Changing Policing in  | Appears to be the responsibility of the Implementation Group, the Cabinet sub   |

| Function   | Past  | Since 2016  | CFP  |
|--|---|---|--|
|  |   | Ireland and the MRP as the vehicle for its implementation given to the Authority by Government Transparency of process aided by publication of minutes, reports and questioning of Garda in private and public session on a monthly basis at Authority and Committee level  | Committee, the Internal Board of the Garda Síochána and the Department of Justice.   |
| <b>External oversight and scrutiny of implementation of recommendations in other third party reports</b>   | Responsibility of the Department of Justice and Equality    | Actively and publicly taken up by the Policing Authority. Examples include the O’Higgins Report, Fennelly Report, Templemore Audit, Crowe Horwath,  | Based on the organigram on page 53, appears to be the Internal Board and the Minister for Justice,   |
| <b>Establishment of a Code of Ethics</b>   | Required by Statute but not delivered.                      | Code of Ethics established on 14 December 2016 and oversight of embedding of Code undertaken by Policing authority  | Not clear  |
| <b>Keep under review the arrangements for managing and deploying the resources available to the Garda Síochána</b>                                 | Responsibility of the Department of Justice and Equality    | Workforce Planning Group established in 2017 to review progress on workforce planning and the civilianisation project. A cross-Departmental/Agency Garda Resources Group was set up and has recently been expanded with broader and stronger Terms of Reference, and now includes representatives from a number of Government departments and the Policing Authority. | Managing resources now appears to be a matter for the Commissioner alone on which he would be accountable both to his Board and the Minister<br><br>Public sector norms regarding pay, staff numbers and estate not to apply |
| <b>Providing advice to the Minister annually with regard to the resources likely to be required by the Garda Síochána to perform its functions</b> | This was not done before the establishment of the Authority | Advice submitted in 2017 and 2018.  | Internal Board of the Garda Síochána   |

| Function  | Past  | Since 2016  | CFP  |
|---|---|---|--|
| <b>Approving (with the consent of the Minister and Minister for Finance) the number and grade of civilian staff to be appointed by the Garda Commissioner</b> | Department of Justice and Equality and DPER Sanction and setting of ECF numbers           | Approved by the Authority with the consent of the Minister for Justice and Equality and the Minister for PER  | Appears to be a matter for the Commissioner alone – is delegated sanction envisaged?   |
| <b>Recruitment and Appointment to the senior Garda ranks (Assistant Commissioner, Chief Superintendent and Superintendent)</b>                                | Appointed by Government after an internal Garda promotion/selection process               | Authority makes appointments to the rank of Assistant Commissioner, Chief Superintendent and Superintendent, having undertaken a selection competition in accordance with regulations made by Government. 5 AC, 15 Chief Superintendents and 44 Superintendents appointed since January 17. | Internal process approved by the Garda State Board<br>Oversight of the integrity of the processes recommended to rest with PCSOC but it already rests with the Commission on Public Service Appointments       |
| <b>Appointment of Senior Civilians</b>  | Recruited and appointed by the Garda Síochána   | All recruited by the Garda Síochána. Authority appoints senior civilians of Principal Officer grade and above   | Recruited and appointed by the Garda Síochána. Oversight of the integrity of the processes recommended to rests with PCSOC but if the civilians continue to be civil servants, that already rests elsewhere.   |
| <b>Appointment to the rank of Commissioner and Deputy Commissioner</b>  | Appointed by Government after (since 2015) an open selection competition conducted by PAS | Nominated by Authority for appointment by Government after an open selection competition conducted by PAS   | Nominated by the Internal Board for appointment by Government<br>Oversight of the integrity of the processes rests with PCSOC but if the selection process continues to be PAS, there is no function for PCSOC |
| <b>Appoint all members to the Garda Síochána Audit Committee</b>  | Appointed by the Department of Justice and Equality?                                      | Audit Members appointed and Policing Authority meets with Audit Committee Chair annually  | Not considered by the CFP but logically a matter for the Garda Board.  |

