AN tÚDARÁS PÓILÍNEACHTA
POLICING AUTHORITY

# Terms of Reference for a Review of Adult Caution Scheme in the Garda Síochána

## 1. Background and Context for the Review

Issues relating to the Garda Síochána Youth Diversion programme were highlighted in external Garda oversight reports in 2014 and 2016[1] and were the focus of a 2017 Garda Professional Standards Unit Report entitled "Report on the Examination of the Garda Youth Diversion Office." The Policing Authority has overseen the work of a Garda review of youth referrals over the period 2010-2017. The Garda Interim report on the matter was discussed with the Garda Commissioner at the Authority's meeting in public in January 2019. It was the subject of further discussion in the Authority's September 2019.

One of the main issues of concern that arose in relation to the programme were youth referrals, which the Garda Youth Diversion Office deemed unsuitable for inclusion in the programme but where not actioned in another way. In total, there were 16,877 cases which were deemed unsuitable for inclusion in the scheme, yet did not result in the prosecution of an offender. Of these, 7,894 referrals were not progressed to a conclusion due to Garda inaction. The reasons given for this in the Final Report on Youth Diversion include:

- Time delay/matter not progressed by the investigating member;
- Garda member reported no correspondence received;
- Garda member transfer/leave/career break; and
- Case not progressed after direction to prosecute from DPP/District Officer.

There is also a further category, including 383 youth referrals, which were considered unsuitable for the programme but were not progressed due to a time delay by persons other than the investigating officer.

A diversionary process for adults exists in the form of the Adult Caution Scheme. The process involved in the Adult Caution Scheme incorporates a more narrow range of and less serious offences than Youth Diversion. Furthermore the chain of persons involved in the decision making process is generally more condensed, most frequently being decided by the local Superintendent. In addition to this, an adult may only be issued with a caution on one occasion, unless approved by the DPP. At its public meeting with the Garda Commissioner on this issue on 17 January 2019, the Authority

[1] Garda Inspectorate Report 10 (2014), Crime Investigation, and Garda Síochána Ombudsman Commission Report (2016), Investigation into Complaints of Neglect of Duty in the Investigation of Alleged Child Sexual Assault

raised the risk that issues which arose in the operation of the Youth Diversion Scheme might also exist in the Adult Caution Scheme.

Separately, in 2017, the Garda Professional Standards Unit (GPSU) conducted an evaluation of the Adult Caution Scheme. This evaluation identified a range of issues which suggested that the procedure was not adhered to or that Garda systems did not support the procedure. Some of the key issues identified, highlighting those which may be of greatest significance, are set out in below:

- There was no search facility on PULSE to find Adult Cautions that had been recommended or administered;
- Adult Cautions were being administered for offences not included on the Schedule of Offences for which an Adult Caution can be given;
- A number of breaches of policy were found including:
    - The Detection Status for Adult Caution was not always properly recorded on PULSE;
    - Adult Cautions were being administered several months after the offence occurred which limits the time available to the investigating member to initiate a subsequent prosecution if necessary;
- GPSU found that subsequent Adult Cautions were being administered to persons who had previously received the benefits of the Adult Cautioning Scheme without the required consent of the Director of Public Prosecutions;
- GPSU examinations found that in some instances the Adult Cautions were being administered by Sergeants and not the District Officer;
- The Adult Caution Referral Form was not being completed in full by members. The absence of information means that the District Officer does not have all required information to make an informed decision on the appropriateness of administering an Adult Caution to the Offender; and
- The Investigating Member was not being made aware that the Adult Caution was administered to the offender and accordingly did not have the relevant information to update PULSE.

Recommendations were made to address the issues raised. However, the scale or prevalence of these issues was not quantified and the implications of these issues were not explicitly outlined in the report. Furthermore, it is currently unclear if these recommendations were implemented or evaluated to ensure that the issues have been resolved.

## 2. The Scope of the Review

The Authority is requesting a review of the Adult Caution scheme to develop an understanding as to whether issues similar to those arising in relation to the Youth Diversion Programme exist, or have the potential to exist, and to assess if those issues identified in the GPSU 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 will examine the GPSU review of Adult Cautions and have regard to:

- The scale/frequency of the issues uncovered;
- The implications of the issues uncovered;

- The adequacy of the recommendations to resolve issues; and
- Assessment as to whether recommendations have been implemented.

The second phase will be an evaluation of the Adult Caution scheme covering the period since the 2017 GPSU review and should:

- Examine the degree to which issues uncovered in the GPSU review are still present;
- Assess the efficacy of procedures and controls to ensure cases progress through the Adult Caution 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 and DPP directions;
    - The degree to which the Garda Síochána's process and practice in this area is generally in line with best practice.
- Examine consistency across districts in application of the Adult Caution Scheme with regard to acceptance/refusal of offenders;
- Assess the adequacy and consistency of the governance and accountability framework in place at divisional and national level to ensure organisational oversight of adult cautions; and
- Assess the adequacy of systems to support the Adult Caution scheme and accurate recording of data.

## 3. Scale of Review

The review should:

- Focus on the period since the publication of the GPSU report in 2017 or, the period since the GPSU recommendations have been implemented; and
- Be of adequate depth, in terms of proportion of cases examined and geographic distribution, for the results to be generalisable to the scheme as a whole.

## 4. Timeframe and Deliverables

It is envisaged that the field work would be carried out for the period of up during October to December 2019, with the following deliverables:

- An interim progress report to be provided to the Authority in early December 2019; and
- A final report, including any recommendations, to be provided in January 2020.

The report may also include the identification of related issues which arise during the inspection and which may form the basis for future inspections, but are out of scope of this current project.

From the perspective of skills transfer, it is envisaged that a member(s) of Authority staff will accompany and work with the inspection team.