



AN TÚDARÁS PÓILÍNEACHTA
POLICING AUTHORITY

Commentary on the Review of the Adult Cautioning Scheme

4 February 2021

1. Introduction

In October 2019, the Authority commissioned Crowe to undertake a review of the Garda Síochána administration of the Adult Cautioning Scheme. The context for commissioning this review related to the issues raised during the Authority's oversight of the Youth Diversion Programme, which resulted in stark findings concerning failures to administer the programme appropriately and system failures within the Garda Síochána.

The Adult Cautioning Scheme is distinct from the Youth Diversion Programme in its legal basis, in the context that it is not centralised and that it applies to a much more limited range of offences. The chain of persons involved in the decision making process for Adult Cautions is generally more condensed, most frequently being decided by the local superintendent. In addition to this, an adult may only be issued with an Adult Caution on one occasion, unless approved by the DPP.

Nevertheless, given the parallels between the two schemes, the Authority raised concerns with the Garda Commissioner that there may be potential for issues, which arose in the review of the Youth Diversion Programme, to also occur in the Adult Cautioning Scheme.

Furthermore, in 2017, the Garda Professional Standards Unit (GPSU) conducted an evaluation of the Adult Caution Scheme. Through this evaluation, a range of issues were discovered which implied that the procedure was not adhered to or that Garda systems did not support the procedure. Based on the findings of the GPSU review, 16 recommendations were made to improve the administration and processes surrounding the scheme.

The Crowe review was commissioned by the Authority to assess issues which may be present in the Adult Cautioning Scheme, and to assess if findings from the 2017 GPSU report had been implemented. This work was assisted by the GPSU and the Garda Síochána Analysis Service (GSAS).

A number of themes have arisen from the review by Crowe which are of concern. There are consistent with issues previously raised by the Authority in other contexts such as Youth Diversion, the review of Mandatory Intoxicant Testing/Fixed Charge Notices in the area of roads policing, and wider oversight of Garda Síochána organisation reform. These themes are briefly set out.

2. Themes arising in the Review

2.1. Governance

Governance of the Adult Cautioning scheme was found to be weak. In the initial review period with the GPSU and during the divisional visits, no national or centralised owner for the scheme was identified. While it was clarified later in the process that ownership rests with the Legal section of the Garda Síochána, it is source of concern that those charged with reviewing the scheme in 2017 appeared to be unaware of this. This also resulted in a lack of awareness in the organisation that significant work was being undertaken to implement a number of the recommendations which fell out of the 2017 review. While it was clarified during the finalisation of the Crowe review, that work to progress the recommendations in the 2017 review was ongoing, it remained the case that only two of the 16 recommendations have been fully implemented.

In addition to this, there is insufficient data and management information to support effective governance of the scheme. The Garda Síochána cannot currently state how many Adult Cautions

have been issued since the inception of the scheme. In turn, no accurate evaluation can be conducted as to the efficacy of the scheme or its capacity to reduce recidivism.

Overall, this presents a basis for some of the other key themes which have emerged from the review and which are outlined below.

2.2. Inconsistencies in processes

In the divisions examined in the review, there was considerable variance in processes used to administer Adult Cautions at local level. This was largely attributed to a lack of guidelines issued at national level and lack of training. Instead, local “custom and practice” was relied upon. Variances across divisions included differences in the rank of the member permitted to issue an Adult Caution, differences in where responsibility for the administration of Adult Cautions fell, ranging from the investigating member to garda staff, and recipients of Adult Cautions not being issued with relevant documentation.

Critically, there were examples where fixed charge penalty notices were issued instead of an Adult Caution, even though an Adult Caution would have been more appropriate. There were also incidents found whereby second Adult Cautions were issued without seeking DPP direction or where no paperwork containing direction from the DPP could be found.

2.3. Data Quality and Systems

In the review of the scheme, the recording of data and the systems to support this were found to be inadequate. From 2006 when the scheme was introduced until 2018, there was no systematic means of recording on PULSE that an Adult Caution had been considered, recommended or administered. While PULSE updates were introduced in 2018, which reduced recording errors, there are issues outstanding. Due to the inconsistency by which Adult Cautions were entered into PULSE, particularly prior to 2018, there is no way of determining the number of Adult Cautions that have been issued to date. The review also reported that there was insufficient quality review taking place for incidents, resulting in misclassifications and incorrect detection status for incidents. Issues such of these hinder effective governance and evaluation of the scheme.

At a local level, the inadequacy of systems also reduce the efficiency of the administration of the scheme and create scope for error. For example, the task of searching to assess if an individual has previously been issued an Adult Caution is burdensome and subject to error in cases where it was not recorded properly in the first instance. This creates a risk that a second or subsequent Adult Caution is issued in error and without the member in question knowing that DPP authorisation is required.

2.4. Training and Guidance

The review found that no formal training has been provided to members to operate the scheme. There is also a lack of guidance as to when to issue an Adult Caution rather than FCPN and a lack of clarity as to when Adult Cautions should be issued.

2.5. Individual Accountability

The review did not present any evidence of individual members flouting rules or deliberately using the scheme inappropriately. Rather there is a lack of leadership and supporting systems for adequate governance and control of the scheme.

3. Expansion of the Scheme

The breadth of the scheme has been examined by a number of groups since its introduction, including the Strategic Review of Penal Policy Report (2014), by the Criminal Justice Strategic Committee in 2016, and the Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use between 2017 and 2019. Since the completion of the Crowe review the Adult Cautioning Scheme was extended to include the following offences, where the offence was committed on or after 14 December 2020;

1. Offences contrary to section 13 of the Criminal Justice (Public Order) Act 1994 (Trespass in a manner likely to cause fear);
2. Offences under section 21 of the Criminal Justice (Public Order) Act 1994 (Control of access to certain events);
3. Offences under section 3 of the Casual Trading Act 1995 (Casual trading without a licence or contrary to the terms of the licence); and,
4. Offences under Section 3 of the Misuse of Drugs Act 1977/84 (Simple possession) This will relate to the possession of cannabis and cannabis resin only. No other controlled drugs are permitted under the Adult Cautioning Scheme.

This effectively means that an additional recommendation from the 2017 GPSU review, to include Section 3 of the Misuse of Drugs Act, can be considered completed.

4. Conclusion and next Steps

While the nature of offences dealt with by way of Adult Caution are relatively minor in nature, the findings of this report reveal significant challenges in the operation of the scheme. Furthermore the review speaks to wider, systemic issues in the Garda Síochána in relation to governance, data quality, training and allied areas. This is consistent with themes arising in other schemes and areas of operation which have been identified as part of the Authority's ongoing oversight.

The review has been provided to the Garda Síochána for observations and in its responses, a number of initiatives and actions have been outlined to the Authority which will form the basis of ongoing oversight by the Authority of improvements to the Garda Síochána administration of the scheme. These include:

- Production of a communications strategy for superintendents and inspectors, a consolidated HQ directive and a revised policy. It is envisaged that these actions should address a number of GPSU recommendations and bring greater consistency to the administration of the scheme.
- Refresher training as part of promotion course and for new entrants to the Garda Síochána.

- Updates to the PULSE system such as:
 - A PULSE update to prevent a second adult caution being issued without DPP authorisation;
 - PULSE generated forms to record adult cautions;
 - A PULSE function to allow members to confirm if an offender has previously received an adult caution; and
 - A review of crime categories on PULSE to ensure they align with the scheme's schedule of offences, as part of the ongoing GISC review of incident types.

In addition to the above the legal basis of the scheme may need to be reassessed. The GPSU report in 2017 recommended that consideration be given to enshrining the scheme in legislation. The Authority has been informed that the scheme is currently enshrined in Common Law, which permits the right of the Garda Síochána to initiate a prosecution. Under the Commission on the Future of Policing in Ireland report it is recommended that the prosecution function be removed from the Garda Síochána which in turn may have implications for the ability of the Garda Síochána to administer the scheme.

The Authority will continue to engage with the relevant sections of the Garda Síochána to ensure the recommendations in both the GPSU and Crowe reviews of the scheme are addressed.