



AN TÚDARÁS PÓILÍNEACHTA  
POLICING AUTHORITY

In April 2020, the use of anti-spit hoods was introduced by the Garda Síochána during the COVID-19 public health crisis. The Policing Authority expressed concerns regarding the introduction of anti-spit hoods and sought assurances from the Garda Síochána that these would only be used for the duration of the public health emergency. While these were in use, the Authority made a commitment to oversee the individual incidents where these devices were used in order to ensure all incidents were necessary, proportionate and constituted the minimum use of force required, and were in line with Garda Síochána governing their use. In September 2020, the Authority was, among other stakeholders, requested to provide its views on the use of anti-spit hoods by the Garda Síochána, in order to inform the Garda Síochána's own evaluation of the use and management of anti-spit hoods. The Authority have provided the attached in answer to this request. While the health and safety of Garda members and staff is of paramount importance to the Authority, it has a significant number of concerns as there is no evidence that these anti-spit hoods provide protection for members while at the same time, use of these items represents a draconian approach to dealing with detainees. The following letter, regarding the Authority's submission to the Evaluation of Management and Use of Anti-Spit Guards, was referenced at the September 2020 meeting in public between the Policing Authority and the Garda Commissioner, under the Policing during COVID-19 agenda item.



AN TÚDARÁS PÓILÍNEACHTA  
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**10 September 2020**

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**Your Ref: DM\_1D-104389/13**

**By email:**

Assistant Commissioner Finbarr O'Brien  
Garda Síochána  
Dublin Metropolitan Region  
Harcourt Square  
Dublin 2

**Strictly Confidential**

**Re: Evaluation of Management and Use of Anti-Spit Guards**

Dear A.C. O'Brien,

Thank you for offering the Authority the opportunity to provide its input on the evaluation of the management and use of anti-spit guards (anti-spit hoods) by the Garda Síochána. As you are aware, the Authority issued a preliminary response on 21 August 2020, and further to the Authority's consideration of this matter at its meeting on 2 September, set out in this letter is its comprehensive response.

**Welfare of Garda members and staff and risks arising**

The welfare of Garda members and staff is a key concern for the Authority. The Authority has repeatedly condemned spitting, the threat of spitting, and all other abuses and assaults carried out on Garda members by a very small minority of the public in the context of the current health emergency. Furthermore, it has recognised the vulnerability of Garda personnel as key frontline workers during COVID-19 and stressed the importance of adequate personal protective equipment (PPE) to ensure all members are protected.

In addition to protections under the Safety, Health and Welfare at Work Act 2005, the Authority stresses that the State's positive human rights obligations extend to the rights of Garda members and staff who have the right to be protected in dangerous situations and to have access to adequate equipment to discharge their duties. Garda Síochána members and staff are rights holders, who enjoy civil, economic and social rights including the right to life, to the protection of health, to dignity at work and to fair and just working conditions.<sup>1</sup>

The Authority has frequently emphasised the importance of Ireland's adherence to the "Statement of Principles" issued in March 2020 by the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) "relating to the treatment of persons deprived of their liberty" during the COVID-19 emergency. These principles also include the importance of professional support, training, and adequate protection to ensure the health and safety of staff in all places of detention including Garda stations.<sup>2</sup>

With specific regard to anti-spit hoods, the Authority has consistently expressed concern over their introduction and use by the Garda Síochána. The Authority is firmly against their permanent introduction, both as PPE for members and as a use of force. This is particularly in the context of the lack of scientific evidence provided as to the efficacy of anti-spit hoods to protect members from infectious diseases. In particular, there is an absence of any evidence demonstrating the effectiveness of anti-spit hoods in preventing the spread of COVID-19, which was the sole stated rationale for their introduction by the Garda Síochána and the beginning of the COVID-19 emergency.

The Authority notes the limited published evidence on (i) the efficacy of anti-spit hoods in reducing the transmission of disease including COVID-19<sup>3</sup>, and (ii) whether the act of spitting itself, while abhorrent, transmits serious disease.<sup>4</sup> The Authority contacted the manufacturer and distributor of the anti-spit hood device used by the Garda Síochána. They stated that the device is designed to prevent spitting into the face of a police officer. It cannot be guaranteed to prevent the transmission of other aerosols and has not been tested against airborne or respiratory droplets of COVID-19.

Similarly, a recent letter to Amnesty International Northern Ireland from the Police Service of Northern Ireland (PSNI) acknowledged that that manufacturer of the "Spit Guard Pro" model stated that the device did not "prevent aerosols from coughing or sneezing and is therefore not an effective means to prevent Covid-19."<sup>5</sup> According to the latest advice from the World Health Organization (WHO) on the spread of coronavirus,

*"COVID-19 spreads between people through direct, indirect (through contaminated objects or surfaces), or close contact with infected people via mouth and nose secretions. These include saliva, respiratory secretions or secretion droplets. These are released from the mouth or nose*

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<sup>1</sup> For example, see the Council of Europe's Revised European Social Charter 1996 including Articles 2, 3, 11 and 26.

<sup>2</sup> Committee for Prevention Torture, 2020. Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic. Council of Europe CPT/Inf (2020)13.

<sup>3</sup> See Kennedy, K.M., Payne-James, J.J., Payne-James, G.J. and Green, P., 2019. The use of spit guards (also known as spit hoods) by police services in England, Wales and Northern Ireland: to prevent transmission of infection or another form of restraint?. *Journal of forensic and legal medicine*, 66, pp.147-154.

<sup>4</sup> See Cresswell, F.V., Ellis, J., Hartley, J., Sabin, C.A., Orkin, C. and Churchill, D.R., 2018. A systematic review of risk of HIV transmission through biting or spitting: implications for policy. *HIV medicine*, 19(8), pp.532-540.

<sup>5</sup> As reported in Irish Legal News on 25 June 2020. Available: <https://www.irishlegal.com/article/psni-faces-renewed-calls-to-suspend-use-of-unsafe-spit-hoods>

*when an infected person coughs, sneezes, speaks or sings, for example.”<sup>6</sup>*

As such, the act or threat of spitting (which under the current policy is the only circumstance which would permit the use of an anti-spit hood) is not the only method by which COVID-19 may be spread.

If the effectiveness of anti-spit hoods cannot be established, then the underlying rationale for their deployment, even during the COVID-19 emergency, is called into question. The Garda Síochána should clarify this during the course of its evaluation. Such clarification, needs to be more robust than solely based on garda observations and organisational experience in a live environment, and ongoing use on members of the public should not represent a reliable or appropriate basis for testing. Use of anti-spit hoods in an operational capacity can neither confirm nor refute hypotheses on their ability to prevent the spread of COVID-19 or other diseases. Rather evidence collected through rigorous and robust scientific methods is required.

### **Risks to persons subjected to the use of anti-spit hoods**

By way of contrast to the lack of evidence that anti-spit hoods protect Garda members, there is evidence that they present a risk to those persons who are subject to their use. For example, there are a number of incidents internationally in which anti-spit hoods were deployed in cases where people died.<sup>7</sup> More generally, hooding (which is a form of sensory deprivation) is widely considered to be a form of ill-treatment which can in some circumstances amount to torture.

In the Irish context and in respect to their current and continued use, the Authority has demonstrated its commitment to oversight of the use of anti-spit hoods. It has stressed the importance of ensuring that their application occurs only where it is necessary, proportionate and constitutes the minimum use of force required, as stated in the procedures document issued by the Garda Síochána.

In monitoring incidents of their application to date, the Authority has highlighted a number of areas of concern. These include:

- The use of anti-spit hoods in addition to other instruments of force including incapacitant spray and batons during incidents;
- That approximately 40 per cent of individuals were judged to be intoxicated;
- A number of incidents in which individuals were judged to have mental health issues;
- The use of anti-spit hoods on children under the age of 18 years with one deployment on a 14 year old; and
- One incident where an anti-spit hood was applied for a period of five hours.

These incidents underline that all persons who are held in police custody, taken to a police station, and more broadly under the control of the police, are in a situation of vulnerability, and the police are under

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<sup>6</sup> World Health Organization, 2020. How is Covid-19 transmitted? Available: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-how-is-covid-19-transmitted>

<sup>7</sup> The most recent example of which is the case of Daniel Prude, a United States citizen with acute mental illness. He reportedly died from asphyxiation after the deployment of a white spit hood. Further details available at: <https://www.bbc.com/news/world-us-canada-54007884>

a duty to protect them.<sup>8</sup> It is worth noting that while utilised by the Irish Prison Service, anti-spit hoods are not used by other public bodies that are operating on the front line with vulnerable people, for example by services dealing with psychiatric illness nor in an acute hospital setting with agitated patients. In the above listed concerns and based on a review of incidents of use, a significant number of persons to whom anti-spit hoods have been applied, have been perceived by garda members to demonstrate such vulnerabilities.

### **Human rights concerns**

As well as concerns with respect to individual incidents, there are a wide range of considerations with regard to the human rights of all individuals who may be subject to the use of anti-spit hoods. As an instrument of force, the application of anti-spit hoods by Garda members has the potential to breach fundamental human rights including the right to human dignity<sup>9</sup>, the right to life, the right not to be subjected to torture or to inhuman or degrading treatment or punishment, and the right to respect for private and family life, home and correspondence which encompasses the right to physical, moral and psychological integrity.<sup>10</sup>

The right to life and not to be subjected to torture or to inhuman or degrading treatment or punishment (Articles 2 and 3 of the European Convention of Human Rights or ECHR) are absolute and cannot be derogated from. The European Court of Human Rights (ECtHR) has held that any recourse to physical force which has not been made strictly necessary by the conduct of a person generally confronted by law enforcement officers diminishes human dignity and is, in principle, an infringement of Article 3 of the European Convention of Human Rights (ECHR).<sup>11</sup>

According to the ECtHR,

*“[a]ny interference with human dignity strikes at the very essence of the Convention”*

and...

*“any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question”.*<sup>12</sup>

In addition to being necessary, proportionate, and constituting the minimum use of force required, their application should not be carried out on a discriminatory basis. Oversight and monitoring of this

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<sup>8</sup> As stated by the European Court of Human Rights. See ECtHR, *Bouyid v. Belgium*, App no. 23380/09 [2015] and *Petyo Petkov v. Bulgaria*, App no. 32130/03 [2010].

<sup>9</sup> Article 1 of the Charter of Fundamental Rights of the European Union states that human dignity is inviolable, and dignity must be protected and respected. This includes by the police.

<sup>10</sup> Incidents which do not meet the level of severity for a breach of Article 3 can give rise to a violation of Article 8 of the European Convention of Human Rights.

<sup>11</sup> The ECtHR has stressed although the ECHR does not refer explicitly to human dignity that respect for human dignity forms part of the very essence of the Convention alongside human freedom. Within this, the Court has identified the link between the concepts of degrading treatment or punishment within the meaning of Article 3 and respect for dignity. See Mavronicola, N., 2020. *Bouyid v Belgium: The ‘Minimum Level of Severity’ and Human Dignity’s Role in Article 3 echr*. In *The European Convention on Human Rights Law Review* (Vol. 1, No. 1, pp. 105-124). Brill Nijhoff.

<sup>12</sup> See ECtHR, *Bouyid v. Belgium*, App no. 23380/09 [2015]. Paragraph 101. Available: <http://hudoc.echr.coe.int/eng?i=001-157670>

requires comprehensive and reliable recording together with the collection of demographic data including ethnic identifiers.

The Authority is particularly concerned by the application of anti-spit hoods on children to date and wishes to restate its fundamental opposition to the use of the devices on those under the age of 18. As set out in the Garda Síochána's Human Rights Framework, Garda members must be aware of the particular vulnerability of children and should be sensitive as regards their age and to the difficult circumstances they may find themselves in when in contact with the Garda Síochána.<sup>13</sup>

The Authority wishes to emphasise that the Garda Síochána as an organ of the State has specific obligations in respect to young people under the Convention on the Rights of the Child (CRC) and the European Social Charter (ESC). Further, the ECtHR has held that certain behaviour towards minors may be incompatible with the ECHR because they are minors, even if it is acceptable for adults. Any ill treatment is likely to have a greater impact particularly in psychological terms upon children. Consequently, Garda members must show greater vigilance and self-control with minors.<sup>14</sup> This is of particular importance in the use of force.

### **Limited training prior to usage**

Albeit that it was necessitated by the circumstances created by the COVID-19 emergency, the Authority is concerned by the limited training provided prior to the use of anti-spit hoods and considers the current training (a short online video) to be inadequate. Garda Síochána members must be given clear guidance and instructions in the deployment of all instruments of force. Training in the use of anti-spit hoods must be ongoing, comprehensive and not a once off exercise. It should be more extensive than the current training available to members and the implications of the use of force for human rights should be at the centre of such training.

### **Analysis of usage should inform the evaluation**

The current evaluation should focus on the data available to the Garda Síochána internally on the usage of anti-spit hoods since they were introduced for the COVID-19 crisis. As you will be aware, at the Authority's request, a wider range of data was collected on each incident, which the Authority has assessed and reported on as this data has become available. In addition to analysing the incident data, the Authority suggests that it would be beneficial for the evaluation to understand how this data has been used by the Garda Síochána during the period of use, from a governance perspective, including any learning or actions which have been taken as a result of reviewing the data and incidents.

### **Comprehensive evaluation including public consultation required**

In terms of the purpose of this evaluation, the Authority would like to reiterate that its understanding is that anti-spit hoods were brought into use as a temporary measure until the end of November 2020 coinciding with the duration of the COVID-19 emergency public health legislation. This understanding

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<sup>13</sup> As set out in the Framework, all children, or those aged under 18, must be treated with dignity and with due regard to their age and their level of maturity. An Garda Síochána, 2019. Human Rights Framework 1.0, p.61

<sup>14</sup> See ECtHR, Bouyid v. Belgium, App no. 23380/09 [2015]. Paragraph 110. Available: <http://hudoc.echr.coe.int/eng?i=001-157670>

seems consistent with the Commissioner's views expressed at the Authority meeting in public of 29 April 2020. At that meeting, the Commissioner stated that:

- *"This [use of anti-spit hoods] will be subject to review on the 1<sup>st</sup> of September as well. We haven't introduced these in effect as settled pieces of Personal Protective Equipment to the organisation."*<sup>15</sup>
- *"We are content to do the review on the 1<sup>st</sup> of September and we can review the situation then. We do not envisage using this as protective equipment going beyond that but I am not sure what the scenario will be that we face on the 1<sup>st</sup> of September."*<sup>16</sup>

The Authority also notes that the introduction to the force's Procedure Document on Management and Use of Spit Guards frames the use of the devices in the context of COVID-19.

It states that:

*"In the current Covid-19 (Coronavirus) pandemic members of An Garda Síochána may encounter incidents which may be a health risk due to possible transmission of infection through contaminated body fluids from spitting...Anti-Spit Guards provide an additional tactical option to be considered in such circumstances."*<sup>17</sup>

Further, their introduction did not commence with the normal process for the introduction of a new piece of use of force equipment by the organisation. The Authority is very firmly of the view that this proposed evaluation should not be used to replace that process.

As outlined in its previous letter to you, it is the Authority's view that the proposed evaluation should be retrospective to assess the use and management of anti-spit hoods to date, rather than an ex-ante review that envisages introduction of these devices as a permanent addition to the use of force options available to Garda members. If the Garda Síochána are considering a permanent implementation of anti-spit hoods, there needs to be a separate and more comprehensive process. This process should include an assessment of alternatives to anti-spit hoods, consultation with the public and key stakeholders, and a human rights and equality impact assessment.

I hope that the foregoing is clear, but if further information or clarification is needed, I am happy to discuss further with you or your colleagues.

Yours sincerely



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**Helen Hall**  
**Chief Executive**

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<sup>15</sup> Garda Commissioner, Policing Authority Meeting 29 April 2020, at 50 minutes.10 seconds. Available: <https://www.youtube.com/watch?v=6nE4szY3ypA>.

<sup>16</sup> Ibid, at 54 minutes.

<sup>17</sup> An Garda Síochána, 2020. Procedure Document on Management and Use of Spit Guards Version 1.0, p.4.