

Ombudsman
an Gharda Síochána
FIOSRÚCHÁN NEAMHSPLEÁCHAS NEAMHCHLAONTAIGHT



Restoring Public Confidence in Policing





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Introduction



Despite promises from Fine Gael and Labour that there would be a sea change in policing following a series of whistle-blower controversies, the public were faced with a chronic failure by the Government to address the matter.

In recent days we have seen how Fianna Fail propped up Fine Gael's incompetence in government when it comes to addressing these matters and the broader administration of justice.

Everyone is entitled to policing that serves the people. Since the introduction of the Garda Síochána Act 2005, we have seen major changes to how An Garda Síochána operates. We have seen the establishment of GSOC, the Garda Inspectorate and the Policing Authority. We welcomed the development of these organisations and made reasonable and sensible suggestions as to how those organisations could be more effective and accountable in their work. However, during this time we have also seen the penalty point scandal and the Guerin Report, the Fennelly Report, the O'Higgins Report, the O'Neill Report, the Cooke Report, and the Departure of a Garda Commissioner with his replacement subject to a tribunal of investigation. Public confidence is now at rockbottom as a result.

Adequate safeguards must be introduced in order to prevent a repeat of past injustice, and to prevent ongoing and future injustice. Civilian oversight of policing and justice must be democratic, fully inclusive and robust.

Everyone is entitled to policing that serves the people by enhancing community safety. Sinn Féin wants to achieve effective civic policing by police services that are accountable, free from partisan political control,

representative of the community they serve, routinely unarmed, imbued with a human rights ethos, and trained and held to the highest professional standards. These proposals set out our vision for policing in Ireland.



Jonathan O'Brien TD
SINN FÉIN SPOKESPERSON ON JUSTICE

Ready for Reform

There is a clear need for a substantial change and further reform in order to deliver a sustainable policing service that is fit for the community it represents.

Key Principles

The key principles that must inform change to An Garda Síochána include:

- » Freedom from partisan control or influence
- » Operational independence
- » Policing with the community to develop maximum confidence in the policing service and to maximise cooperation between citizens and An Garda Síochána
- » Effective oversight with adequate safeguards and consequences for wrongdoing

Currently there are six strands to policing delivery including:

- » An Garda Síochána and the Garda Reserve
- » Garda Síochána Ombudsman Commission
- » The Garda Inspectorate
- » The Garda Professional Standards Unit
- » The Policing Authority
- » Joint Policing Committees

Each of these has different functions and responsibilities defined in legislation.

The GSOC investigate complaints made by members of the public against members of the Gardaí where it is deemed that an offence has occurred.

The Garda Síochána Inspectorate benchmark performance and promote best practice.

The Garda Professional Standards Unit examines and reviews, as directed by the Garda Commissioner, the operational, administrative and management performance of An Garda Síochána at all levels.

The Joint Policing Committees act as a forum for local authorities, An Garda Síochána, Oireachtas members and the community to work together

locally in tackling crime and promoting community safety.

The Policing Authority is tasked with oversight of performance of An Garda Síochána's policing (not security) functions.

Sinn Féin believe that governance and accountability are at the core of what needs to be improved within An Garda Síochána.

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Policing in Ireland must conform to the highest standards of human rights, accountability, impartiality, transparency, and effectiveness. Notwithstanding the good work carried out by rank and file members of An Garda Síochána on a daily basis, the public will only have confidence in policing structures where there is sufficient civilian oversight, adequate safeguards, and cultural change. When the Policing Authority was established, we stated that it should be completely independent in its operation.

Sinn Féin also proposes that the Crime and Security Branch of An Garda Síochána and the Defence Forces Directorate of Military Intelligence (G2) come under the scrutiny of the appropriate Oireachtas Committee with the necessary safeguards in place, based on international standards.

We believe that An Garda Síochána must be accountable to the professional Code of Ethics established by the Policing Authority. We would also like to see the introduction of a new Criminal Justice Inspectorate, covering all aspects of the criminal justice system, that will incorporate the existing Garda Inspectorate.

Under our plan the Minister would be responsible for setting the overall long-term objectives for policing after consultation with the Policing Authority.

We need to create the conditions necessary to secure widespread, pan-community confidence in policing and justice, and to promote in particular a culture of open and transparent policing within the community.

A Patten Commission for the 26 Counties



We acknowledge that, after a plethora of scandals concerning the operation of and mismanagement within An Garda Síochána, the Fine Gael government have announced plans to establish a Commission on the Future of Policing in Ireland, as their limited reform programme for the Gardaí continues.

Sinn Féin recognises the good work carried out by many Garda officers on a daily basis. However, given the widespread public recognition of the need for root and branch Garda reform and improved accountability, Sinn Féin is calling for a Patten-style reform process on a par with the 1999 Independent Commission on Policing for Northern Ireland (the Patten Commission). Our collective objective must be to create the most effective and accountable police service, free from direct political control, fair and impartial, with the highest standard of human rights compliance. We must stamp out the culture of corruption and of impunity that is apparent in the Gardaí.

We believe that Patten-style thresholds are the minimum reforms necessary and that the Terms of Reference establishing the Commission on the Future of Policing in Ireland must reflect at a minimum the standards of policing, police accountability and responsiveness to community concerns of the Terms of Reference that were contained in the Good Friday Agreement establishing the Independent Commission on Policing for Northern Ireland.

That means that a Commission on the Future of Policing in Ireland must at a minimum look at direct political control of An Garda Síochána, at best practice in civilian oversight and accountability, at independent professional scrutiny and at the legislative steps needed to ensure proper professional standards are met.

It must also look at issues of training and possible re-training and at the position governing appointment and dismissal of senior Garda officers.

The government must ensure that any Terms of Reference for the Commission address the workings of the Commission with regard to the widest possible consultation with civil society groups and individuals and non-governmental expert organisations.

The Commission must ensure that there are clearly established arrangements to enable people and their representatives articulate their views and concerns about policing.

It is essential that the Commission focuses on policing issues, but if it identifies other aspects of the criminal justice system relevant to the Gardaí including their role in prosecution, then this should be highlighted too.

An independent Policing Authority



Sinn Féin proposed the introduction of a new independent Garda Authority in 2014. Following this, the Policing Authority was established with Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015 however many important provisions in this legislation have not yet been commenced.

Specifically, the sections that would allow the Policing Authority to recommend to the government the removal of the Garda Commissioner, Deputy Garda Commissioners, Assistant Garda Commissioners and members of other ranks have not yet been introduced.

These sections must be commenced without delay. As part of this the Minister is obliged to amend the regulations governing the promotion and discipline of the Garda Síochána in consultation with the Garda Commissioner and the Policing Authority. While we acknowledge that work has begun on these changes, there must be no further deferral of this important change.

When the legislation was being introduced Sinn Féin raised a number of issues concerning the independence of the Policing Authority which were rejected by the Minister for Justice. An independent Policing Authority is an integral part of reform of policing. We have concerns that even when the Act is fully commenced, the Authority will still be constrained in their powers to appoint and remove senior officers of An Garda Síochána. There are a number of areas in which the Policing Authority cannot act without the consent of the Minister which limits the independence of the authority and undermines its purpose.

In the Justice Committee Report on Garda Oversight and Accountability it was stated that the Policing Authority had not yet identified anything like the full list of issues problems and challenges that it is likely to encounter, but reaffirmed that a functioning framework is essential in overseeing the implementation of a wide range of third party reports including those by Justice O'Higgins, the Garda Inspectorate and GSOC.

To this end we have made a number of proposals to enhance the powers of the Policing Authority to

make it fit for purpose. We believe that the practice of the Scottish Policing Authority and the Policing Authority in the north should be examined with a view to improving the Policing Authority

Sinn Féin proposals for the enhancing functions and responsibilities:

- Immediately commence outstanding provisions of the legislation governing the Authority
- The Authority should have responsibility for determining the priorities of An Garda Síochána and should work in conjunction with the Garda Commissioner in the preparation of annual policing plans
- The Authority should consult with local communities and obtain their views and experience of policing and JPCs
- The Authority should be empowered to conduct its functions without needing the consent of the Minister
- The Authority should hold the Garda Commissioner to account and the Commissioner should keep the Authority fully briefed on relevant matters.
- The Authority should have full independent capacity regarding the appointments of the Garda Commissioner, the Deputy Commissioner and the Assistant Garda Commissioner following open competition by the Public Appointments Service based on best practice in recruitment
- The Authority should also have the independent power to remove these senior officers
- The Authority should be empowered to deal with complaints against and the discipline of senior officers (Garda Commissioner, the Deputy Commissioner and the Assistant Garda Commissioner)

- The Authority should monitor and address human rights and equality compliance by An Garda Síochána at every level of its operations and ensure issues identified by the Garda Síochána Ombudsman Commission are dealt with
- The Authority membership should be increased to 21 and include members with a variety of backgrounds and expertise including legal, human rights, academic, civil society and law enforcement
- The Authority should be diverse in its membership and should include political representation decided using the d'Hondt method. Independent members should be recruited through fair and open competition.
- There should be a statutory requirement that the membership of the Authority be representative of society.
- The Authority should be supported in its work by a number of advisory groups e.g. on equality, human rights and youth affairs.
- The Authority should be empowered to conduct unannounced visits in Garda stations and inspect any documentation relevant to their investigation

Independent Oversight and the Garda Síochána Ombudsman Commission

GSOC was established by the Garda Síochána Ombudsman Act 2005 and has been operational since 2007.

The statutory functions of GSOC are:

1. To receive complaints made by members of public concerning the conduct of members of the Garda Síochána
2. To carry out the duties and exercise the powers assigned to it in relation to those complaints
3. To issue guidelines for the informal resolution of certain categories of complaints and to make procedural rules for investigations
4. To report the results of its investigations to the Garda Commissioner and, in appropriate cases, to the Director Public Prosecutions and, if it reports to the Director, to send him or her a copy of each investigation file
5. To conduct other investigations of matters concerning the conduct of members of the Garda Síochána
6. To examine practices, policies and procedures of the Garda Síochána
7. To draw up with the Garda Commissioner protocols

An Garda Síochána must be accountable. There is an urgent need for reform to how GSOC operates. Indeed, representatives from GSOC stated themselves in the Oireachtas Justice Committee that they believed that parts of the legislation governing its functions needed to be reviewed and overhauled.

The powers of GSOC need to be enhanced in order to ensure that the Garda Commissioner comes within the remit of GSOC, if the Police Authority do not have the role of investigating senior garda members. GSOC's powers to secure co-operation from Gardaí must be clarified and bolstered as serious blockages in GSOC investigations have been an issue. The Garda Síochána Ombudsman Commission needs to be fully empowered and independent in order to fulfil its oversight obligation.

Proposals to improve the effectiveness of GSOC:

- Serving officers of An Garda Síochána should not be seconded to GSOC i.e. Gardaí should not be investigating fellow Gardaí
- A duty of impartiality and independence should be included in GSOC objectives.
- GSOC to have a statutory obligation to report at regular intervals to the Oireachtas Justice Committee and answer questions from members
- GSOC to have powers of investigation in respect of the work of the Garda Commissioner
- Where a Garda retires or resigns, any complaint against the officer can still be investigated if GSOC believes it would be in the public interest to do so
- The time limit for the making of complaints to GSOC should be extended from 6 months to one year with the time period running from the date of knowledge
- The Minister for Justice should not have the power to withhold material from GSOC on national security grounds.
- The Garda Commissioner should be under a duty to provide GSOC with material it requests
- GSOC to be given the right to make unannounced visits and inspections of garda stations
- GSOC's access to PULSE should be placed on a statutory footing
- The Ombudsman should have remit over civilian staff of the Gardai
- Allow gardai to make complaints to the Ombudsman concerning the conduct of fellow gardai
- Ensure that mediation by GSOC be used more widely and effectively and give the Ombudsman power to decide when it should be attempted as is the

case for the Police Ombudsman in the north.

- Allow the Ombudsman to compel witnesses, including Garda officers.
- Allow the Ombudsman to compel retired Gardai to attend interview and to provide any documentation in their possession
- Place a duty on all Gardai to report any evidence of suspected criminal offence by other Gardai or civilian staff
- Give the Ombudsman the power to arrest persons who are not Gardai but who are engaged in crime for which a Garda is being investigated
- Allow the Ombudsman the power to recommend the suspension of a Garda
- Allow the Ombudsman the power to direct informal disciplinary

proceedings against a Garda where it is inappropriate to recommend formal disciplinary proceedings

- Allow the Ombudsman to attend all disciplinary hearings which follow a GSOC investigation
- Ensure complaints of a less serious nature (i.e. allegations of verbal abuse from a Garda) should be considered a “service level” issue
- Provide a statutory framework for GSOC to provide An Garda Síochána with observations on systemic issues arising out of complaints
- Introduce a penalty for gardaí who fail to deliver reports back to GSOC within agreed timeframes as GSOC currently has no statutory means of redress

A new Criminal Justice Inspectorate



Due to the potential for overlap in the roles of the Garda Inspectorate and GSOC, the previous Oireachtas Justice Committee recommended the abolition of the Garda Inspectorate and the merging of its functions with GSOC.

The current Oireachtas Committee on Justice and Equality Report on Garda Oversight and Accountability recommended that consideration be given to the establishment of a Criminal Justice Inspectorate to oversee and supervise the administration of all aspects of the criminal justice system, and pointed to the Criminal Justice Inspectorate in the north as a possible model. Sinn Féin have called for this for a number of years.

Ultimately, Sinn Féin would support the establishment of an All-Ireland Criminal Justice Inspectorate.

In the interim we propose the establishment of a Criminal Justice Inspectorate in this jurisdiction that would replace the Garda Inspectorate and cover all state policing and justice related agencies

Sinn Féin proposals:

- Work towards establishing an all-Ireland Criminal Justice Inspectorate to inspect the range of criminal justice organisations of relevant agencies and services
- Make the Criminal Justice Inspectorate responsible for inspecting the criminal justice organisations including An Garda Síochána, the DPP, the Probation Service, the Courts Service, and the Irish Youth Justice Service



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