



AN TÚDARÁS PÓILÍNEACHTA
POLICING AUTHORITY

The Policing Authority, 4th Floor, 90 King Street North, Dublin 7, D07 N7CV

Phone: +353 1 8589090 email: info@policingauthority.ie

20 April 2020

Ref: PA/2020/132

Mr. Charlie Flanagan T.D.
Minister for Justice and Equality
Department of Justice and Equality
51 St. Stephen's Green
Dublin 2

**Re: Report on the policing performance by the Garda Síochána in relation to the Health Act 1947
(Section 31 – Temporary Restrictions) (Covid-19) Regulations 2020 (“Covid 19 Regulations”)**

Dear Minister

I refer to your letter dated 16 April 2020 in which you requested an interim report on the Authority's oversight activities and our assessment of the application of the Covid 19 Regulations by the Garda Síochána since they came into force.

The Authority welcomes the emphasis your letter places on the especial importance of its statutory oversight role at this time, reflecting as it does the Authority's own approach to its work, in circumstances which are particularly challenging for the Garda Síochána. It also welcomes the opportunity to report regularly to you on the work it has commenced, and will further develop, to oversee the policing of the Covid 19 crisis. I can assure you that the Authority continues to take very seriously its responsibility to exercise open, comprehensive, fair and independent oversight in the public interest.

In this first, interim, report, it may be useful to review briefly the approach adopted by the Authority as the situation developed; to comment on the oversight framework with the Garda Síochána; to identify some initial key oversight issues; to give you a sense of the engagement with external agencies and groups thus far; and to offer some interim observations arising from our work to date.

You will note from this report that the Authority proposes to provide an update to you on a fortnightly basis in which a progressively more complete picture can, we hope, emerge.

1. Introduction

As you will be aware from the updates provided to your officials over the past couple of months, the Authority has quickly adapted the manner in which it discharges its statutory oversight obligations to the new realities.

In the latter half of February, before the contours of the Coronavirus became fully clear, the Authority had begun to reflect on the potential impact of the emerging problem and on how it might affect the discharge of its statutory responsibilities in terms of oversight of policing. The Authority met in early March to consider the matter further. By this time, it was becoming clear that there would be serious implications for policing as for the entire society.

I had already discussed these issues in some depth with the Commissioner and briefed the Authority who were firm in the view that its oversight role could not be diminished, however complicated circumstances became. On the contrary, the Authority's strong view was that its statutory function to oversee policing performance would have to be evident and unambiguous and, indeed, assume greater significance at a time of increased police powers. The introduction and enactment of emergency legislation with the associated powers given to the Garda Síochána reinforced this approach to the oversight role of the Authority.

The Authority met again on 25 March and, in accordance with usual practice, its meeting incorporated a comprehensive discussion, by video conference, with the Garda Commissioner and the Chief Administration Officer. There was a detailed discussion about a range of issues, many of which are touched upon later, as well as aspects of the Act which had been signed into law a few days earlier and the challenges that it would present for policing once the associated regulations were developed. The Authority was adamant in its commitment to finding a way to maintain the engagements in public with the Commissioner at future meetings, a position with which the Commissioner agreed.

Although challenging in the context of required social distancing, a decision was taken to complete the selection process for the position of Assistant Commissioner and final interviews went ahead in the second half of March as planned, and a panel of candidates was established on 25 March, reflecting the importance of the leadership and succession needs of the Garda Síochána. One

candidate was appointed from this panel at an Authority meeting on 7 April with a further candidate proposed for appointment, subject to the approval of Government.

As the scale of the task facing the Garda Síochána unveiled itself, it was clear that the Policing Plan for 2020, submitted to you on 24 December 2019, would no longer represent a realistic basis for any evaluation of policing performance in the current year. Work was begun, both by the Garda Síochána and by the Authority, on reviewing what might be an appropriate set of adjustments. I briefed the Secretary-General on this intention at the beginning of April.

2. Oversight Framework with the Garda Síochána

The policing oversight framework put in place over the past number of weeks and planned for the immediate future builds on the Authority's experience and approach to date and includes:

- Placing human rights and ethics at the centre of its oversight;
- Timely and frequent engagement with the Garda Commissioner and his senior colleagues;
- Establishing parameters of reporting to ensure that sufficient information is available to allow for comprehensive oversight;
- Discussion at Committee and Authority meetings with the Garda Síochána to ensure mutual understanding of the challenges, processes, governance and reporting in the Garda Síochána and for the Authority.
- Public meetings to ensure the public has an opportunity to hear and understand the challenges arising;
- Engagement with stakeholders such as statutory bodies, NGOs and civil society to understand the challenges presented to particular groups and to appreciate their experience of the policing service at this time;
- Environmental analysis in terms of crime trends and media trends as they reflect public concerns; and
- Review of trends emerging in other jurisdictions with regard to the policing of the Covid 19 situation.

This oversight work has all been continuing almost as normal, but with an emphasis on policing performance during the Covid crisis.

The Authority's regular monthly meetings with the Commissioner and normal interaction between Authority Committees and staff and senior Garda representatives are proceeding. To keep abreast of the fast changing environment, interactions between the Chairperson and Garda Commissioner have been intensified and take place frequently each week. In addition,

regular interactions have been essential with the Deputy Commissioners, the Chief Administrative Officer, the Chief Information Officer and other members of the Executive team.

Arrangements are in place for real-time reporting of any issues of public interest to the Chairperson or Chief Executive and for weekly reporting to the Authority of (a) any use of the Anti-spit hoods; (b) any use of the powers in the 2020 Act or the related Regulations; and (c) operational data on changes in Crime types.

The format and content of the recording and those reports are being enhanced and discussed with the Garda Síochána on an ongoing basis. It will be necessary for the Authority to have access to the most complete information possible to enable it to exercise its oversight and to make regular reports to you. For example, the use of the new policing powers is not fully explained by references only to arrests made and this will be explored further with the Garda Commissioner over the coming days. We will return to this question in our next report to you.

3. Current Key Oversight Issues

3.1. Attestation of new recruits

The attestation of recruits, who had not yet completed their training and their deployment to assist in the current crisis is a matter of concern for the Authority, while the Commissioner's reasons for doing so are well understood. Discussions with the Commissioner over the last few weeks focussed on the risks arising from this decision both for the individuals and the organisation; the level of training undertaken to date; how and when this training would be resumed; the roles these New Garda members would be assigned; and the supervision arrangements that would be introduced for them.

The Authority welcomed the assurances from the Commissioner that the trainees concerned will return to complete their full training and pass out from the college when the current crisis eases. There was a similar welcome for the Commissioner's confirmation that the trainees are assigned as 'assisting members' with limited powers in their own right, as is normal practice for probationers on their first assignment from the college; that they are deployed in roles providing additional visibility; are assigned experienced tutor Gardaí; and are always accompanied. In this context, the Commissioner does not envisage that they will use their Garda powers. He emphasised the small percentage of the total Garda membership represented by those newly attested as well as his concern to ensure they are adequately supported and looked after. He confirmed that all the newly attested members had received training on and signed the Code of Ethics.

3.2. Emergency Legislation and Related Regulations

The new Emergency Legislation was signed into law on 20 March 2020 and the Minister for Health made the associated Covid Regulations on 8 April 2020. In preparation for this, the Garda Síochána introduced procedures and guidelines for Garda Members on the implementation of the Regulations and the use of the Emergency Legislation.

The Authority was concerned that these new powers not be used unreasonably or disproportionately and that any use be recorded and reported. The Commissioner confirmed that arrangements were being made in this regard including for the recording of data on the Pulse and CAD systems. As alluded to earlier, following initial verbal reports from the Commissioner to the Chairperson, weekly reports to the Authority on the use of the powers are now being developed, the first of which is expected by close of business today. The format and content of these weekly reports will be considered and revised as necessary on an ongoing basis in consultation with the Garda Síochána.

3.3. Introduction of Anti-spit hoods

In late March, before the Commissioner had the opportunity to brief the Authority, a number of reports emerged in the media of the intention to introduce Anti-spit hoods to the Garda Síochána. While recognising the harm that may be caused to members of the Garda Síochána and members of the public by spitting, given the highly contagious nature of Covid 19, it is with some considerable reluctance that the Authority views the introduction of this new device. I have spoken to the Commissioner on a number of occasions over the past few weeks about the Authority's concerns and was somewhat reassured by his clear indications that the availability and possible use of Anti-Spit Hoods was being strictly limited to the current crisis. As you will see from my letter to him of 9 April 2020, which I have attached for your information, I have requested that this limitation be explicitly set out in the Policy and Procedure documents and that that the termination date used in the 2020 Act, 9 November 2020, might appropriately be adopted for their use.

The Commissioner and his senior colleagues have provided prompt information regarding the procedures and the training videos developed for their use. The Authority is fully conscious of the human rights implications of introducing a new element in the use of force by the Garda Síochána and will continue to oversee whether these devices are used only in circumstances where it is necessary, proportionate and constitutes the minimum use of force required.

The Authority has specifically requested a number of clarifications from the Commissioner on their use. For example, concerns arise that while the procedure stated that the use of Anti-Spit Hoods is not permitted on children under 12 years of age, it is silent on their use on children

aged 12 and over. It is the Authority's clear view that the document should make explicit provision in respect of the circumstances that would warrant their use on children, or categories of children, within the group aged between 12 and 18. The Authority also had a concern that the placing of the onus of responsibility on individual members is incomplete without a parallel recognition of the responsibility that devolves upon supervisors and local management. We have been specific with the Commissioner about the elements of information that the Authority wishes to be included in the use of force reporting in these devices and will continue to monitor this over the coming weeks.

3.4. Well-being and sustained operations

At its meeting on 25 March 2020, Members had an in-depth discussion with the Commissioner with regard to the arrangements that were in place and being planned to deal with the policing demands generated by the crisis and with particular reference to the welfare of Garda members and staff. The Commissioner outlined the operational changes that he has introduced to minimise the exposure of his colleagues to the virus and to ensure that policing service can be sustained throughout the crisis. At the Policing Performance and Strategy meeting earlier today, the infrastructure in place to facilitate the management of policing the Covid 19 crisis in a timely responsive manner was discussed. It was confirmed that there is a daily high level meetings chaired by a Deputy Commissioner at which the available resourcing level is monitored and discussed. This includes absence and sickness, equipment including PPE equipment and any Industrial relations issues arising. The meeting is informed by daily reporting on use of powers, use of force and crime levels. A daily meeting with the regional Assistant Commissioners facilitates communication of any issues arising at regional and national level.

The Authority recognises, and has discussed with the Commissioner, the particular vulnerability of Garda personnel and would be more reassured if there were an arrangement to accord an appropriate level of priority to the Garda Síochána for virus testing. At this afternoon's Committee meeting the Deputy Commissioners confirmed that the organisation has sufficient PPE resources and provided assurance that matter of priority testing for Garda personnel will be resolved within the next day or two.

3.5. Policing to protect and respect Human Rights

Under Section 42 of the Irish Human Rights and Equality Act 2014, the Garda Síochána, like all public bodies in Ireland, has a legal obligation to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans. This is in addition to the statutory Policing Principle set out in an

amended Garda Síochána Act 2005 that “...policing services are to be provided....in a manner that respects human rights...”.

Recalling his firm and frequently expressed commitment to the Code of Ethics, the Authority has recommended to the Commissioner that the Code be placed at the centre of the ongoing Covid policing operation. This provides an opportunity to make the Code live in day-to-day policing and to ensure that the Garda Síochána’s obligations under the Garda Síochána Act 2005 and the Human Rights and Equality Act 2004 are complied with.

The Commissioner confirmed to the Authority at our 25 March 2020 meeting that the Garda College in Templemore is closed and all students and staff redeployed to other duties. The management of providing ongoing agile and yet comprehensive training for all Members and Staff in particular in relation to the new Policing Powers and the corresponding human rights implications will be challenging and will be explored further with the Commissioner over the coming weeks.

3.6. Domestic Violence

In recognising that normal policing work continues alongside the Covid 19 demands the Authority noted the first successful prosecution for coercive control. It discussed with the Commissioner the plans to deal with the well-founded apprehension that increases in domestic violence and other types of crime were likely to emerge in the context of the Government’s instructions for people to stay at home. The Commissioner confirmed that the statistics on domestic violence and other crimes were being kept under close review, that a range of initiatives was being taken and that measures were in place to deal with the issues arising, including maintaining effective communication with victims. The introduction of Operation Faoiseamh was an important development that was widely welcomed.

4. Stakeholder Engagement

In the context of the new policing powers, we have sought to broaden our information base on how these are being implemented. In line with its organisational value of ‘listening’, the Authority has consistently engaged with a range of statutory, voluntary and civil society organisations in order to enhance its understanding of how members of the community, and organisations which act and work on their behalf, experience the policing service provided by the Garda Síochána. This engagement has proven valuable in providing an experiential perspective on policing performance and to complement the information and reporting provided by the Garda Síochána as well as

information on crime trends. This perspective has consistently informed the Authority's oversight and reporting.

While this is more challenging during a period of national lock-down, the Chief Executive and her team have engaged, and will continue to engage, by telephone and video conference with a broad range of groups and organisations, statutory and non-statutory, including those representing particular communities and groups in society, or particular geographic areas.

Among other things, this engagement will seek to understand and assess the experience of day to day policing and how it may have been affected by the Covid 19 crisis and whether there are new issues that have arisen in the area or for a particular group/community as a result. These issues may include new types of crime, a change in the prevalence or nature of existing crime, or it may relate to increased vulnerability amongst certain groups.

In identifying groups and organisations, the Authority has had regard to its existing relationships with Joint Policing Committees and others and it has sought to ensure a geographic balance between urban and rural engagements. It has also had regard to the trends emerging, and the lessons that may be learned, in other jurisdictions in relation to policing the Covid 19 crisis.

This work has commenced and at the time of writing, the Authority has engaged with a range of statutory bodies, including IHREC, GSOC, the Garda Inspectorate, community groups and NGOs. The Chief Executive has also written to the Chair of each Joint Policing Committee to invite engagement with them over the coming weeks.

The matters discussed, and issues arising include:

- A general sense that the approach of the Garda Síochána is reasonable and that enforcement is being used a last resort;
- A concern that the Covid 19 Regulations should not be extended without good reason;
- The risk that the Covid 19 Regulations may be used to extend stop and search inappropriately;
- A sense that complaints to date about Garda Síochána Members in relation to the Covid 19 crisis do not suggest that the Covid regulations are being used disproportionately, unreasonably or without concern for human rights;
- Domestic abuse increases and pent-up demand for services when the current crisis ends;
- Drug dealing moving to the suburbs and drugs intimidation increasing in domestic settings; and
- The need for transparency and public reporting on the use of the Covid 19 Regulations.

5. Interim Observations

The Authority has had effective contact with the Garda Síochána and frequent, open and frank discussions with the Commissioner about both preparedness and day-to-day management of policing during the Covid Crisis. We are moving towards a more structured, but non bureaucratic, framework for reporting to the Authority on a weekly basis. This reporting framework has been

clearly identified in respect of spit hoods and is being finalised in respect of the use of powers more generally and the provision of crime data.

The Authority welcomes the approach of the Garda Síochána to date, based on policing by consent and on the use of new powers as a matter of last resort. I am encouraged by the understanding demonstrated by the Garda Síochána as to the importance that any use of the new powers is appropriately and fully recorded. This has importance for a number of reasons - so as to support accountability within the Garda Síochána, to increase understanding for public policy reasons and to enable the Authority to discharge its statutory oversight role. However, as noted earlier, this is work in progress and I hope that by the time of our next report to you, a more settled and complete framework will have been introduced.

The engagement with Stakeholders has been very valuable, but it is at an early stage and the Authority will intensify and expand this over the coming weeks. Nothing in these engagements thus far suggests that there is any differential application of powers based on location, urban or rural, or within either of these categories. We will monitor this question of consistency carefully both in terms of geography and vulnerability with as much contact with local communities and JPCs as circumstances permit.

The Authority will continue to focus its oversight of the Garda Síochána through the lens of protection of human right and ensuring that there is constant readiness to return to previous policing practices. It will be important that in the return to standard policing powers, there is no overhang in terms of policy or practice from the use of the current exceptional powers. We recognise also the very positive opportunities to learn from the experience of policing in the current crisis and to build on the new approaches to work and community engagement that are an important part of policing at the moment.

In relation to some of the procedures and training material provided to the front-line, there is considerable scope for more information and training to be provided from the perspective of the protection of human rights and to renew Garda members' understanding of the human rights of assembly, privacy, liberty and family life. We have asked the Garda Síochána to reflect on specifically which Human Rights are engaged in the use of the powers and to identify those in their guidance.

These human rights are being willingly limited and sacrificed by members of the public in order to protect life and public safety but they remain as the foundation of contemporary society and its legal framework. This balancing of rights may pose more complex challenges as we enter phases of

relaxation of restrictions and we will continue to discuss with the Garda Síochána how best to respond to that challenge.

From my discussions with him, there is a shared emphasis by the Commissioner and the Authority on ensuring that the work of organisational renewal continues; that the broad objectives, if not every fine detail, of the Policing Plan are actively advanced; that the New Operating Model continues to be extended and that any temporary delays to current plans be as short as possible. The revised policing plan will be very supportive in this respect.

6. Concluding Remarks

The Authority's observations in this interim report are, in the nature of things, tentative. We are satisfied that the Garda Síochána fully understand the special character of the times, of their current role and of the temporary and exceptional nature of the new powers. We are confident that the Commissioner is wholly committed to the principle of policing with the consent of the community and that these powers be used in all cases only as a last resort. We welcome the Commissioner's readiness to report on the use of the powers and his recognition that the use of spit hoods is a use of force and requires a process of open reporting. We also welcome his emphasis at all stages on the temporary character of the current arrangement and, in particular, of the distribution and use of spit hoods.

I am happy to provide further reports on a fortnightly basis for the duration of the crisis. Our Chief Executive will continue to liaise with your officials to ascertain whether any further information would be appropriate for inclusion in future reports.

Yours sincerely,



Bob Collins
Chairperson

CC

Garda Commissioner Harris
Mr. John O'Callaghan