



Crowe



AN TÚDARÁS PÓILÍNEACHTA  
POLICING AUTHORITY

# Review of the Adult Cautioning Scheme Final Report

December 2020

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# 1 Introduction and Scope of Review

## 1.1 Commissioning of the Review

Crowe was engaged by the Policing Authority in October 2019 to undertake a review of the Adult Cautioning Scheme operated by the Garda Síochána.

The terms of reference for the review were set out as follows:

*The Authority is requesting a review of the Adult Cautioning Scheme to develop an understanding as to whether the same issues exist as for Youth Diversion or if they have the potential to exist, and to assess if those issues uncovered in the GPSU<sup>1</sup> review have been resolved. It is envisaged that the review would consist of two phases. These phases may overlap in terms of timing.*

*The first phase should examine the GPSU review of Adult Cautions and have regard to the following:*

- *The scale/frequency of the issues uncovered;*
- *The implications of the issues uncovered;*
- *The adequacy of the recommendations to resolve issues;*
- *Assessment as to whether recommendations have been implemented.*

*The second phase should be an evaluation of the Adult Cautioning Scheme covering the time since the 2017 GPSU review and should have consideration for the following:*

- *The degree to which issues uncovered in the GPSU review are still present;*
- *Assessment of the efficacy of procedures and controls to ensure cases progress through the Adult Cautioning Scheme and are dealt with effectively and in a timely manner, including;*
  - *The degree to which the process and timeframes are known, understood and implemented by Garda members;*
  - *The degree of compliance with internal policies and procedures, District Officer/DPP directions;*
  - *The degree to which the Garda Síochána's process and practice in this area is generally in line with best practice.*
- *Consistency across districts in application of the Adult Cautioning Scheme with regard to acceptance/refusal of offenders;*
- *The adequacy and consistency of the governance and accountability framework in place at divisional and national level to ensure organisational oversight of adult cautions;*
- *The adequacy of systems to support the Adult Cautioning Scheme and accurate recording of data.*

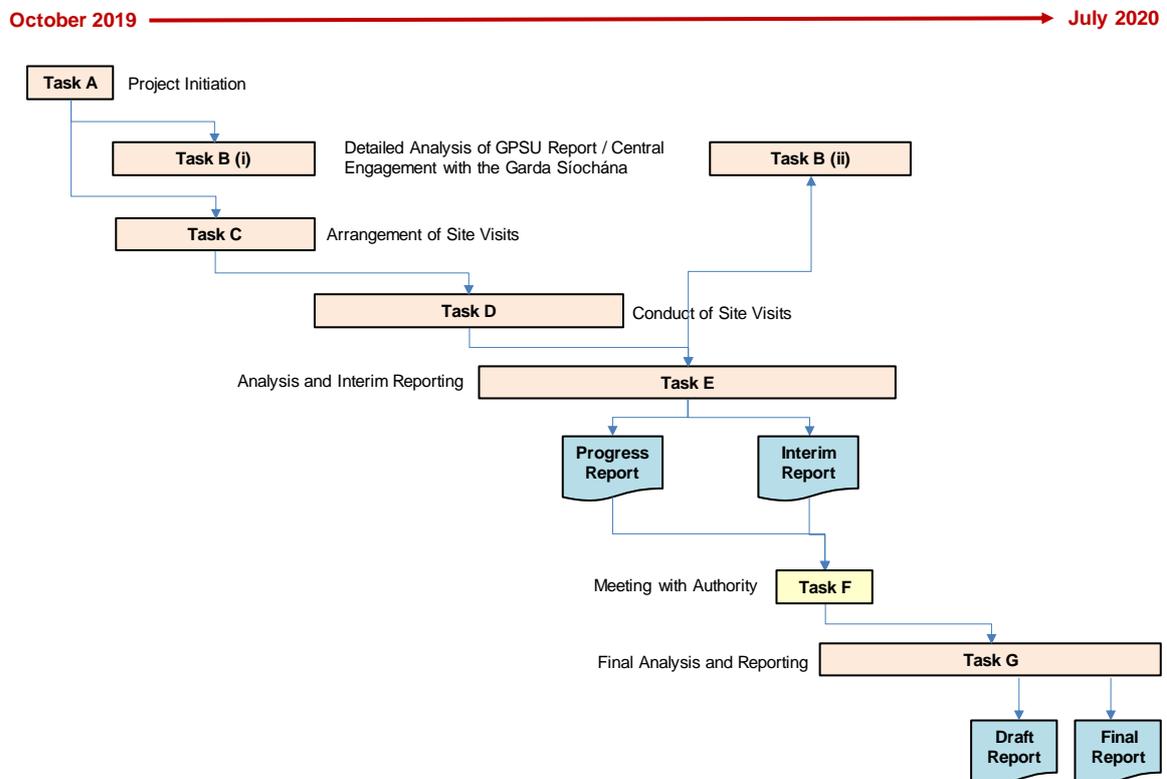
The review undertaken by Crowe followed a previous examination undertaken by the Garda Professional Standards Unit (GPSU), which resulted in the completion in mid-2017 of a report entitled "Report on the Examination of the Adult Cautioning Scheme".

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<sup>1</sup> The GPSU is the Garda Professional Standards Unit. A summary of their review is included in Section 4 of this report, along with Crowe's commentary on the GPSU work in respect of the Adult Cautioning Scheme.

## 1.2 Project Methodology

The diagram below shows the sequencing of tasks within the review:



As part of this assignment, we undertook the following tasks as set out in the diagram above:

- Task A: Project Initiation.** We agreed the terms of reference and the approach with the Authority, and mobilised our assignment team in October 2019. This included a member of the Policing Authority staff working closely with us as project liaison officer and as an observer during aspects of the on-site information gathering.
- Task B (i): Detailed Analysis of GPSU Report/Central Engagement with the Garda Síochána.** We undertook a detailed review of the 2017 GPSU report, and engaged directly with the GPSU to gain a more comprehensive understanding of the nature of their work and the issues they encountered. We spent several days on site with the GPSU examining PULSE records in relation to adult cautions, in preparation for the site visits to a selection of Garda Divisions.
- Task B (ii): Further Engagement with GPSU.** In January 2020, we undertook a second round of consultation with the GPSU in order to probe a specific issue regarding the use of prosecutions for offences listed within the Adult Cautioning Scheme, when it might have been possible to administer an Adult Caution. This matter is discussed in further detail later in this Report.
- Task C: Arrangement of Site Visits.** Task C entailed development of a standard information-gathering template for use by all members of our team during the site visits. We worked with the GPSU to identify eight suitable sample Divisions, which

were also agreed with the Authority, and the GPSU facilitated us by making introductions to the Chief Superintendents in these Divisions. The eight Divisions selected were intended to provide a broad mix in terms of urban and rural locations across the State, and were as follows:

- Two divisions within the Dublin Metropolitan Region – **DMR North** and **DMR South Central**;
  - Two divisions which include a city – **Cork City** and **Waterford**;
  - Four other (largely rural) divisions, including at least one in the border region – **Donegal, Mayo, Kilkenny-Carlow** and **Roscommon-Longford**.
- **Task D: Conduct of Site Visits.** We completed all site visits, and in all cases Garda management, members and staff were very open and accommodating.
  - The site visits were conducted by two members of the Crowe team, one of whom had operational policing experience. During these visits, we typically:
    - Met the Divisional Officer and other senior members of the divisional management team, in order to obtain their perspective on the issues under examination;
    - Held a short series of meetings or focus group sessions with Garda members involved in the administration of Adult Cautions, in order to understand the local processes involved;
    - Reviewed a sample of case files involving Adult Cautions within the Division, in order to explore how each case was processed and to build up an overall picture in respect of the issues within the scope of the review.

Each site visit lasted two days and involved time spent at the Divisional HQ (Day 1) and another large station, generally a District Office (Day 2). Fundamental to the enquiries conducted in the site visits were the following three questions:

- **What** went wrong with the administration of Adult Cautions within the Garda Síochána?
  - **Why** did it go wrong?
  - **How** have these problems been rectified?
- **Task E: Analysis and Interim Reporting.** We commenced our analysis of the data midway through the conduct of the site visits, and this process continued up to and including our re-engagement with GPSU. We presented our Interim Report to the Policing Authority in late January 2020, including high-level findings and analysis to that point.
  - **Task F: Meeting with Authority.** We met with the Policing Authority on 29<sup>th</sup> January in order to present our Interim Report, and to obtain initial feedback in respect of its content. Relevant issues which arose during the course of that discussion were included in our final analysis as part of the preparation of this Report to the Authority.
  - **Task G: Reporting.** We produced a Draft Report for the Policing Authority in mid-March 2020. A Final Report then followed after feedback from the Authority had been considered.

### 1.3 Time Periods Examined

In order to conduct a robust review of the Adult Cautioning Scheme, we used multiple datasets provided by the Garda Síochána Analysis Service. Due to access controls for the PULSE system, our examination of the relevant data was facilitated by the GPSU, in terms of the production of data extracts and reports from PULSE, and “live” on-screen review of PULSE records.

The datasets, their time periods, and their intended purpose are outlined below:

- **Initial dataset:** 1 January 2017 to 30 June 2019; eight divisions; 8,356 incidents; intended to be used to select incidents for sampling. This dataset / time period was selected as it was considered to offer a more reliable and consistent body of data due to PULSE changes over the years, and as we also wanted a more recent range of cases which could, if necessary, be probed with Garda members during site visits.
- **First Examination of Data:** 1 January 2017 to 30 June 2019; 419 incidents; sample of incidents from the initial dataset; examined live on PULSE in GPSU.
- **Second Examination of Data:** 1 January 2017 to 30 June 2019; 891 incidents selected; eight divisions; intended to determine if prosecutions were occurring when Adult Cautions would be more appropriate; examined live on PULSE in GPSU.
- **Dataset over the course of the Scheme:** February 2006 to 30 June 2019; all divisions; intended to look at data collection on PULSE throughout the life of the Scheme. We undertook a retrospective look-back in order to understand how changes to data collection had occurred since 2006, and to attempt to estimate the total number of Adult Cautions issued since the scheme began.
- **Assessment of PULSE fix:** 1 June 2018 to 1 June 2019; 5,570 incidents; all divisions; intended to assess the impact of the PULSE fix in April 2018 to limit the offences in which an Adult Caution could be applied on PULSE itself.
- **Reoffending dataset:** 1 June 2018 and 13 February 2020; 1,416 incidents; intended to assess the level of reoffenders within one year of receiving an Adult Caution.

### 1.4 Structure of This Report

This report to the Policing Authority is structured as follows:

- **Section 2** provides an overview of the Adult Cautioning Scheme within the Garda Síochána, and looks briefly at comparative arrangements elsewhere;
- **Section 3** considers the data available relating to the Scheme, and looks at issues relating to the PULSE system;
- **Section 4** examines the GPSU report and provides our independent assessment of its findings and recommendations, and their impact;
- **Section 5** describes the information gathered from the site visits to Garda which we undertook within eight Garda Divisions;
- **Section 6** presents our findings arising from the review;
- **Section 7** sets out our proposed recommendations and suggested improvements.

## 2 Overview of the Scheme

### 2.1 Overview

The Adult Cautioning Scheme was introduced into the Garda Síochána on 13th January 2006, through HQ Directive 6/06. It was approved by the Director of Public Prosecutions (DPP) and became operational on 1st February 2006.

The Scheme is intended to operate as an alternative to the prosecution of certain persons where the following conditions apply:

- there must be evidence of the commission of a specified offence listed in the schedule (see below);
- there must be prima facie evidence to warrant a prosecution;
- the prosecution of the offence must not be required by the public interest;
- it only applies to offences committed on or after the commencement date of 1st February 2006;
- it only applies to persons aged 18 years and upwards;
- the offender must admit the offence and be prepared to accept a caution;
- the caution should be applied only once to an offender, although the DPP can approve a second caution.

HQ Directive 6/06 sets out the remit of the Adult Cautioning Scheme. The administering of a caution is the process whereby the District Officer or Acting District Officer informs an individual that it is not proposed to prosecute him or her in a particular manner, if he or she is prepared to accept both a reprimand in respect of the matter and a warning that any future behaviour of a criminal nature is more likely to result in a prosecution.

### 2.2 Schedule of Offences

Twenty offences are listed in the schedule covering the Adult Cautioning Scheme, as follows:

#### **Criminal Damage Act, 1991**

- Section 2: Damaging Property (where the value of the property damaged is less than €1000)
- Section 3: Threat to damage property

#### **Criminal Justice (Public Order) Act, 1994**

- Section 4: Intoxication in a public place
- Section 5: Disorderly Conduct in a public place
- Section 6: Threatening, abusive or insulting behaviour in a public place
- Section 8: Failure to comply with direction of member of An Garda Síochána
- Section 9: Wilful Obstruction
- Section 11: Entering building etc. with intent to commit an offence
- Section 22: Surrender and seizure of intoxicating liquor

#### **Criminal Justice (Theft and Fraud Offences) Act, 2001**

- Section 4: Theft (where the value of the property concerned is less than €1000)
- Section 8: Making off without payment (where the value of the payment is less than €1000)
- Section 17: Handling stolen property (where the value of the property concerned is less than €1000)
- Section 18: Possession of stolen property (where the value of the property concerned is less than €1000)

#### **Dublin Police Act, 1842**

- Section 14(12): Nuisances in Public thoroughfares (applies to Dublin Metropolitan (Court) District only)

#### **Intoxicating Liquor Act, 1927**

- Section 17: Persons on licensed premises during prohibited hours

#### **Intoxicating Liquor Act, 2003**

- Section 6: Offences by drunken persons
- Section 8: Disorderly conduct

#### **Licensing Act, 1872**

- Section 12: Public Drunkenness

#### **Non-Fatal Offences against the Person Act, 1997**

- Section 2: Assault (Assault on a member of the Garda Síochána shall be forwarded to the Director of Public Prosecutions)

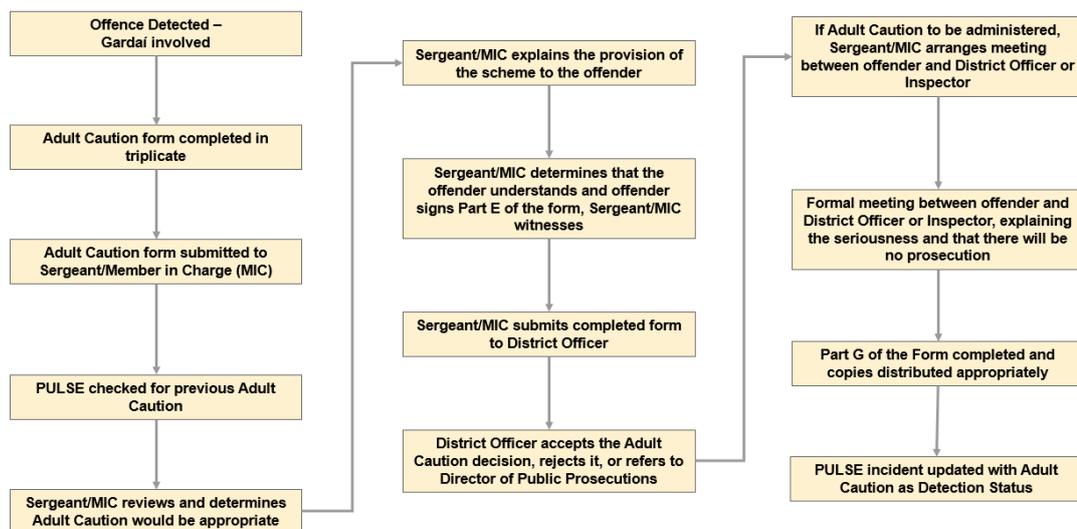
#### **Summary Jurisdiction (Ireland) Amendment Act, 1871**

- Section 8: Offensive or riotous conduct in a theatre or other place of public amusement (applies to Dublin Metropolitan (Court) District only)

## **2.3 Operation of the Adult Cautioning Scheme**

From our engagement with GPSU and our site visits to eight Garda divisions, the typical process involved in the Adult Cautioning Scheme operates along the lines illustrated in the chart overleaf and as described below:

- an offence listed in the schedule is committed and the offender is detected by Gardaí, resulting either in an arrest or the offender's details being recorded by Gardaí;
- if the detecting Garda member believes that the case is appropriate for an Adult Caution, he/she will complete an Adult Caution Referral Form – this includes four parts dealing with offender details, particulars of arrest/offence, details of the victim, and circumstances of the offence, and is completed in triplicate;
- the Adult Caution Referral Form is submitted to the Sergeant/Member-in-Charge of the station – the original and two copies are retained together until the caution is completed;
- PULSE is checked by the detecting Garda member to ensure that an Adult Caution has not been administered previously to that offender;



- once the Sergeant or Member-in-Charge has reviewed the Referral Form and is satisfied that the offender may be appropriate for an Adult Caution, he/she explains to the offender the provisions of the scheme, and determines that the offender understands the procedure and agrees to be considered for inclusion in the scheme. Offenders who consent to be included in the scheme then sign Part E of the form, which is witnessed by the Sergeant or Member in Charge;
- the referral form is then submitted to the District Officer by the Sergeant or Member in Charge, along with a narrative setting out views and recommendations;
- once the District Officer has considered the matter, he/she makes a decision to direct an Adult Caution, refuse an Adult Caution, or refer the matter to the Director of Public Prosecutions for consideration. The decision of the District Officer is recorded on Part F of the Referral Form;
- if the District Officer directs an Adult Caution, the Sergeant or Member-in-Charge arranges a suitable time and venue for the caution to be administered by the District Officer or by an Inspector;
- the administration of the Adult Caution involves a formal meeting in which the District Officer or Inspector explains the seriousness of the offence to the offender, and that the use of the Adult Caution means that prosecution is avoided and no criminal conviction will be listed against the offender. The process also typically involves a warning that if the offender comes to Garda attention again in relation to another offence, prosecution will follow;
- Part G of the referral form is used to record the administration of the Adult Caution, and the three copies of the form are distributed as follows:
  - The original / top copy is retained and filed at the District Office;
  - the second copy is retained and filed at the recording station;
  - the third copy is given to the offender after the Adult Caution has been administered.
- The Adult Caution is recorded on PULSE, selected at the “Detection Status” drop down menu in the Person Tab on the Incident Screen.

As the reader will note from the later sections in this report, there are considerable differences between the typical process as illustrated above and the actual process as observed during our visits to eight Garda Divisions, including:

- Use of hard copy records;
- Misclassification of offences;
- Adult Cautions being administered outside the rules of the scheme;
- Detection Status of some incidents being entered incorrectly on PULSE;
- Length of time between the offence being committed and the caution being administered.

## 2.4 Comparative Practice Elsewhere

The Adult Cautioning Scheme operated by the Garda Síochána is similar in many ways to schemes in use within other jurisdictions. For example, in England and Wales <sup>2</sup>, the police or the Crown Prosecution Service can administer a caution or Fixed Penalty Notice if a minor offence is committed. In Scotland <sup>3</sup>, the police have powers to give a Recorded Police Warning or to impose various types of Fixed Penalty Notice for minor offences. And in Australia <sup>4</sup>, police cautions are used to deal with low-level criminal offending as an alternative to taking such matters to court, whereas in New Zealand there is a greater focus on restorative justice disposals.

While there are variations in the approaches used in different international examples, there is a general commonality with regards to the rationale for the existence of these schemes:

- To reduce the burden on the court system;
- To ensure that punishment is proportionate to the crime committed;
- To deliver swift, simple and effective justice that carries a deterrent effect;
- To record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- To reduce the likelihood of re-offending;
- To increase the amount of time police officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the Courts <sup>5</sup>.

The criteria of eligibility and the issues of consideration also similar across all of the schemes that we have examined:

- The offence must be minor;
- The caution must be appropriate for the offence;
- After investigating the matter, police must have determined that there would be a good chance of conviction if person were charged with the offence;
- The caution must be approved by a more senior rank than the investigating officer.

<sup>2</sup> <https://www.gov.uk/caution-warning-penalty>

<sup>3</sup> <https://www.mygov.scot/police-fiscal-warning-penalty/>

<sup>4</sup> <https://lawhandbook.sa.gov.au/ch03s01s02.php>

<sup>5</sup> UK Ministry of Justice: Code of Practice for Adult Conditional Cautions Part 3 of the Criminal Justice Act 2003

Similarly, the considerations for the police in assessing suitability are consistent:

- The person's criminal history (if any);
- Any previous cautions;
- Whether the victim of the crime believes that there should be a caution;
- Whether the police believe that there should be a caution;
- Whether the offender has expressed remorse for the offending;
- The seriousness of the offence;
- Public interest considerations.

Notable variations from other international contexts include the fact that the Irish cautioning system is based on common law power rather than enshrined in legislation.

In England and Wales an additional option of a 'conditional caution' is available. In effect, this places additional qualifications on the offender, that they need to comply with over time, or the option remains to proceed with prosecution. In this jurisdiction, the range of offences for which a caution can be considered is significantly wider, including some indictable and hybrid offences. These include offences relating to possession of drugs, an issue which was raised repeatedly in our interactions with front line Gardaí. Codes of Practice in respect of both 'Simple' and 'Conditional' cautions are produced by the Ministry of Justice.<sup>6</sup>

A further issue that we encountered during our engagement with front line Gardaí was their frustration at the additional administrative/bureaucracy implications created by the requirement for the caution to be directed at the level of District Officer. In the Australian system, the caution is approved at the rank of Sergeant. In England and Wales the rank/seniority of the decision maker varies dependent upon the seriousness of the offence.

In general terms, therefore, the Irish Adult Cautioning Scheme bears many similarities to its international counterparts. It is an 'out of court disposal' and reflects internationally accepted best practice principles of offender rehabilitation: *that sanctions and interventions should be commensurate with the level of risk posed by an offender and that intensive interventions should be reserved for chronic offenders who pose an ongoing risk. For low risk offenders CJS interventions should be minimised and even avoided as they may unintentionally increase the likelihood of reoffending.*<sup>7</sup>

International evaluations of formal police cautioning schemes support the effectiveness of cautioning first-time, low-rate, adult-onset offenders as consistent with the dominant model of offender rehabilitation (risk-needs-responsivity principles) and is likely to reduce recidivism, thereby further reducing costs.<sup>8</sup>

Our engagement with operational Garda members would support the thesis that the cautioning option tends to provide a "wake-up call" to first-time offenders, the vast majority of whom do not subsequently come to police attention. Although we have expressed

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<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/243436/9780108512162.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/243436/9780108512162.pdf)

<sup>7</sup> Andrews & Dowden 2006

<sup>8</sup> Allard et al. 2010

elsewhere in this report (Section 3) our concerns about data collection, our interrogation of the information available would support this assertion.

A direct comparison between the Garda Adult Cautioning Scheme and the international examples examined by Crowe reveals variation in respect of both the scope and extent of the offences covered. The schemes are, however, similar in their operational practice and impact.

## 3 Adult Cautioning Scheme Data

### 3.1 Overview

This section outlines the data available on Adult Cautions, the limitations of the data, and analysis of the data.

**A central finding of this review is that there were, until 2018, very significant limitations regarding the completeness and accuracy of data related to Adult Cautions held on the Garda PULSE system, and there are continuing deficiencies in the governance associated with data-gathering, collation, management and publication. We detail these limitations and concerns in the following paragraphs.**

### 3.2 Available Data

#### 3.2.1 Preamble

As all data for Adult Cautions originates from PULSE, the data used for this review is subject to the limitations of PULSE.

#### 3.2.2 Data Recording on PULSE

Since 2006 'Adult Caution' has been available as a field within the "Detection Status" record on PULSE.

When an incident is detected, a field exists in the "person tab" of the PULSE incident where the status of the detection is recorded against the individual. Prior to PULSE Release 7.3 (25th February, 2018), Garda personnel could save any of the following status under the individual tab, or could simply leave the detection status blank:

- Caution (Informal);
- File to DPP;
- Adult Caution;
- File to DO (District Officer) for Direction;
- Under Investigation;
- Proceedings Complete;
- Proceedings Commenced;
- No Proceedings – offender under 12 years of age;
- Committed for Trial;
- DO – No Proceedings;
- DPP – No Proceedings.

It should be noted that records of incidents where these fields were used were not necessarily followed up or quality assured by local Garda management. Additionally, the detection status of an incident is recorded against the individual and not an individual

incident, but conversely, when searching an individual's history catalogue there is no drop-down button to indicate the administration of an Adult Caution.

**Fundamentally, what this means is that from the inception of the Adult Cautioning Scheme in 2006 until 2018, there was no systematic means of recording on PULSE that an adult caution had been considered, recommended or administered. Since 2018, Garda members are now required to set the Detection Status to "Adult Caution" once it has been administered. In many instances, narrative is also added referencing the caution book number and the date when the caution was administered. This change on PULSE has substantially resolved the problem and makes the status clear.**

### 3.2.3 *How Have Adult Cautions Been Recorded?*

When examining Adult Caution incidents on PULSE relating to incidents between 2006 and 2018, we noted that there were limitations in the PULSE system. To search for Adult Caution incidents on PULSE, a wild card search must be used. This type of search can only identify incidents in which the words 'adult caution' are used in the PULSE narrative. It will not find misspellings or abbreviations. Furthermore, if 'adult caution' is only mentioned in the Investigation Notes and not the narrative, it will not identify that particular incident.

The Garda Síochána Analysis Service has the ability to search for incidents in which the Detection Status of the suspected offender is marked as 'Adult Caution'. This does not necessarily mean that an adult caution was administered, and our review suggested that there is no correlation between the Detection Status being shown as 'Adult Caution' and an adult caution actually being administered – in some cases, the Detection Status was marked as something else, such as 'Caution' or 'Proceedings Commenced', when the narrative text indicated that an adult caution had been given. Furthermore, it was found that the Detection Status of an offender was not always updated correctly to 'Adult Caution' after a caution had been administered. This is discussed in further detail in Section 3.4.2.

While these wild card searches result in a large number of incidents, it does not produce a clear figure of the number of Adult Cautions actually administered. The wild card search will not return incidents if there is misspelling or if the words 'adult caution' are not mentioned in the narrative at all, while the Detection Status search will not return incidents if the Detection Status is incorrect. Combining the data sets would not give a clear figure of Adult Cautions, as the narrative search will also include incidents in which the Adult Caution was mentioned but not ultimately administered due to any number of reasons.

Another limitation of PULSE data provided is that the number of Adult Cautions within one incident is not always evident. For example, if one incident has four suspected offenders and it is marked "Adult Caution", it could be that only one of the suspected offenders received an Adult Caution. Therefore, it is important to note that, in this section, discussion around the number of Adult Cautions is the number of Adult Caution incidents; some incidents could have multiple Adult Cautions.

A further limitation of PULSE is that the incident types listed on PULSE do not correspond to the offences on the Schedule of Offences. For example, the Schedule of Offences regarding the Criminal Justice (Theft and Fraud Offences) Act, 2001, includes the following:

- Section 4: Theft (where the value of the property concerned is less than €1,000);
- Section 8: Making off without payment (where the value of the payment is less than €1,000);
- Section 17: Handling stolen property (where the value of the property is less than €1,000);
- Section 18: Possession of the stolen property (where the value of the property is less than €1,000).

The incident types on PULSE are not directly linked to the specific sections of the Criminal Justice (Theft and Fraud Offences) Act, 2001. The incident types on PULSE that relate to these offences are listed below:

- Handling/Possession of Stolen Property;
- Theft (Other);
- Theft from M.P.V.;
- Theft from Person;
- Theft from Shop.

While the PULSE incident allows for the entering of the value of the property, it is not indicated in the incident type, meaning that some theft incidents could be marked as an Adult Caution even if the value of the property was over €1,000. There are four separate incident types for theft and no clear incident type for “making off without payment”. The lack of alignment between the Schedule of Offences and PULSE incident types presents problems in attempting to reconcile the data and assess its reliability.

**The PULSE system is currently not able to present all incidents in which an Adult Caution was administered, due to the inability of PULSE to search for Adult Cautions, the Detection Status not always being accurately recorded as an Adult Caution, and the possibility of multiple Adult Cautions occurring within a single incident. These PULSE limitations hinder the ability to determine an accurate number of Adult Cautions that have been administered.**

### 3.3 How Many Adult Cautions Have Been Administered Since 2006?

We were naturally keen to understand how many Adult Cautions had been administered since the inception of the scheme in 2006, and whether any patterns could be seen in terms of geography, offence type, or other variable factors.

**Although the Adult Cautioning Scheme became operational in February 2006, no figures are compiled by the Garda Síochána in relation to the number of cautions administered over this period (for the reasons outlined in Section 3.2.3 above). We find it highly unusual that a scheme of this significance has not been subject to basic data collection over its lifetime, whether for reporting purposes, to help identify its effectiveness, or for other reasons related to governance. (We comment further on this matter in Sections 6 and 7 of this report.)**

As described in Section 1.2 above, our approach involved a detailed assessment of how the scheme has operated in a sample of eight Garda Divisions. The Garda Síochána

Analysis Service provided data regarding incidents within the eight divisions, for the time period 1 January 2017 to 30 June 2019, in which the narrative content mentions adult caution. There were 8,356 incidents found; of these, some incidents were discounted, as they were in relation to TUSLA notifications or property returned<sup>9</sup>. This left us with a dataset of 7,920 incidents. Of these incidents, there were 4,649 Adult Cautions administered, which amounts to 58.7% of the incidents provided.

Using these 4,649 Adult Cautions as a benchmark figure in the eight divisions, we were able to estimate that approximately 23,000 Adult Cautions have been administered in these divisions from 1 January 2007 to 30 June 2019. This is based on the figures for the period 1 January 2017 to 30 June 2019 and the assumption that actual Adult Cautions may have been higher in some areas prior to 31 July 2008, when Fixed Charge Penalty Notices for specific public order offences were introduced.

Our process for estimating that approximately 23,000 Adult Cautions have been administered in these divisions was as follows:

- The number of Adult Cautions in each division from 1 January 2017 to 30 June 2019 was extracted from our initial dataset;
- An average number of Adult Cautions for every six months was created from this figure;
- The average number of Adult Cautions every six months was then applied to the period between 1 January 2007 and 31 December 2016;
- The actual figure of Adult Cautions was then added to the figure extrapolated from the six-month average.

**If we extrapolate this figure of 23,000 Adult Cautions over the full lifetime of the scheme and for all Garda divisions, we estimate that approximately 85,000 to 95,000 Adult Cautions have been administered since the inception of the scheme in 2006.**

The Garda Síochána Analysis Service also provided data for all incidents that were marked as an Adult Caution from February 2006 to 30 June 2019. This set of data is subject to the limitations noted previously, namely that it does not capture incidents in which an Adult Caution was administered but the Detection Status of the offender is not updated correctly.

It also captures incidents in which “Adult Caution” is chosen in the detection status field, but an Adult Caution was not actually administered. This appears to be more prevalent in the earlier years of the Scheme. For example, from 2006 to 2008, there are 281 incidents of Property Recovered that had Adult Caution as the Detection Status. This practice does not appear to occur after 2008. Road traffic offences, such as General Road Offences, Speeding, and Tax/Registration also appear with Adult Caution as the Detection Status over the course of the Scheme; Simple Possession of drugs is also noted with Adult Caution with some frequency. In total, there are 1,359 incidents over the lifetime of the Scheme where Road Offences and Simple Possession were marked as an Adult Caution.

<sup>9</sup> “TUSLA notifications” and “property returned” are completed in PULSE as separate incidents, but are always in connection to an incident already in the system. Property returned incidents are incidents logging that property recorded as stolen (such as a Theft from Shop incident) has been recovered. TUSLA notifications are separate incidents noting that TUSLA has been notified when a child is present or involved in an incident (such as being present during a Theft from Shop incident).

Again, this practice was much more prevalent in the early years of the Scheme. Simple Possession incidents being marked as an Adult Caution were mainly in the early years of the Scheme, as it was included on the Schedule of Offences until 2009; there have been no Simple Possession incidents marked as an Adult Caution since 2016. Between 1 January 2017 and 30 June 2019, there were 6 General Road Offences and Speeding incidents marked as an Adult Caution; these all occurred before 2018. This issue appears not to be prevalent now.

The table below outlines the number of incidents in which Adult Caution was marked in the Detection Status of the offender, from February 2006 to 30 June 2019.

| Year         | Number of Adult Cautions |
|--------------|--------------------------|
| 2006         | 4,437                    |
| 2007         | 7,922                    |
| 2008         | 9,969                    |
| 2009         | 10,394                   |
| 2010         | 10,657                   |
| 2011         | 9,074                    |
| 2012         | 7,895                    |
| 2013         | 7,377                    |
| 2014         | 6,985                    |
| 2015         | 6,472                    |
| 2016         | 6,204                    |
| 2017         | 5,891                    |
| 2018         | 5,438                    |
| 2019         | 2,635                    |
| <b>Total</b> | <b>101,350</b>           |

It should be noted that the figures above do not include any Property Recovered incidents or incidents regarding TUSLA notifications. All other incident types have been included, as it is not possible to determine if an Adult Caution was administered or not without examining each incident individually. While there are incidents that are not on the Schedule of Offences that have been marked as Adult Caution, it is not possible to tell if the Detection Status has been entered incorrectly or if an Adult Caution was administered despite the offence not being on the Schedule.

### 3.4 Data Examined

#### 3.4.1 Review of 1,300 PULSE Incidents

Overall, we examined over 1,300 incidents on PULSE in GPSU. These incidents were selected as a sample from larger datasets to examine in depth on PULSE. This was split between two examinations:

- Firstly, we examined 419 incidents from the wild card search to determine if Adult Cautions were being administered correctly and for the correct offences; and

- Secondly, we examined 891 incidents from the four largest categories of offences that receive Adult Cautions (Public Order, Drunkenness, Theft from Shop, Assault Minor) to determine if charges were being issued when an Adult Caution would have been more appropriate.

The incidents examined were selected at random from the eight divisions we visited. While the selection was random, we took care to select incidents from all stations in a division and to select incidents from each type of offence. There was also a particular effort to examine incidents that were not on the Schedule of Offences. Any incidents that required further analysis were then considered for more detailed review and discussion with relevant Garda members during the divisional visits, where the relevant files could be examined.

### 3.4.2 First Examination of Data

For our first examination, we received a dataset from the Garda Síochána Analysis Service detailing incidents between 1 January 2017 and 30 June 2019 in which the narrative content mentions adult caution. There were 8,356 incidents, of which 4,649 were marked as having received an Adult Caution in the Detection Status of the suspected offender. 419 of these cases, related to the eight Garda Divisions selected for site visit, were reviewed in detail live on PULSE (facilitated by GPSU) and subsequently through review of hard copy material, and associated discussions with Garda members, during the site visits.

The incident types and number of Adult Cautions are outlined in the table below.

| Incident Type  | No. of Adult Cautions |
|--|-----------------------|
| Air Navigation Transport - Other Offences                    | 2                     |
| Air Navigation Transport - Section 28, 33(5), 43 of 1988 Act | 1                     |
| Assault / Obstruction / Resist Arrest - Peace Officer        | 8                     |
| Assault Causing Harm   | 6                     |
| Assault Minor  | 442                   |
| Begging  | 3                     |
| Burglary   | 9                     |
| Card Not Present Fraud                                       | 1                     |
| Collections (House to House)                                 | 1                     |
| Construction and Use of Vehicles                             | 3                     |
| Criminal Damage - (by Fire)                                  | 5                     |
| Criminal Damage (Not by Fire)                                | 272                   |
| Deception/Other  | 54                    |
| Drunkenness Offences   | 820                   |
| Employee/Internal Fraud                                      | 1                     |
| Endangering Traffic - NOT Section 14 NFOAP Act 1997          | 2                     |
| Fireworks Offences   | 2                     |
| Forgery / False Instrument Offences                          | 9                     |
| General Road Offences  | 4                     |
| Handling / Possession of Stolen Property                     | 26                    |
| Impersonating a member of the Garda Síochána                 | 1                     |
| Liquor Licensing   | 4                     |
| Offences on the Railway                                      | 1                     |
| P.S.V. Regulations   | 6                     |
| Post Office Offences   | 1                     |
| Public Mischief and Similar Offences - Other Offences        | 1                     |
| Public Order Offences  | 1,385                 |

| Incident Type   | No. of Adult Cautions |
|---|-----------------------|
| Robbery from the Person                               | 1                     |
| Speeding  | 2                     |
| Theft (Other)   | 258                   |
| Theft from M.P.V.                                     | 10                    |
| Theft from Person                                     | 7                     |
| Theft from Shop                                       | 1,250                 |
| Trespass on Lands (Housing Misc. Provisions Act 2002) | 1                     |
| Trespassing in Yard or Curtilage                      | 39                    |
| Unauthorised Taking (Pedal Cycle)                     | 9                     |
| Vehicle Located In the Jurisdiction                   | 2                     |
| <b>Grand Total</b>                                    | <b>4,649</b>          |

While some of the incident types may seem to be blatantly incorrect usages of Adult Cautions, there may be an element of misclassification. For example, the Air Traffic incidents noted above were in regards to Public Order offences that occurred during flights, usually related to intoxicated passengers. Due to the location of the incident, they were classified under Air Traffic rather than Public Order. Some of the other incidents noted in the table above were incorrect recording of the Detection Status. The General Road Offence incidents, for example, include incidents in which an Informal Caution was given, but the Detection Status was marked as Adult Caution. The PULSE update in 2018 has, for the most part, resolved this issue. (This is referred to in Section 4.5 below.)

These, however, are only the incidents that have Adult Caution as the Detection Status for the offender. When examining incidents, we found that there were incidents in which an Adult Caution was administered, but the Detection Status of the offender was not listed as Adult Caution. Of the incidents examined in Cork City, 15% of the incidents had an incorrect Detection Status when the offender had received an Adult Caution; 24% of the incidents viewed in Mayo had an incorrect Detection Status. While the sample from these divisions was small, the error rate identified in recording is significant.

**This suggests that there is very little quality review taking place on some of these incidents. These errors are not identified as there is no review or analysis of the Adult Caution numbers at any level in the organisation.**

### 3.4.3 *Second Examination of Data*

One question which arose in relation to the Adult Cautioning Scheme during the course of the review was whether, in some circumstances, Gardaí might be choosing to prosecute certain offenders who might otherwise have been eligible for receiving an Adult Caution, and where the conditions of the scheme had been met, namely:

- there must be prima facie evidence of the offender's guilt;
- the offender must admit the offence;
- the offender must understand the significance of the caution; and
- the offender must give an informed consent to being cautioned.

Whilst we had no evidence to suggest that this might be happening, we were conscious that the lack of definition and precision in the scheme could create circumstances in which

some offenders, who might otherwise receive an Adult Caution, instead could find themselves facing prosecution.

For this examination of data, the table shown at Section 3.4.2 above provided guidance in regards to our approach. The incident types of Assault Minor, Drunkenness Offences, Public Order Offences, and Theft from Shop made up over 80% of the incidents marked as an Adult Caution. Therefore, we focused on a random sample of 891 of these incident types, covering the eight Garda divisions we visited.

Fewer than 4% of the incidents examined had PULSE narratives that were unclear and there was a possibility that an Adult Caution may have been more suitable. For some Public Order Offences, there is the option to issue an FCPN rather than an Adult Caution. Having spoken to Garda members, many would opt for Adult Caution before FCPN, but there is no official guidance or HQ Directive that sets out how this should operate. Other reasons why an Adult Caution may not have been administered include the suspected offender declining the option.

In the majority of incidents, it is very clear as to why an Adult Caution was not administered, either due to the incident itself or the individual's previous history. In many cases, the individual had a significant catalogue of previous offending. As the incident sampling was based on limited data, there were some incidents reviewed where the outcome was Adult Caution and others where the suspected offender was a juvenile. Where Adult Caution was the outcome, this was checked to ensure that it was the correct action to be taken based on the information available.

**Based on the incidents examined, there does not appear to be any significant incidence of prosecutions happening where Adult Cautions should have been applied.**

## 3.5 Reoffending Data

### 3.5.1 *PULSE Data June 2018 to February 2020*

One of the ways of determining the effectiveness of a Scheme such as Adult Cautioning is in its ability to deter individuals from committing offences in the future. The Garda Síochána Analysis Service provided us with the number of individuals that had Adult Caution recorded as the Detection Status in an incident between 1 June 2018 and 13 February 2020 and were subsequently recorded as a suspected offender on another incident in a 12-month period after the date of the offence. This time period was selected as it was after the April 2018 fix to the PULSE system and was of a duration which would permit preliminary assessment of second offences committed within 12 months of the Adult Caution being administered.

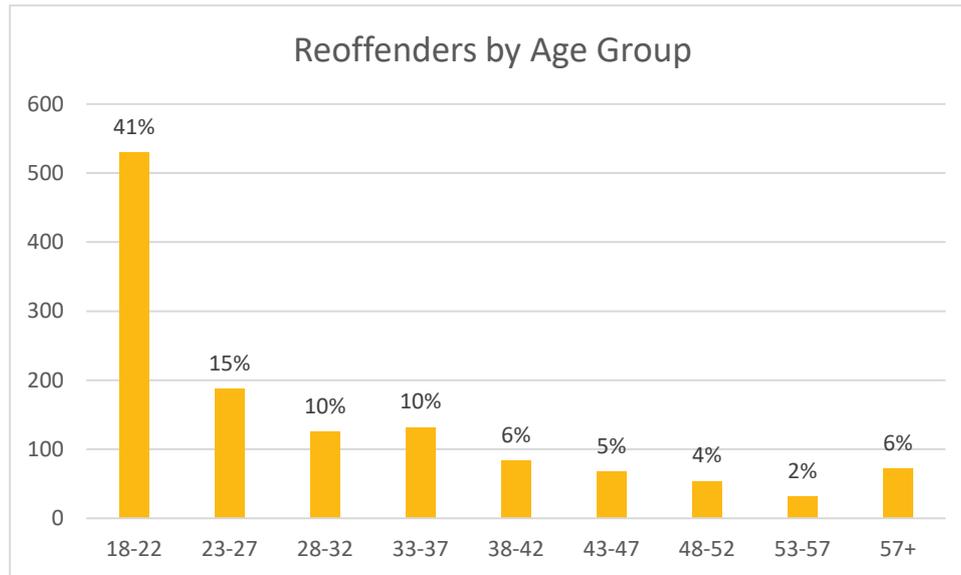
### 3.5.2 *Extent of Reoffending*

There were a total of 1,284 separate incidents in which an individual reoffended within twelve months of receiving an Adult Caution. When compared to the dataset of Adult Caution incidents that occurred between 1 June 2018 and 30 June 2019, this indicates that approximately 23% of individuals reoffend after receiving an Adult Caution. It should be

noted that this implies that 77% of those that receive an Adult Caution do not reoffend within 12 months.

### 3.5.3 Age Breakdown

The dataset for those that reoffended after receiving an Adult Caution included the age group of the offender and the subsequent offence type. The graph below shows the reoffenders by their age group:



As can be seen above, the largest percentage of reoffenders are between the ages 18 and 22. It is likely, based on anecdotal evidence, that some of these are young adults who are receiving their first Adult Caution after multiple incidents as youth offenders.

### 3.5.4 Extent of Reoffending

The dataset also allowed for visibility of how many times an individual reoffended within 12 months. The majority (91%) of those that reoffended only reoffended once during the 12 months. The table below outlines the number of individuals and the number of times they reoffended within 12 months of receiving an Adult Caution.

| Number of Incidents of Reoffending | Number of individuals |
|------------------------------------|-----------------------|
| One offence                        | 1,171                 |
| Two offences                       | 42                    |
| Three offences                     | 6                     |
| Four offences                      | 1                     |
| Seven offences                     | 1                     |

### 3.5.5 Offence Types

This dataset also included the type of offence that was committed after the Adult Caution was received. Approximately three quarters of incidents that were re-offences were made up of the following offences:

- Assault Minor;
- Criminal Damage (Not by Fire);
- Drunkenness Offences;
- Public Order Offences;
- Simple Possession; and
- Theft from Shop.

Except for Simple Possession, these are all low-level offences that, and had they been the first offence, would have been eligible for an Adult Caution. There were other more serious crimes that were committed within 12 months of an Adult Caution; these include one incident each of Aggravated Burglary and Murder, and two incidents each of Rape of a Female and Sexual Assault. Overall, however, these incidents are in the minority.

### 3.5.6 Offence Types

We only have had sight of reoffending data for this one-year period, as we wanted to match reoffending data to the most accurate Adult Caution data, which would be only available after April 2018 when PULSE was updated. The data on reoffending after receiving an Adult Caution could look different depending on the given year. However, the age group of reoffenders and the fact that a majority (77%) of those who received an Adult Caution do not reoffend are consistent with the anecdotal evidence received during our Divisional visits (as detailed in Section 5 below).

### 3.5.7 Overall Assessment of Re-offending Figures

Nonetheless, the figures also show that nearly one quarter of those who received an adult caution did go on to reoffend; this figure will also include those who were already serial youth offenders who went on to receive their first Adult Caution as a young adult. Whilst this shows that there was clearly a reasonably large number of people for whom an Adult Caution failed to deter subsequent offending, it is worth noting the recidivism rates for those serving custodial prison sentences in Ireland. CSO statistics<sup>10</sup> show that the average rate of recidivism for prisoners across all age groups who were released during 2012 was 45.8%, and that 72.3% of ex-prisoners aged under 21 went on to reoffend within three years of release.

At present, there is no available data to show what percentage of persons who have received an Adult Caution went on to reoffend within three years, so it is not possible to compare the Adult Caution reoffending rates with prisoner recidivism. There are also different factors to be considered, such as the relative seriousness of offences committed

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<sup>10</sup> CSO, *Prison Recidivism 2011 and 2012 Cohorts*, published Sept 2019 (<https://www.cso.ie/en/releasesandpublications/ep/p-pri/prisonrecidivism2011and2012cohorts/>)

and the fact that persons committed to prison often receive a custodial sentence after other, non-custodial options have been exhausted.

Overall, these figures should be considered alongside the general findings presented in Section 6.2 below regarding the positive perceptions amongst Garda members of the effectiveness of the Adult Cautioning Scheme in preventing the majority of first-time offenders from coming to subsequent attention of the Gardaí.

## 4 GPSU Report

### 4.1 Overview

In 2017, the Garda Professional Standards Unit (GPSU) produced its report arising from an examination of the Adult Cautioning Scheme, which presented a detailed assessment of the operation of the scheme, along with 16 recommendations for its improvement.

### 4.2 Report Background

The GPSU review was recommended after an investigation in relation to irregularities concerning Adult Caution files in a Garda District was completed. The review was recommended to ensure or establish that similar issues were not occurring at other locations.

There were a total of 17 Districts examined, with ten PULSE incidents selected for examination in each District to determine if they were compliant with the relevant HQ Directives. GPSU also examined procedures in relation to evidence of correspondence and of reviews by supervisors/management. International research of jurisdictions that operate similar schemes was conducted to determine if best practice in these jurisdictions could be applied in Ireland.

The GPSU report does not contain details of the number of Adult Cautions administered by the Garda Síochána, either nationally or in relation to the sample of Districts selected for examination. We regard this as unusual, as it prevents the reader from appreciating the scale of operation of the Adult Cautioning Scheme, a necessary part of the context of the report.

GPSU, before examining particular PULSE incidents, examined the HQ Directives relating to the Adult Cautioning Scheme, as there is no formal legislation governing the Scheme. These HQ Directives are the only guidance available to Garda members for operating the Adult Cautioning Scheme.

The control measures in place for the Adult Cautioning Scheme were also examined. This included controls inherent in the Adult Caution Process, in other HQ Directives relating to supervisory and management reviews, and in PULSE itself. The effectiveness of these controls or the extent to which they are utilised was outlined in the findings of the report.

International research concentrated on a similar scheme operating in England and Wales. The main differences were explored between the scheme in England and Wales and the Adult Cautioning Scheme in Ireland. Possession of drugs can be dealt with by way of a caution in England and Wales. Conditional cautioning is also utilised in these jurisdictions. These two differences are also noted as being recommended for consideration in the Garda Inspectorate Crime Investigation Report (2014).

After the review of methodology, HQ Directives, control measures, and international research, the GPSU then set out their findings that were informed by the previously discussed research and review.

### 4.3 Findings of the GPSU Report

The GPSU report identified a number of issues during their examination of the Adult Cautioning Scheme. The report does not specify the scale or frequency of the issues found in their selected incidents. We have probed this issue with the GPSU and our conclusion is that, due to the way in which records are kept and the data issues raised in Section 3, it is not possible to determine with any precision the exact scale of the issues found. The deficiencies in data capture and management within the Adult Cautioning Scheme impair the ability of any independent reviewer (including GPSU and Crowe) to reach sound conclusions regarding the operation of the scheme and to make informed recommendations for its improvement.

The report found that there was no search facility on PULSE to find Adult Cautions. Adult Cautions are not in the 'Find' menu on the PULSE browser and are not listed on a person's Catalogue. This greatly inhibits an Investigating Member to quickly determine if an offender has previously received an Adult Caution and if they are eligible for an Adult Caution for that offence. If a Garda member is unable to determine if an offender has previously received an Adult Caution, there is a greater risk of an offender receiving a second caution without DPP approval.

The GPSU examination of the Scheme also found that there were Adult Cautions being administered to those who had previously received an Adult Caution without DPP approval.

In relation to the Adult Caution Forms, the GPSU report found some issues that needed to be addressed. In relation to the form itself, the GPSU found that there was no place on the form to record attempts to contact the offender in order to administer the Caution. It was also found that Garda members were not completing the form until directed by the District Officer, which adds a delay to the process. It was also found that forms are not being fully completed, with sections of the form being regularly omitted. Incomplete forms can impact on a District Officer's ability to make a decision on the appropriateness of an Adult Caution.

The GPSU examination noted that Adult Cautions were also being administered for offences not included on the Schedule of Offences. There were also instances in which the Adult Caution was administered by Sergeants and not the District Officer.

On PULSE, the recording of Adult Cautions had some issues identified by the GPSU report. The referral number from the Adult Caution Referral Book was not included in the PULSE incident in a majority of cases examined by the GPSU. The recording of the Detection Status as 'Adult Caution' for the suspected offender was found by the GPSU not always to have been properly recorded on PULSE. The introduction of Investigation Notes on PULSE was also noted by the GPSU to have caused Adult Caution to not be mentioned in the PULSE narrative of an incident, as it would appear in the Investigation Notes instead. It was also found that there were cases in which the Investigating Member was not informed that the Adult Caution had taken place, thus PULSE was not updated. This has an impact on data quality and contributes to the lack of concrete numbers of Adult Cautions administered.

The GPSU report states that there was no evidence that structured Inspections of the Adult Cautioning Scheme were conducted and documented.

GPSU found that Adult Cautions were being administered several months after the offence. This limited the time available to initiate a prosecution if necessary.

These findings indicate that there are individuals receiving Adult Cautions inappropriately – for offences not on the schedule or a second Adult Caution – due to these issues. These issues also contribute to the overall data quality concerns in the Garda Síochána.

#### **4.4 Recommendations of the GPSU Report**

GPSU made 16 recommendations in its final report. The table below details the recommendation from the report, if it has been implemented, and any comments we have regarding that recommendation.

As may be observed, two of the 16 recommendations made by the GPSU have been fully implemented; six have been partially implemented; one has seen limited progress; and seven have not yet been implemented.

The recommendations made by the GPSU were practical steps to resolve the issues uncovered during their examination. The recommendations that directly impact the operation of the Scheme by Garda members are meant to streamline the work rather than increase work with more paperwork or procedures.

| GPSU Recommendation   | Implemented? | Crowe Comment (July 2020)   |
|---|--------------|---|
| 1. The technical ability of PULSE is limited to only allow the offences on the Schedule of Offences record a detection status of Adult Caution.   | Yes          | This is a welcome update to PULSE and appears to have resolved issues around classification of incidents on PULSE.  |
| 2. The PULSE system to be updated whereby Adult Cautions can be easily located under the drop down 'Find' on the PULSE browser.   | No           | <p>Adult Cautions cannot be easily located on PULSE. An individual's catalogue must be searched by each incident in order to determine if an Adult Caution had been administered previously.</p> <p>There is a need for proper recording of Adult Cautions to make it easier for Garda members to identify if an individual has previously received an Adult Caution.</p>   |
| 3. The introduction of a PULSE generated electronic form similar to the Juvenile Referral forms to replace the Adult Caution Form. Alternatively, the Adult Caution Form should be updated.                   | No           | <p>There is a PDF version of the Adult Caution Form available on the Garda portal, but it does not link in any way to PULSE and still needs to be completed manually.</p> <p>A PULSE-generated form should be introduced to reduce duplication of effort in recording Adult Cautions.</p>   |
| 4. Update PULSE to record the Adult Caution Referral Number with the associated PULSE incident.   | No           | <p>In many of the divisions visited, the Adult Caution Referral Number is recorded in the narrative, but there is no separate field for this information and no prompt for a Garda member to input it when updating the incident.</p> <p>The introduction of PULSE-generated form should auto-generate the Adult Caution Referral Number. This would reduce the risk of duplication of numbers and ensure that the referral was linked to both the individual and the incident.</p> |
| 5. An overall revised policy document be issued in relation to the Adult Cautioning Scheme.   | No           | <p>No policy documents or HQ Directives have been issued since 2009.</p> <p>The Garda Síochána should issue a policy document to reflect the introduction of fixed penalty notices for public order offences and how the two should be administered. It has been over ten years since the last HQ Directive to all members.</p>   |
| 6. The instructions of HQ Directive 58/15 be included in any revised Policy to reiterate that members of An Garda Síochána should not become involved in negotiating or awarding reparation and compensation. | No           | <p>Until such time as revised policy document under recommendation 5 has been issued, this recommendation cannot be implemented. However, the policy that the Garda Síochána should not become involved in negotiating or awarding reparation and compensation is still part of HQ Directive 6/06 and HQ Directive 58/15, which remain in effect.</p>   |

| GPSU Recommendation   | Implemented?     | Crowe Comment (July 2020)  |
|---|------------------|--|
| 7. An instruction to be issued to ensure that the correct Detection Status is recorded in respect of suspected offenders.   | Partially        | To ensure this recommendation has been fully implemented, the instructions regarding Detection Status should be included in the policy document. While nationwide instructions have been issued regarding this issue, it has not been set out in a policy document.  |
| 8. An instruction to be issued to ensure that the Adult Caution Referral Form is completed by the detecting member when the offender is being processed.  | Partially        | To ensure this recommendation has been fully implemented, the instructions regarding Detection Status should be included in the policy document. While nationwide instructions have been issued regarding this issue, they have not been set out in a policy document.   |
| 9. A specified timeframe (three months is suggested) with which Adult Cautions should be administered to facilitate processing of subsequent summons or charges if necessary.   | Limited progress | <p>In many of the divisions visited, Garda members of all ranks aimed to deal with Adult Cautions as expediently as possible to facilitate processing of subsequent summons or charges if the individual did not accept the Adult Caution or failed to turn up for the Caution to be administered.</p> <p>A policy document should include a specified timeframe within which Adult Cautions are administered. Whilst three months is reasonable in many instances, we observed a significant number of cases involving offenders living in another part of the country, on in Northern Ireland, where the adult cautions took longer than three months to administer due to the extent of correspondence involved (between Garda Divisions, and/or with offenders directly) and the time involved in arranging for the offenders to visit their nearest Garda station for the caution to be given.</p> <p>Where cases involve the input of external parties, it may not be possible to complete within three months, but, where it is within the power of the Garda Síochána, every effort should be made to complete the process within the specified timeframe.</p> |
| 10. An Garda Síochána to consult with the Office of the Director of Public Prosecutions and Department of Justice and Equality to include Section 3 of the Misuse of Drugs Act, 1977 – 1984 in the Adult Cautioning Scheme. | Partially        | This consultation was ongoing at the time of this report. We would agree with this suggestion. Section 7.2 further explains our view on this.  |
| 11. An Garda Síochána to consult with the Office of the Director of Public Prosecutions and Department of Justice to extend the Adult Cautioning Scheme to include the use of conditional cautioning.                       | Partially        | This consultation was ongoing at the time of this report. We would agree with this suggestion.   |

| GPSU Recommendation  | Implemented? | Crowe Comment (July 2020)   |
|--|--------------|---|
| 12. When administering subsequent cautions, the consent of the Director of Public Prosecutions must be obtained.   | Partially    | <p>There is currently no mechanism on PULSE to prevent a second Adult Caution from being administered, but Garda members do appear to be aware of the need to obtain the consent of the Director of Public Prosecutions for a second or subsequent Adult Caution.</p> <p>Through our examination of incidents, we observed a very small number of cases where more than one Adult Caution has been administered without the consent of the Director of Public Prosecutions. Controls are required to ensure that the Scheme operates in the appropriate manner.</p> |
| 13. It is recommended that consideration be given to enshrining the Adult Cautioning Scheme in legislation.  | No           | <p>The Garda Síochána should liaise with the Department of Justice on this matter, but it is outside the control of the Garda Síochána. It should be noted that the Scheme is enshrined in common law.</p>  |
| 14. Consideration should be given to amending the policy and procedures, to allow members of supervisory rank (Sergeant or Inspector) administer Adult Cautions.   | No           | <p>We are not aware of any discussions regarding this recommendation taking place. We would agree with this suggestion. Section 7.2 further explains our view on this.</p>  |
| 15. Local management to conduct inspections of Adult Cautions as part of the HQ Directive 59/14 Inspections and Reviews.   | Partially    | <p>There do not appear to be formal inspections of Adult Cautions as part of the HQ Directive 59/14, but in some Garda Divisions which we visited, regular review and oversight of the scheme is undertaken by Superintendents responsible for governance or community engagement. These processes are not standardised and do not form part of a national reporting scheme.</p> <p>The Adult Cautions should regularly be reviewed as part of good governance to ensure that they are being administered in line with the Scheme.</p>                              |
| 16. The process to be amended to ensure that correspondence is sent by the District Office to the Investigating member with all details relevant to the caution to ensure accurate recording on PULSE. The incidents should also be monitored through the PAF system until the caution is administered and PULSE is updated. | Yes          | <p>Adult Caution incidents are managed through the PAF system until the caution is administered. Based on our understanding of the system in place in the divisions visited, the investigating member is informed of the outcome and, in most cases, updates are made by the investigating member.</p>  |

## 4.5 Operational Impact of the Report

We note that recommendations 10 to 14 are noted as requiring external consultation. We have been informed that external consultations were taking place at the time of this report in relation to recommendations 10 and 11.

The technical ability of PULSE to only allow the offences on the Schedule of Offences to record a detection status of Adult Caution was implemented in April 2018. The data we received in regards to this is discussed in more detail in Section 3 of this report, but the PULSE update appears to have been effective in limiting Adult Cautions to only those on the Schedule of Offences.

To assess the effectiveness of this PULSE update, we received data from the Garda Síochána Analysis Service of the incidents that were marked as Adult Caution for the time period 1 June 2018 to 1 June 2019. We selected this time period to allow the PULSE update to take full effect and to have view of a full year. The table below shows the incident types that were marked as Adult Caution over that time period.

| Incident Type   | Adult Cautions |
|---|----------------|
| Assault / Obstruction / Resist Arrest - Peace Officer | 6              |
| Assault Causing Harm                                  | 3              |
| Assault Minor   | 653            |
| Begging   | 1              |
| Burglary  | 4              |
| Card Not Present Fraud                                | 1              |
| Criminal Damage - (by Fire)                           | 5              |
| Criminal Damage (Not by Fire)                         | 344            |
| Deception/Other                                       | 55             |
| Drunkenness Offences                                  | 725            |
| Employee/Internal Fraud                               | 10             |
| Fireworks Offences                                    | 1              |
| Handling / Possession of Stolen Property              | 25             |
| Indecency   | 1              |
| P.S.V. Regulations                                    | 4              |
| Public Mischief and Similar Offences - Other Offences | 1              |
| Public Order Offences                                 | 1,576          |
| Robbery from the Person                               | 1              |
| Theft (Other)   | 242            |
| Theft from M.P.V.                                     | 7              |
| Theft from Person                                     | 9              |
| Theft from Shop                                       | 1,873          |
| Trespassing in Yard or Curtilage                      | 22             |
| Unauthorised Taking (Pedal Cycle)                     | 1              |
| <b>Grand Total</b>                                    | <b>5,570</b>   |

The table above shows that the majority of incidents were those that are on the Schedule of Offences. Four offences make up 86% of the total incidents: Assault Minor, Drunkenness Offences, Public Order Offences, and Theft from Shop. All other offences make up a small minority of incidents. It should be noted that directions from the DPP could be the reason for incident types not on the Schedule receiving an Adult Caution. The

number of incident types not on the Schedule of Offences that receive an Adult Caution has decreased from previous years. The PULSE update has been effective in reducing the number of incident types receiving Adult Cautions.

While this PULSE update has been a welcome improvement in the operation of the Scheme, there are still further updates to PULSE that would benefit the efficiency of the Scheme. The ability to search PULSE for Adult Cautions should be extended. Adult Cautions should be easily located on PULSE to ensure that Garda members are able to quickly locate a previous Adult Caution for an offender, so that it is less likely that an offender will receive the benefit of a caution twice. The introduction of an electronic form on PULSE would also be beneficial to the operation of the Scheme.

There has, to our knowledge, not been an updated HQ Directive in relation to the Adult Cautioning Scheme since 2009. One of the GPSU recommendations is that an updated policy document be developed and issued, with the recommendations of the GPSU report included. As it has been 11 years since the last HQ Directive in relation to the Adult Cautioning Scheme, this recommendation should be seriously considered. Because there has not been an updated policy document, the associated recommendations (numbers 6 to 9 inclusive) have not been implemented. An updated policy document could implement several of the GPSU recommendations at once and give updated guidance to Garda members.

#### 4.6 Crowe's Assessment of the GPSU Report

Overall, we consider that the 2017 report by GPSU was a genuine attempt to provide an objective and robust review of the Adult Cautioning Scheme, and was based upon a sound methodology designed to facilitate a detailed investigation of a wide range of issues. This was also the first time that the Scheme had been independently reviewed to a significant degree, although an earlier report by the Garda Inspectorate in 2014 had referred to the Scheme and made some high-level recommendations in respect of criminal justice policy issues.

The GPSU report is largely concerned with process, and many of its findings are very similar to the outcome of the analysis conducted by Crowe.

However, the absence of any information on the number of Adult Cautions administered by Gardaí makes it difficult for the reader to understand the scale of the issues examined or their impact on the justice system. The GPSU review makes no comment on the availability or reliability of data, other than as part of its assessment of changes required to PULSE.

**We consider this to be an important omission, as unavailable or unreliable data has major implications for the effective function of the Adult Cautioning Scheme, for its day-to-day operation, for its governance within the Garda Síochána, and for the establishment and maintenance of public confidence in the scheme.**

A more fundamental concern with regard to the GPSU report, however, is the fact that it appears to have had very little impact within the Garda Síochána. Whilst the GPSU report has made a welcome contribution to overall consideration of the scheme and its future, it is

disappointing that three years after it was completed, only two of its 16 recommendations have been fully implemented, and a further six partially implemented, by the Garda Síochána. seven of its recommendations have not been implemented, and one has seen limited progress. No process appears to have been put in place to manage the implementation of the GPSU recommendations, nor was there a project manager or project team appointed to lead the necessary programme of change.

**Overall, the GPSU report appears to have gone largely unnoticed within the Garda Síochána. We consider this to be a serious failing from a governance perspective, and we return to this topic in Section 6 below.**

## 5 Divisional Visits

### 5.1 Overview

We conducted two-day site visits to a sample of eight Garda Divisions, which were intended to provide a broad mix in terms of urban and rural locations across the State, as follows:

- Two divisions within the Dublin Metropolitan Region – **DMR North** and **DMR South Central**;
- Two divisions which include a city – **Cork City** and **Waterford**;
- Four other (largely rural) divisions, including at least one in the border region – **Donegal, Mayo, Kilkenny-Carlow** and **Roscommon-Longford**.

We used the opportunity of the visits to explore how the scheme works in these locations, and to view a range of (paper-based) case files and Adult Caution books (i.e. the station copy of the referral form completed for each relevant incident).

### 5.2 Local Variations to the Operation of the Scheme

From our site visits, it would appear that the process as outlined in Section 2.3 is reasonably well adhered to across the Garda Síochána, but we did note a range of local variations to the way in which the scheme is administered.

In several locations, the administration of the scheme is delegated to the detecting Garda member, whereas in others some of the administrative tasks are undertaken by civilian personnel (for example, arranging appointments for Adult Cautions to be administered). Where no administrative support is available and the detecting Garda has to arrange the appointment, this can be cumbersome and time-consuming, given shift patterns, work rosters and lack of clarity around the availability of the District Officer to administer the caution. Lack of administrative support has a general tendency to make the Scheme less effective – we encountered several examples where major delays had arisen – and to reduce the amount of time available for other frontline duties.

In some of the Garda Divisions we visited, the strong preference is for Adult Cautions to be given by an officer at Superintendent rank – often to attach a level of formality to the process and to ensure that the offender understands that future transgressions will not be tolerated and will result in prosecution. In others, however, Adult Cautions may be more frequently given by Inspectors, particularly in rural locations where this may be operationally more expedient.

Some Garda Divisions organise a set time when Adult Cautions are administered, in line with the availability of the Superintendent or Inspector (e.g. Monday afternoons), and all offenders are expected to attend at the designated time. In other locations, individual appointments are made to suit all parties.

Some Garda Divisions administer Adult Cautions before the individual leaves the station. This practice is common in large urban Garda Stations where there is an Inspector

available. This practice is also used where the individual is not resident in Ireland. In these situations, not administering the Adult Caution immediately may lead to the case remaining open as the individual could have left the jurisdiction before an appointment could be made.

The practices for reviewing the Adult Caution books vary both between divisions and individual Garda Stations. In most, all of the pages are kept in the book while in others the pages will be removed and filed as part of the process. In most divisions, many or all of the third copy “green sheets” that should be given to the individual when the caution is administered remained in the book.

In some locations, there is a preference for issuing a Fixed Charge Penalty Notice when the offence is a Public Order one. Some locations prefer Fixed Charge Penalty Notices for these particular offences over an Adult Caution, even when the offender would be eligible for an Adult Caution. There is little clarity amongst operational Gardaí as to which option should be selected, and no Garda member to whom we spoke had any recollection of receiving formal training or induction regarding the use of adult cautions – it was generally held to be something that was learned “on the job”, with more experienced Gardaí instructing their younger colleagues on how to use the Adult Cautioning Scheme.

**The Adult Cautioning Scheme should be uniform and consistently applied across the Garda Síochána, supported by clear policies and operational procedures set out in HQ Directives, underpinned by effective training, and properly overseen and managed.**

### 5.3 Adult Cautioning Scheme Data for the Eight Divisions Visited

In order to provide the reader with a sense of the scale and nature of the relevant offences committed in the eight Garda Divisions we visited, Appendix 2 illustrates the 4,649 Adult Cautions that were marked as ‘Adult Caution’ in the Detection Status of the offender for the time period 1 January 2017 to 30 June 2019, specifically related to the eight divisions we visited. These incidents were provided by the Garda Síochána Analysis Service as part of the dataset of incidents in which the narrative content mentions adult caution.

Appendix 3 illustrates the incidents that were marked as ‘Adult Caution’ in the Detection Status of the offender for the time period 1 June 2018 to 1 June 2019. These are the incidents that occurred in the eight divisions that were chosen as our sample divisions.

## 6 Findings

### 6.1 Overview

We understand that this review was commissioned as a result of some concerns within the Policing Authority that problems identified within the Garda Youth Diversion Scheme might also be found within the Adult Cautioning Scheme. Recent reviews and analysis of the Garda Youth Diversion Scheme (including work undertaken directly by Crowe for the Garda Síochána) showed that there were very significant problems in that scheme, including failure by Gardaí to follow up cases involving youth referrals, cases not being properly actioned or recorded, and problems involving resourcing, governance / oversight, and training and technology.

In this review of the Adult Cautioning Scheme, we have identified various deficiencies relating to operational consistency, lack of standardised processes, absence of training, problems with data/PULSE, and administrative matters, amongst others. Whilst these problems have not had the impact or public prominence of other major reported difficulties within the Garda Síochána (for example, recording of breath tests at MIT checkpoints, incorrect prosecutions instead of FCPNs, or problems with youth diversion), they nonetheless illustrate that many of the same causative factors continue to be found. Furthermore, poor governance also appears to be at the heart of many of the issues associated with the Adult Cautioning Scheme.

This section covers general findings, various findings specific to data, and issues relating to governance.

### 6.2 General Findings

#### 6.2.1 *Narrow Range of Offences*

The vast majority of cases which we have reviewed within the eight divisions which we visited relate to a narrow range of offences – public order (generally involving intoxication), assault, and theft of items valued under €1,000. Of the other offences listed in the schedule, many appear to be used very sparingly, and one appears never to have been used:

**Summary Jurisdiction (Ireland) Amendment Act, 1871**

Section 8:           Offensive or riotous conduct in a theatre or other place of public amusement (applies to Dublin Metropolitan (Court) District only)

#### 6.2.2 *View of the Adult Cautioning Scheme within the Garda Síochána*

On the whole, the Adult Cautioning Scheme is well regarded within the Garda Síochána – it is considered by both frontline Gardaí and Garda management to be a very useful tool for dealing efficiently and effectively with first-time, low-level offenders. Anecdotal feedback received from Gardaí with whom we engaged in all eight divisions would suggest that a large proportion of offenders who receive an Adult Caution do not subsequently come to Garda attention again. Many of those arrested for public order offences are young adults

for whom the prospect of a criminal conviction means that they would be ineligible for obtaining a visa to enter the United States or (potentially) Australia – for these individuals, the Adult Caution often works effectively to prevent a repetition of offending behaviour.

For other individuals, particularly those who have regularly been subject to Garda attention as juvenile offenders, the receipt of an Adult Caution is often the first step in a career of adult offending. Young adults who have committed their first offence as an adult are eligible for Adult Cautions even when they have previously been subject to youth diversion interventions, provided that they meet the eligibility criteria for the Adult Cautioning Scheme. In such cases, these individuals are entitled to receive an Adult Caution, even though the likelihood is that they will continue to offend.

### **6.2.3 Use of Adult Cautions in Relation to Homicide Offences**

In the cases which we have examined in the eight Garda Divisions visited, there is evidence of a small number of cases which appear to have been misclassified. In particular, we identified three cases where the offence had originally been classified in the “homicide” category, but had later been downgraded to public order offences. Whilst it might appear that such a downgrade could be a significant issue, closer inspection showed that these cases involved incidents where threats to kill an individual had been made as part of a wider family dispute or street confrontation between individuals, and that there was no substance to the threat. For example, one case involved a domestic dispute between members of an foreign-language-speaking family living in several locations across the State: the original report to Gardaí was made via 999 call and focused on a threat which had been made by text message written in a non-Latin alphabet. The incident was entered on to PULSE as a threat to kill, but subsequent investigations across the relevant Garda divisions and interviews of the parties involved, and translation of their text messages, revealed that the threat was without substance. Senior Garda management within the division in which the offence was reported decided that there was little likelihood of a further offence being committed, and consequently an Adult Caution was administered.

### **6.2.4 Cases Handled outside the Rules of the Scheme**

During our site visits, we were made aware of a small number of cases handled outside the rules of the scheme – for example, a second caution given without DPP direction, or without paperwork being present in the case file to confirm DPP direction. In this regard, the rules of the scheme (as set out in HQ Directive 6/06) are very clear:

***The nature of a caution is such that it should be applied only once to an offender but it may, in the most exceptional circumstances, be appropriate to apply it to a person who has been previously cautioned.***

***Such exceptional circumstances may occur:***

- ***where the subsequent offence is trivial; or***
- ***where there has been a substantial lapse of time since the first caution so as to suggest that it may have been of real benefit.***

***The consent of the Director of Public Prosecutions must be obtained in all such cases.***

We noted one case in which an individual had committed a minor shoplifting offence, at a time when the person concerned was experiencing difficulty in their life arising from bereavement – local Gardaí felt at the time that the offence was a “cry for help”, and an Adult Caution was given. Some years later, the same individual was arrested for a further shoplifting offence, again of a minor nature at a time of personal crisis. The decision was reached to administer a second Adult Caution, due to passage of time and the circumstances of the two offences, but there was no evidence in the file to indicate that DPP direction had been sought or granted.

(In an unrelated case, a Garda Inspector in another Division suggested that referring cases of this nature to the Office of the DPP for approval to grant a second Adult Caution would simply “clog up the system” and that a “common sense” approach should be adopted in cases like this, i.e. for a Garda Superintendent to approve the second caution.)

**It is clearly inappropriate for Gardaí to make a decision to issue a second adult caution without DPP direction, irrespective of the circumstances: the rules of the scheme regarding DPP consent are very clear, and are not optional or discretionary.**

We also noted one example where an offender was arrested for shoplifting, with the value of the item stolen being under €12. Subsequent investigation showed that the offender had committed three offences of larceny of goods worth over €6,000 around 15 years previously, and had served a prison sentence in relation to those offences. The offender had not come to Garda attention subsequently. Given the passage of time, the low value of the item stolen, and the remorse shown by the offender, local Garda management directed that an Adult Caution be applied. According to the rules of the Scheme, this was correct and DPP direction was not required, as the previous offences had been committed before the inception of the Adult Cautioning Scheme. In theory, however, past offending behaviour might have been taken into account more actively when considering whether an Adult Caution would be effective for the more recent offence.

### **6.2.5 System and Process Issues**

Much of what we have observed in this review is about system and process (e.g. a lack of definition or precision around the rules of the scheme), rather than potential disciplinary matters (i.e. Garda members deliberately flouting the rules). In relation to the latter, we uncovered no evidence to suggest that members of the Garda Síochána are deliberately flouting the rules or administering the scheme in an inappropriate manner. It is noteworthy that the way in which HQ Directive 6/06 is written provides scope for flexibility in the application of the rules of the scheme, including phrases such as “if reasonably possible” and “may be appropriate”, as illustrated below:

#### **(iii) Views of the Victim**

***Before the offence and the offender are considered for the application of a caution, the views of any victims must, if reasonably possible, be sought. The effect on the victim of the offence in question, and, any reason advanced by him/her as to why a caution should not be applied must be carefully considered before a decision is taken on whether to prosecute or to caution. However, a caution may be appropriate***

*even if the victim is opposed to it. In such a case it may be appropriate to refer to case to the Director of Public Prosecutions.*

**In practice, therefore, we see a scheme with processes which are imprecisely defined and which lacks consistency across the Garda Síochána, with significant limitations in its oversight and governance. There is clearly scope for a system of this nature to be abused, and these matters need to be resolved.**

### 6.2.6 *Administrative and Resourcing Issues*

There are administrative and resourcing issues which need to be resolved in respect of the functioning of the Adult Cautioning Scheme. Issues which we identified include:

- In some of the cases which we reviewed, an extensive file had been built up in respect of what appeared to be relatively low-level offences. In one case, a 40-page file was presented to us in relation to a complaint that a member of the public had not received an item valued at €70 which had been purchased on an online marketplace from a vendor or elsewhere in the country. The seller was arrested and the case file included an interview transcript and much supporting information including photographs. The ultimate decision was that an Adult Caution should be administered to the seller.
- In another case, minor criminal damage outside a nightclub caused by two individuals whilst on a weekend trip resulted in the involvement of at least 10 different Gardaí across three Garda divisions and the preparation of an extensive case file including interview transcripts, CCTV and photographic evidence, witness statements and other material – again, Adult Cautions were administered to both offenders. In incidents of these types, the amount of effort put into dealing with the cases should be proportionate to the nature of the offences and the objectives of the Adult Cautioning Scheme. In this particular case, our team was unconvinced that the effort was proportionate to the circumstances of the case – accepting that local Garda management may have had wider considerations in mind that were not evident within the case file (e.g. public interest matters / community impact caused by large volumes of stag parties descending on rural towns).
- Across the scheme, there is a duplication of data, with material in case files also replicated on PULSE and on the Adult Caution referral forms.
- In many instances, the Adult Caution referral forms which we reviewed in various Garda stations were illegible, with many top copies seemingly completed in pencil or very light ink, and the second and third copies (carbon sheets) containing no legible data whatsoever. **This demonstrates a lack of professionalism and proper oversight, and also calls into question the admissibility of such material should it ever be required in court proceedings, for example.**

### 6.3 Data Findings

The inability to search for Adult Caution through PULSE created difficulties from the outset as to how best gather the relevant data for our review. There is no search function specifically for Adult Caution. Within PULSE, Adult Caution incidents can only be identified through a 'wild card' search for the words 'adult caution' in the PULSE narrative. Alternatively, a request can be sent through the Garda Síochána Analysis Service for a search of incidents in which a suspected offender's Detection Status is Adult Caution. Quickly identifying Adult Caution incidents is not possible on the current version of PULSE.

Even searching for an Adult Caution within an individual's catalogue is a time-consuming process. Unlike Youth Referrals, Adult Cautions do not appear as a separate part of their catalogue. To find a previous Adult Caution in an individual's catalogue, it is necessary to look through all previous incidents in which the individual is recorded as a suspected offender and read the narrative or examine the Detection Status of the individual in that particular case. While it is not a difficult process, it can take a considerable amount of time in some cases.

During our first examination of the data, we noted that there were many incidents of Property Recovered that included a mention of Adult Caution in the narrative. Each Property Recovered incident was connected to a theft incident, usually "Theft from Shop". These are separate PULSE incidents, but relate to the property referred to in the theft incident. In many incidents, the property involved in a Theft from Shop case never leaves the premises and does not enter the custody of the Garda Síochána. There does not appear to be any compelling reason to record these as separate incidents, rather than including the property recovered in the original incident.

As noted in the previous section, there were small numbers of cases where the classification of the incident made the incident, at first glance, seem too serious an offence for an Adult Caution. For example, there were very small number of incidents classified as Air Traffic incidents that were recorded as receiving an Adult Caution. When reading the narrative on PULSE, it becomes clear that these were public order incidents that, due to their location, were classified under Air Traffic rather than Public Order. The PULSE update in 2018 has appeared to resolve this issue.

The Detection Status of some incidents were entered incorrectly. We found some cases of PULSE incidents that were clearly an Adult Caution based on the PULSE narrative and were marked not as an Adult Caution, but had a different status, such as Under Investigation, Proceedings Commenced, or Caution (informal). These incidents would not be identified in a search run by the Garda Síochána Analysis Service. Some of these indicate that the case is still pending ('Under Investigation') or that there was a charge or summons created ('Proceedings Commenced'). While there is no implication for the individual, it impacts on data quality and these incidents could appear on reports regarding numbers of Cautions (informal), cases still pending, or cases where a summons or charge was created incorrectly.

**These difficulties are illustrative of the wider problem relating to Adult Caution data within the Garda Síochána: not only does the absence of accurate and reliable data hamper of the operational running of the scheme, it also prevents any effective reporting or analysis of data pertaining to adult cautions.**

We also noted that the Detection Status of Adult Caution would appear on incidents where, based on the narrative, an Adult Caution was not actually administered. Some General Road Offence incidents, for example, include incidents in which the narrative noted that an Informal Caution was given, but the Detection Status was marked as Adult Caution. The PULSE upgrade in April 2018 corrected this issue.

Another finding regarding PULSE is the fact that incident types on PULSE do not align with the relevant legislation. For example, there are four separate theft incident types on PULSE. None of these align with the sections of the Criminal Justice (Theft and Fraud Offences) Act, 2001. It should also be noted that, while PULSE allows for the value of the property to be recorded, it is not clear from the incident type.

The PULSE changes made since the GPSU report include restricting incidents being marked as Adult Caution if they are not on the schedule of offences, and Adult Cautions being monitored on the PAF system. While these are welcome changes and have made a positive impact on the administration of the scheme, there are more changes that should be made to PULSE to benefit the scheme. These have been discussed briefly above. One of the more beneficial updates would be any changes made to facilitate the locating of Adult Caution incidents, both in terms of Adult Cautions overall and Adult Cautions in an individual's catalogue. This would provide clarity in regards to the numbers of Adult Cautions, as well as reducing the time for members to locate previous Adult Cautions and reduce the risk of individuals receiving multiple Adult Cautions.

## 6.4 Training and Standardisation of Practice

It was highly noteworthy that during the divisional site visits, it was reported generally to us by the vast majority of Garda members with whom we engaged that they had never received any formal training or induction in relation to the operation of the Adult Cautioning Scheme. Of the Gardaí with whom we engaged during the course of this review, only one (a recent recruit) could recall having received formalised training in Templemore, and only with regard to the operational "on the street" aspects rather than back-office paperwork and PULSE. Instead, informal instruction would be passed down by more experienced Gardaí to their more junior colleagues.

This is also related to the lack of an update to the HQ Directive, and the general lack of ownership around the Scheme.

**This is very unusual: given that adult cautions are administered with a reasonable degree of frequency across the Garda Síochána, we would expect there to be a short formal training module for new recruits at the Garda College, along with documented standard processes and effective oversight by supervisors and managers. None of this appears to be happening.**

## 6.5 Governance and Oversight Issues

Overall, our review of the Adult Cautioning Scheme has identified a range of significant concerns in respect of its governance and oversight:

- At national level, the absence of any definitive data pertaining to the scheme, and the failure of the Garda Síochána to develop any mechanisms for the collation and management of Adult Cautioning Scheme data, are somewhat surprising, particularly given the fact that more than 85,000 Adult Cautions are likely to have been administered since the inception of the scheme in 2006.
- Overall, during the course of this review, it was not apparent to us that there was any central oversight or management of the Adult Cautioning Scheme, subsequent to the HQ Directive issued in 2009. Adult Cautions simply became a tool which Gardaí could use for dealing with low-level offending. We were not advised during the course of the review that any senior officer within the Garda Síochána held central responsibility for championing and developing the Scheme.
- Aligned with the lack of effective governance of the scheme, we find little evidence of effective processes, procedures and controls being applied across the Garda Síochána to ensure consistency of application. There is no central, accessible set of current guidelines available to Garda members setting out how the scheme should operate, in plain English. Much of the operational use of Adult Cautions appears to relate to custom and practice within individual Garda Divisions, Districts or stations, which can lead to significant differences in terms of such matters as whether an Adult Caution is selected, who administers it, what records are kept, and the length of time taken between the offence and the administration of the caution. This can result in potential inequalities of outcome.
- It is disappointing that only two of the 16 recommendations made by the GPSU in 2017 have been fully implemented, and that nine have not been implemented. We believe the lack of progress is directly related to the absence of senior level ownership. Five of the recommendations which have not been implemented relate to matters where engagement with the Department of Justice and the Office of the DPP is required, and where ultimate decisions rest outside the Garda Síochána. Other matters are more of an operational nature, relating to the need for clear direction to Garda members on the functioning of the Scheme, but these have not been progressed.
- We also note that the GPSU report does not examine governance arrangements for the Adult Cautioning Scheme, nor does it make any comment on deficiencies in this area – it is predominantly concerned with process, but ignores the governance context. The GPSU report does not deal with the absence of reliable data relating to the Scheme. Whilst the GPSU findings in respect of process are correct and largely mirror our findings in this report, their failure to mention problems with governance and oversight represent a shortcoming. Most significantly, the GPSU report appears to have been largely ignored within the Garda Síochána, with no process put in place to consider and implement its recommendations.
- No effort appears to have been made to evaluate the effectiveness of the scheme since its introduction. For example, the figures we have produced on re-offending rates for persons who have received an Adult Caution (see Section 3.5 above) illustrate the potential that exists for some more detailed research to be conducted on the effectiveness of the Scheme, and the potential for greater benefits to be delivered if the Scheme were to be changed in certain ways. Evaluations of formal

police cautioning schemes support the effectiveness of cautioning for recidivism and cost savings, particularly for low-risk offenders<sup>11</sup>. If most adult-onset offenders are low-rate, low-risk offenders, diversion may be a more appropriate response to most adult-onset offending rather than processing these individuals through the adult courts<sup>12</sup>. Again, the failure of the Garda Síochána to evaluate the Adult Cautioning Scheme would appear to be related to its lack of ownership within the organisation. Whilst many Gardaí – including those at senior levels – are very positive about the Scheme, nobody is championing it as a means of dealing with low-level offending in an efficient and effective manner, for the benefit of the wider criminal justice system.

## 6.6 Overall Findings

Overall, the Adult Cautioning Scheme is well-regarded within the Garda Síochána, and offers a relatively speedy and efficient means of dealing with less serious offences, provided that certain criteria have been met. It is also important to note that the predominant opinion amongst frontline Gardaí to whom we spoke during the site visits was that the majority of offenders who receive an Adult Caution generally do not come to the attention of Gardaí subsequently, suggesting that the scheme is successful as a diversionary measure (although no independent analysis has been commissioned in this regard).

Notwithstanding these generally positive findings, our main concerns with regard to the Adult Cautioning Scheme relate to:

- The lack of effective governance of the scheme, and a lack of ownership at senior management levels;
- Related to this, the limited progress of – and the lack of any effective project structure within – the Garda Síochána to implement the recommendations contained in the GPSU report prepared in 2017;
- Variations in the degree of compliance with internal Garda policies and procedures, District Officer and DPP directions;
- Continuing difficulties with regard to the recording of adult cautions and the maintenance of reliable PULSE statistics on their use;
- The absence of formalised training and guidance material for Gardaí relating to the use of adult cautions.

The absence of effective oversight and governance, and other deficiencies in relation to data recording, training, and the availability of up-to-date guidance material on the scheme, would not be reflective of our team's broad experience in international policing. The lack of progress in the implementation of the recommendations contained in the GPSU Report (2017) and the absence of any effective ownership of the implementation process at executive level management, would also not be reflective of approaches which we have typically seen in other policing organisations and within the wider public service.

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11 Allard T et al. 2010. Police Diversion Of Young Offenders And Indigenous Over-Representation

12 Thompson C et al. 2014. Examining Adult-Onset Offending: A Case For Adult Cautioning.

In our view, rectifying these issues should be achievable within 12 months, and would considerably strengthen the Adult Cautioning Scheme as an effective means of dealing efficiently and effectively with relevant offences.

## 7 Recommendations and Suggested Improvements

### 7.1 Core Recommendation for the Garda Síochána

We believe that significant reform is required within the Adult Cautioning Scheme, partly in respect of its operational functioning, but more substantially in respect of its oversight and governance, in order to enhance its effectiveness and efficiency.

**Fundamentally, there needs to be central ownership of the Scheme within the Garda Síochána, at senior management level. We therefore recommend that the Commissioner should make the following changes:**

- **Corporate governance:** Formally align the ownership of the policy and administrative aspects of the Adult Cautioning Scheme at Assistant Commissioner / senior executive level (in accordance with existing portfolio responsibilities);
- **Operational governance, oversight and reporting:** Formally integrate the operational management and administration of the scheme within the existing PAF approach in Divisions.

Within this context, it is essential that a programme of work is initiated whereby the Adult Cautioning Scheme can be strengthened and improved. The Assistant Commissioner assigned responsibility for “owning” the scheme should establish and lead a project team charged with:

- Developing an action plan for the enhancement of the Adult Cautioning Scheme, bringing together the findings of the 2017 GPSU report and the 2020 Crowe report, and producing a clear plan setting out actions, milestones, resources and critical success factors;
- Development of the details of appropriate governance structure for the Adult Cautioning Scheme which aligns with the two recommendations presented above, and which links in with the new Garda operating model;
- Development of new HQ Directive(s) and training arrangements, as necessary and linked to the action plan;
- Socialisation of the action plan across the Garda Síochána, focused on the specific measures which Garda members across the organisation can implement, and the changes in the Scheme which will impact on operational policing;
- Ensuring that reliable and informative data on the Scheme is collated from PULSE and forms part of published Garda statistics, including regular monitoring and review of the number of Adult Cautions administered;
- Overall monitoring of how the Scheme is working in practice, and reporting on same to the Commissioner on a regular basis (e.g. quarterly);
- Evaluation of the effectiveness of the scheme on an ongoing basis, with a formal and independent evaluation commissioned every three years, and the evaluation report published;

- Regular engagement with the Policing Authority to report on the effectiveness of the Scheme and progress with the implementation of the recommendations contained in this report and in the action plan to be developed.

We envisage that the body of work outlined above should take around 12 months to complete. During this period, monthly progress reporting of the work of the project team to the Policing Authority should take place. Thereafter, and at a future date to be agreed once the amended scheme is fully in operation, we would envisage that quarterly reporting on the performance of the Adult Cautioning Scheme would be appropriate.

## 7.2 Potential Suggested Improvements

During the course of the review, a number of suggestions arose from our discussions with stakeholders across the Garda Síochána in relation to the future functioning of the Adult Cautioning Scheme. These suggestions included:

- There may be scope for Adult Cautions to be administered by a Sergeant rather than an Inspector or Superintendent – a key issue for many Garda members was the time lag between an offence being committed and the Adult Caution being administered, which can be problematic in terms of stopping offending behaviour becoming a pattern. A frequent suggestion made by frontline Gardaí and Sergeants was that the process could be completed more swiftly if Sergeants could administer an Adult Caution, for example if an Inspector or Superintendent was not going to be available within a short-term period.
- It may be worthwhile to consider the option of a second Adult Caution for a different offence in the schedule, or where there is a defined passage of time. For example, if an individual has received an Adult Caution for a public order offence, it may be appropriate for a second caution to be administered in the event of a minor theft offence, or vice versa. A number of frontline Gardaí felt that this would be helpful and would give them greater flexibility to deal with low-level offending in an efficient manner.
- It would also be worthwhile to assess the scope for adding some other offences to the schedule – e.g. simple possession of cannabis up to a defined value. In that context, we noted that there were significant differences of opinion between Garda members, with many feeling very strongly that all drugs-related offences should go straight to prosecution, given the pernicious effect of the supply of illegal drugs across Irish society. Many other Garda members took what might be considered as a more “pragmatic” view, that a first-time offender being detected for possession of a small amount of cannabis for personal use should be given the chance to change their behaviour through the use of an Adult Caution.
- There should be the ability to easily search PULSE for Adult Caution incidents. A Search function for Adult Cautions should be considered. This would allow for better visibility on the number of Adult Cautions administered.
- Another suggested update for PULSE would be the inclusion of Adult Cautions in an individual’s catalogue, much in the same way that Youth Referrals are currently captured. This would enable Garda members to quickly assess the eligibility of an individual to receive an Adult Caution. Currently, it is a cumbersome and time-consuming process to determine if an individual has previously received an Adult Caution. The streamlining of this process by including Adult Cautions in the

catalogue would not only reduce a Garda member's time in assessing an individual's eligibility, but would also assist in ensuring that an individual does not receive a second Adult Caution without DPP consent.

- An updated policy document for the Adult Cautioning Scheme. As the last HQ Directive relating to the Scheme was issued in 2009, it would likely be helpful to develop and issue an updated HQ Directive. This would allow inclusion of recommendations, such as the option for a second Adult Caution, as noted above.

**Appendix 1: Adult Caution Referral Form**  
(From Garda Portal)



**An Garda Síochána**  
**ADULT CAUTION REFERRAL FORM**

|  |
|--|
| Station Code : _____<br>PULSE I.D. No : _____<br>PULSE check completed? Yes <input type="checkbox"/> No <input type="checkbox"/> |
|--|

|                            |                         |
|----------------------------|-------------------------|
| <b>A. OFFENDER DETAILS</b> |                         |
| Name : _____               | Mobile No.: _____       |
| Address: _____             |                         |
| Station Code: _____        | DOB _____ Sex _____     |
| Occupation: _____          | Phone(Home/Work): _____ |

|  |
|--|
| <b>B. PARTICULARS OF ARREST</b>  |
| Offence(s) in respect of which the arrest was made:<br><div style="border: 1px solid black; height: 40px; width: 100%;"></div> |
| Place: _____ Date: _____ Time: _____   |
| Name of arresting member: _____  |
| Rank: _____ Reg No.: _____ Unit: _____   |

|  |
|--|
| <b>C. DETAILS OF VICTIM (if appropriate)</b>   |
| Name: _____  |
| Address: _____   |
| Phone(Work): _____ (Home/Mobile): _____  |
| <b>VIEWS OF THE VICTIM:</b><br><div style="border: 1px solid black; height: 40px; width: 100%;"></div> |

|   |
|---|
| <b>D. CIRCUMSTANCES OF THE OFFENCE</b>  |
| Outline the details of the prima fade evidence obtained in support of the charge :<br><div style="border: 1px solid black; height: 50px; width: 100%;"></div> |
| Arresting Member _____  |

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## Appendix 2: Breakdown of 4,649 Adult Cautions that were marked as 'Adult Caution' in Offender Detection Status for period 1 Jan 2017 to 30 June 2019

| Incident Type  | Cork City | DMR North | DMR South-Central | Donegal | Kilkenny/Carlow | Mayo | Roscommon / Longford | Waterford |
|--|-----------|-----------|-------------------|---------|-----------------|------|----------------------|-----------|
| Air Navigation Transport - Other Offences                    |           | 2         |                   |         |                 |      |                      |           |
| Air Navigation Transport - Section 28, 33(5), 43 of 1988 Act |           |           |                   |         |                 | 1    |                      |           |
| Assault / Obstruction / Resist Arrest - Peace Officer        | 1         | 1         |                   | 1       | 2               | 2    |                      | 1         |
| Assault Causing Harm   | 3         |           | 1                 | 1       | 1               |      |                      |           |
| Assault Minor  | 89        | 52        | 44                | 63      | 81              | 26   | 24                   | 63        |
| Begging  | 1         |           |                   |         | 2               |      |                      |           |
| Burglary   | 1         | 1         | 1                 | 1       | 2               |      |                      | 3         |
| Card Not Present Fraud                                       |           |           |                   | 1       |                 |      |                      |           |
| Collections (House to House)                                 |           |           |                   | 1       |                 |      |                      |           |
| Construction and Use of Vehicles                             |           |           |                   | 1       |                 | 2    |                      |           |
| Criminal Damage - (by Fire)                                  | 1         | 1         |                   | 1       | 2               |      |                      |           |
| Criminal Damage (Not by Fire)                                | 43        | 26        | 58                | 27      | 41              | 14   | 13                   | 50        |
| Deception/Other  | 10        | 3         |                   | 1       | 6               | 13   | 8                    | 13        |
| Drunkenness Offences   | 294       | 46        | 130               | 78      | 96              | 30   | 9                    | 137       |
| Employee/Internal Fraud                                      | 1         |           |                   |         |                 |      |                      |           |
| Endangering Traffic - NOT Section 14 NFOAP Act 1997          |           |           |                   | 1       |                 | 1    |                      |           |
| Fireworks Offences   | 2         |           |                   |         |                 |      |                      |           |
| Forgery / False Instrument Offences                          | 7         |           |                   | 1       |                 | 1    |                      |           |
| General Road Offences  |           |           |                   | 1       |                 |      | 1                    | 2         |
| Handling / Possession of Stolen Property                     | 5         | 5         | 8                 | 4       | 2               |      | 1                    | 1         |
| Impersonating a member of the Garda Síochána                 |           |           |                   |         |                 | 1    |                      |           |

| Incident Type   | Cork City    | DMR North  | DMR South-Central | Donegal    | Kilkenny/Carlow | Mayo       | Roscommon / Longford | Waterford  |
|---|--------------|------------|-------------------|------------|-----------------|------------|----------------------|------------|
| Liquor Licensing                                      |              |            |                   | 1          |                 |            | 2                    | 1          |
| Offences on the Railway                               |              |            |                   |            |                 |            |                      | 1          |
| P.S.V. Regulations                                    | 2            | 1          | 2                 |            | 1               |            |                      |            |
| Post Office Offences                                  |              | 1          |                   |            |                 |            |                      |            |
| Public Mischief and Similar Offences - Other Offences |              |            |                   |            |                 |            |                      | 1          |
| Public Order Offences                                 | 331          | 145        | 412               | 170        | 88              | 65         | 48                   | 126        |
| Robbery from the Person                               | 1            |            |                   |            |                 |            |                      |            |
| Speeding  |              |            |                   | 2          |                 |            |                      |            |
| Theft (Other)   | 50           | 30         | 33                | 17         | 54              | 18         | 37                   | 19         |
| Theft from M.P.V.                                     | 3            | 2          | 3                 |            | 1               |            | 1                    |            |
| Theft from Person                                     | 2            | 1          | 3                 |            | 1               |            |                      |            |
| Theft from Shop                                       | 412          | 255        | 64                | 29         | 157             | 79         | 94                   | 160        |
| Trespass on Lands (Housing Misc. Provisions Act 2002) |              |            |                   |            |                 |            |                      | 1          |
| Trespassing in Yard or Curtilage                      | 5            | 9          | 16                |            | 1               | 4          | 2                    | 2          |
| Unauthorised Taking (Pedal Cycle)                     | 3            |            | 4                 | 1          | 1               |            |                      |            |
| Vehicle Located In the Jurisdiction                   | 2            |            |                   |            |                 |            |                      |            |
| <b>Total Incidents Marked 'Adult Caution'</b>         | <b>1,269</b> | <b>581</b> | <b>779</b>        | <b>403</b> | <b>539</b>      | <b>257</b> | <b>240</b>           | <b>581</b> |

### Appendix 3: Incidents marked as 'Adult Caution' in the Detection Status of the offender for the time period 1 June 2018 to 1 June 2019

|   | Cork City  | DMR North  | DMR South Central | Donegal    | Kilkenny/Carlow | Mayo       | Roscommon/Longford | Waterford  |
|---|------------|------------|-------------------|------------|-----------------|------------|--------------------|------------|
| Assault / Obstruction / Resist Arrest - Peace Officer | 1          |            |                   |            | 1               |            |                    |            |
| Assault Causing Harm                                  |            |            |                   | 1          | 1               |            |                    |            |
| Assault Minor   | 43         | 16         | 20                | 25         | 31              | 14         | 12                 | 25         |
| Card Not Present Fraud                                |            |            |                   | 1          |                 |            |                    |            |
| Criminal Damage - (by Fire)                           | 1          |            |                   | 2          | 1               |            |                    |            |
| Criminal Damage (Not by Fire)                         | 16         | 11         | 17                | 9          | 20              | 7          | 3                  | 15         |
| Deception/Other                                       | 2          | 1          |                   |            |                 |            | 3                  | 1          |
| Drunkenness Offences                                  | 153        | 17         | 54                | 30         | 54              | 11         | 5                  | 43         |
| Employee/Internal Fraud                               | 1          |            |                   |            |                 |            | 9                  |            |
| Fireworks Offences                                    | 1          |            |                   |            |                 |            |                    |            |
| Handling / Possession of Stolen Property              | 4          | 2          | 2                 |            |                 |            |                    |            |
| P.S.V. Regulations                                    | 1          |            | 1                 |            | 1               |            |                    |            |
| Public Mischief and Similar Offences - Other Offences |            |            |                   |            |                 |            |                    | 1          |
| Public Order Offences                                 | 154        | 58         | 217               | 116        | 44              | 33         | 16                 | 58         |
| Robbery from the Person                               | 1          |            |                   |            |                 |            |                    |            |
| Theft (Other)   | 20         | 10         | 7                 | 2          | 11              | 4          | 8                  | 8          |
| Theft from M.P.V.                                     | 1          |            | 1                 |            |                 |            |                    |            |
| Theft from Person                                     | 1          | 1          | 2                 |            |                 |            |                    |            |
| Theft from Shop                                       | 191        | 78         | 15                | 8          | 61              | 35         | 43                 | 59         |
| Trespassing in Yard or Curtilage                      | 2          | 1          | 2                 |            |                 | 2          |                    |            |
| <b>Total Incidents Marked 'Adult Caution'</b>         | <b>593</b> | <b>195</b> | <b>338</b>        | <b>194</b> | <b>225</b>      | <b>106</b> | <b>99</b>          | <b>210</b> |