

**Garda Inspectorate Report**

**“Responding to Child Sexual Abuse – A Follow-up Review December 2017”**

**SECOND PROGRESS REPORT OF THE INTER-AGENCY IMPLEMENTATION GROUP**

**Chaired by Caroline Biggs, SC**

**8 May 2019**

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## **1. INTRODUCTION**

### **1.1 Establishment of Implementation Group**

This is the second progress report of the independently chaired inter-agency Implementation Group established to examine and drive forward the implementation of recommendations in the Garda Síochána Inspectorate's report "Responding to Child Sexual Abuse – A Follow-up Review."

In accordance with its terms of reference, the Implementation Group will operate for an initial period of 12 months from the date of its first meeting on 11 June 2018. The Group is required to submit quarterly progress reports to Cabinet Committee B, dealing with Social Policy and Public Services. The first of these reports set out the Implementation Group's terms of reference, membership and work schedule together with key findings on completion of the first stage of its work. It was submitted to Cabinet Committee B on 22 October 2018 and is available on the Department of Justice and Equality's [website](#).<sup>1</sup>

### **1.2 First Stage**

During the first stage of its work, the Implementation Group examined and assessed all 24 substantive recommendations and 103 key actions in the Garda Inspectorate's Report, together with the suggested timeframes for implementation, i.e. short, medium or long term. The vast majority of recommendations and key actions were accepted by the Group but there were some reservations in relation to others. Arising from this initial examination, recommendations and key actions were categorised as;

- Accepted in full (Green)
- Accepted with modification (Amber)
- Not accepted – further evaluation needed (Blue)
- Not accepted – clarification required (Grey)
- Rejected (Red)

### **1.3 Second Stage**

At the time of writing the Implementation Group's first progress report in October 2018, indications were that at least 30 of the 103 key actions had already been addressed and achieved. To be fully satisfied in this regard, and to accurately inform its second progress report, the Group decided to engage in a verification process to substantiate implementation on the ground.

The Group also undertook, as part of this second stage, to seek clarifications from the Garda Inspectorate where necessary and to conduct further evaluation in respect of key actions where a definitive view had yet to be formed.

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<sup>1</sup> <https://www.gov.ie/en/publication/21bd8-garda-inspectorate-report-responding-to-child-sexual-abuse/>

## **1.4 Second Stage Findings**

This second progress report sets out the Implementation Group's findings arising from its next stage of work from October 2018 to January 2019. Pages 3 to 29 of this report should be read in conjunction with the full list of 24 recommendations and 103 key actions listed from pages 33 to 59.

Comments in relation to these recommendations and key actions have been updated to reflect the Group's findings on completion of the second stage of its work. These findings were informed by a series of meetings, discussions and crucially, the verification process undertaken to confirm what recommendations are already implemented or significantly underway. Outstanding recommendations and key actions not substantively addressed in this second progress report will be dealt with in future progress reports.

## **2. TASKS COMPLETED OCTOBER 2018 - JANUARY 2019**

### **2.1 Meetings and Work Schedule**

As the Group embarked upon the next phase of its work, the Chair, accompanied by the Secretary to the Implementation Group, consulted and met with relevant offices, agencies and officials to explore the key issues around each of the recommendations and key actions in more detail. The issues identified in this process were conveyed to the Group for consideration and discussion, in order to reach a definitive view as to (a) feasibility (b) modifications where necessary, and (c) appropriate timeframes for implementation. A list of the Implementation Group's meetings and the Chair's consultative meetings with relevant agencies/offices/officials during this period is set out on page 30 of this report.

### **2.2 Verification Process**

In its October 2018 Progress Report, the Implementation Group identified some 30 key actions pertaining to An Garda Síochána as potentially implemented, subject to verification. As part of this verification process, a detailed report was sought from An Garda Síochána to demonstrate, to the satisfaction of the Group, how and when these key actions were implemented. Supporting data from An Garda Síochána was presented to, and accepted by the Implementation Group at its meeting on 23 January 2019. Further details are set out in Section 3 of this report.

### **2.3 Liaison with Expert Working Group established to conduct a Review of Protection of Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences**

The Implementation Group's October 2018 Progress Report acknowledged that an Expert Working Group, chaired by Mr. Tom O'Malley BL, had been established to review the Investigation and Prosecution of Sexual Offences. The Expert Group's work involves a review of the adequacy of existing laws, practices and procedures for protecting vulnerable witnesses in the investigation, prosecution and trial of sexual offences – see full terms of reference on page 31 of this report for information.

On comparing their respective terms of reference, the potential for overlap between the two working groups on some issues was noted. The Garda Inspectorate's Follow-up Report relates to child sexual abuse in particular, and outlines the multi-agency responses and approaches it considers necessary. Children are also however, among the vulnerable witnesses, victims or otherwise, whose interaction with the Courts and justice system the Tom O'Malley Working Group seeks to address and improve.

The Chairs of both Groups met on 22 January 2019 to discuss and agree a collaborative approach including the sharing of information, particularly with regard to Recommendation 3.11 and associated key actions. The Working Group chaired by Tom O'Malley will report its overall findings to the Minister for Justice and Equality in due course. Relevant information and initial findings will be shared between the two Groups in the intervening period to ensure that issues of mutual interest are comprehensively addressed.

#### **2.4 Evaluation of Recommendation 2.1**

Recommendation 2.1 proposes that "the Department of Justice and Equality convene an inter-departmental and multi-agency representative group to develop a National Strategy for Child Sexual Abuse, Child Sexual Exploitation and Online Risks to Child Safety."

As indicated in its October 2018 Progress Report, the Implementation Group's terms of reference require that it should seek to agree a common position as to which Government Department should assume overall responsibility for developing any such national strategy or overarching framework. Having engaged in further discussion, the majority view of the Implementation Group is that it stands over its initial finding, i.e. it accepts the objectives behind this recommendation and that a national approach is required. How this should manifest itself, however, is a complex issue that still requires further examination and discussion. As the Implementation Group is not yet in a position to report substantively on Recommendation 2.1, the matter will be addressed in a later progress report.

The Group has agreed however, that the development of any national framework or strategy under Recommendation 2.1 should take account of and be aligned with the Action Plan for Online Safety 2018 -2019<sup>2</sup> and/or any future versions thereof and existing policies, strategies and initiatives already in place to deal with child sexual abuse and exploitation.

To ensure that the Group best informs itself as to as to how the objectives behind Recommendation 2.1 might best be achieved, the Chair has engaged directly with Cosc, the Ombudsman for Children and Rape Crisis Network Ireland (RCNI). Time constraints have not yet allowed for further discussion on this issue and it is intended that the next stage of engagement in relation to this issue will include the Department of Children and Youth Affairs, Department of Justice and Equality, the CARI Foundation, the Special Rapporteur for Children and others as necessary. These meetings (attended by the Chair and Secretary), will provide the Group with an enhanced understanding of the needs of sexually abused children in the context of the Garda Inspectorate's recommendations, and give further insight into national strategies already in existence and under development, including what oversight measures might be appropriate for consideration.

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<sup>2</sup> [gov.ie](http://www.gov.ie) - Action Plan for Online Safety 2018 - 2019 ([www.gov.ie](http://www.gov.ie))

### 3. SECOND STAGE FINDINGS BY RECOMMENDATION AND KEY ACTION

#### 3.1 Garda Inspectorate's Recommendations - Chapter 2

##### Recommendation 2.6

**The Inspectorate recommends that the Garda Síochána, in conjunction with other Sex Offenders Risk Assessment and Management (SORAM) partners, develop a national high-level executive group to take overall responsibility for SORAM and to review the joint approach to managing sex offenders and particularly those at risk of causing most harm.**

This was the only substantive recommendation to be rejected in the Implementation Group's October 2018 Progress Report. The basis for rejection was that a high-level group already exists, with overall responsibility for SORAM in the form of a National SORAM Office, as well as a National Steering Committee. The Group indicated that further evaluation was required as to whether another high-level group is warranted. As indicated in the first progress report, and in view of the large number of recommendations that required examination, the Group was keen to ensure that it would not reject any recommendations or key actions out of hand, without full and proper evaluation. Having conducted further inquiries and evaluation, the Group is satisfied to stand over its initial findings and does not consider it necessary or appropriate that another high-level executive group be convened.

Although Recommendation 2.6 has been rejected, the Group found that a number of the key actions associated with it were stand-alone and could be considered separately. Of these eight key actions, three were identified as having been implemented (i.e. key actions 3, 4 and 6) and have therefore been subject to a verification process.

##### *Key Action 1*

*Ensure that the high-level executive group is made up of senior managers similar to the group that drove the implementation of the J-ARC initiative.*

This key action was not accepted in the October 2018 Progress Report as it required further evaluation. Having conducted an evaluation, the Implementation Group has concluded that while there may be some issues for consideration as outlined below, a further high-level executive layer is not warranted.

In addition to the National SORAM Office and associated National Steering Committee, the Group was advised of the recent establishment of a *High Level Group on Offender Management* to develop a successor to the Joint Strategy on the Management of Offenders 2016-2018, for the period 2019-2021. The High Level Group, (whose membership includes the Director General of the Irish Prison Service, Director of the Probation Service, An Garda Síochána Deputy Commissioner and senior management from the Department of Justice and Equality), will report to the Criminal Justice Strategic Committee by June 2019. It is anticipated that the new strategy will renew and build upon existing priorities, and identify additional actions as appropriate. The Chair of the Implementation Group will therefore make contact with the High Level Group, with view to suggesting some actions for inclusion in the new strategy.

The Implementation Group shares the view of the Inspectorate that SORAM is of great importance to community safety and that the SORAM process provides an excellent platform for agencies to work together. Notwithstanding the effectiveness and good work of SORAM, as with any organisation there is room for improvement. Key Actions 2 and 4 below are examples of how the system can be improved and enhanced. The Group considers that the new strategy could be useful in driving these improvements.

Having evaluated Key Action 1, the Group has rejected it on the basis that the establishment of another National High Level Executive Group is not necessary. The Group believes that the objective behind this key action and the substantive Recommendation to which it relates can be achieved through the platform of the existing structures, the National SORAM Office and the National Steering Committee.

### *Key Action 2*

*Develop Violent and Sex Offenders Register (ViSOR) or a similar e-type information sharing system.*

The Implementation Group accepted this key action in its October 2018 Progress Report, but now accepts it only with modification. Following discussions with the National SORAM Office, the Group agrees that an e-sharing information system would be beneficial, as the systems currently used by SORAM agencies are not integrated. The Group suggests therefore, that the use of an e-type information sharing system could be given more emphasis in the next Joint Strategy on the Management of Offenders.

The development of a Violent and Sex Offenders Register (ViSOR) however, is a separate matter for consideration in the long term. While any form of broader Register would appear to have merit, legislative change would be required to give effect to it. Much more detailed analysis and evaluation would be required to ensure that the addition of violent offenders to such a register does not detract from the efficacy of the current system. The Group is therefore of the view that while a Violent Offenders Register would be of value in principle, it may be that it should be managed and operated separately to that for Sex Offenders.

### *Key Action 3*

*Ensure that all SORAM personnel charged with managing sex offenders are risk assessment trained.*

The Implementation Group accepted this key action in its October 2018 Progress Report, noting that the provision of necessary training appeared to have been implemented. The Group sought detailed information from An Garda Síochána and the National SORAM Office in relation to risk assessment training currently in place. At a local SORAM Team level, four agencies are engaged in the management of sex offenders either directly or indirectly, An Garda Síochána, Probation Service, Tusla and Local Authorities (Housing).

An Garda Síochána and the Probation Service hold the primary function of sex offender management and are trained in two risk assessment tools to assist in the management of the risk posed by offenders. These are known as the *Risk Matrix 2000* and the *Stable and Acute 2007*.

The Implementation Group has ascertained that members of An Garda Síochána engaged in the management of sex offenders have been trained in Stable and Acute since 2009. In 2013, three personnel from An Garda Síochána and the Probation Service were trained as trainers in Stable and Acute 2007. Since then, An Garda Síochána and the Probation Service have engaged in joint training of personnel from both agencies, with 3-4 courses held annually, each accommodating 20-25 attendees. Between 2013 and 2018, a total of 150 members of An Garda Síochána were trained in the use of Stable and Acute 2007. Details of Stable and Acute 2007 training delivered in 2018 and the number of An Garda Síochána personnel in attendance are set out below;

<b>Date of Stable and Acute 2007 Training</b>	<b>AGS Attendees</b>
25 April 2018 to 27 April 2018 inclusive	8
19 September 2018 to 21 September 2018 inclusive	14
17 October 2018 to 19 October 2018 inclusive	15
<b>Total</b>	<b>37</b>

The *Risk Matrix 2000* was first introduced for use by An Garda Síochána in 2008 and personnel from An Garda Síochána and the Probation Service completed “train the trainer” courses in 2010.

Both of these risk assessment tools are applicable to all offenders subject to Part 2 of the Sex Offenders Management Act 2001, and not just those offenders who are managed through SORAM. In addition to the above, SORAM workshops are arranged on an ongoing regional basis by the National SORAM Office, and are specific to the requirements of the Local SORAM Teams. Details of workshops held in 2018 are set out below - individual attendance numbers are not currently available.

<b>Region</b>	<b>Local SORAM Team</b>
Dublin Metropolitan Region	DMR North DMR West DMR East
South Eastern Region	Waterford Tipperary
Western Region	Galway
Eastern Region	Meath Louth Wicklow

The Implementation Group is advised that while Tusla and Local Authorities (Housing) have a working knowledge of *Risk Matrix 2000* and the *Stable and Acute 2007*, they are not trained in these risk assessment tools as they were not validated for use by these agencies. However, on the basis of the details verified by An Garda Síochána and the National SORAM Office, the Group is satisfied that those who have key responsibility for the management of sex offenders are risk assessment trained.



#### *Key Action 4*

*Develop a standard operating procedure for managing prison pre-release meetings and consider assignment of gardaí and probation officers to manage the release of sex offenders.*

The Implementation Group accepted this key action in its October 2018 Progress Report, and undertook to verify its implementation. On further examination of the matter, the Group found that each agency involved in SORAM has its own Standard Operating Procedure (SOP).

There is currently no SOP in existence however, for managing prison pre-release meetings. The Group acknowledges that Prison Authorities do currently inform SORAM when a prisoner is to be released, and that pre-release meetings can and do occur. An SOP for managing pre-release meetings would be of value in streamlining this process and the Group therefore suggests that this issue might be considered for inclusion in the next Joint Strategy on the Management of Offenders. The Chair will also seek to meet with the Prison Authorities to ascertain if it can assist in prioritising this issue.

#### *Key Action 5*

*Ensure that the National SORAM Office performs an oversight and governance role.*

This key action required clarification from the Garda Inspectorate as to the extent of oversight envisaged. While SORAM is considered to be working successfully overall, the Inspectorate was concerned that there were some inconsistencies in how it was operating at local level.

Essentially, the oversight role of the National SORAM Office is conducted in two phases:

1. Document Review, which has been in operation since January 2017;
2. Local SORAM Team Meeting Review.

Having engaged with the National SORAM Office, and revisited some issues following clarification from the Garda Inspectorate, the Implementation Group is satisfied that comprehensive oversight and governance arrangements are in place at local and national level. There are 28 Local SORAM Teams in existence and Local SORAM Team (LST) meetings take place every 6-8 weeks.

- At these meetings, the multi-agency team decides what new offenders meet the entry criteria for inclusion for SORAM and discuss offenders currently being managed by the Team.
- The Chair of the meeting requests that an RMP1 (risk assessment) document is prepared for the next meeting with regard to new entrants into SORAM.
- Current SORAM offenders are discussed, risks identified and actions agreed as per their individual RMP2 (follow-up risk assessment) documents.
- A copy of the RMP1 and RMP2 documents are forwarded to the National SORAM Office for the purposes of national data collation and oversight.
- Personnel from the agencies in the National SORAM Office i.e. An Garda Síochána, Probation Service, Tusla and Local Authority (Housing) conduct the oversight of documents returned by the LST.

- The National SORAM Office issues feedback on the documents returned by the LST in accordance with Section 6.3.3.1 of the SORAM Manual of Practice. This feedback is returned to the Chair and Secretary of the LST, via standardised templates.
- The review of these documents also supports the continued improvement of the documents completed by the Local SORAM Teams and ensures that they represent the risks identified and actions agreed locally.
- All documentation received in the Office is also processed for the purposes of national data collation.

To complement the governance procedures currently in place, a sample of Local SORAM Team Meeting Reviews will commence in 2019, in accordance with the National SORAM Office Implementation Plan 2019. (This second phase of governance had been included in the SORAM Manual of Practice since 2016 but it was necessary to embed the Document Review phase with the Local SORAM Teams before its commencement.)

Work is now underway on the preparation and identification of 2 Local SORAM Teams (LSTs) as a sample to conduct the Local SORAM Team Meeting Reviews. It is anticipated that the first of these reviews will be carried out in Q2 and the second in Q4 2019.

As outlined in the SORAM Manual of Practice, a sample of Local SORAM Teams (LSTs) will be selected for an oversight review with onsite visit. The purpose of this visit is to review how the LST is operating in accordance with the Manual of Practice and to provide guidance and support for the future functioning of the LST.

#### *Key Action 6*

*Ensure full representation at SORAM meetings from relevant agencies including local authority housing and mental services.*

The Implementation Group accepted this key action in its October 2018 Progress Report but noted that the matter of attendance could be difficult to enforce. While no overall records of attendances are maintained, the view expressed by the National SORAM Office is that those who are required to attend SORAM meetings do so. For example, if a person is under the care of HSE mental health services, the HSE would be represented.

At national level, there is representation from Local Authority Managers at quarterly meetings. A Senior Housing Officer from Dublin City Council is seconded to the National SORAM Office and co-ordinates policy for all offices nationally. The approach adopted to date is one of encouragement, with some training in the management of sexual offenders provided for housing officers in local authorities.

Further, the HSE and Local Authorities (Housing) are represented on the National Steering Committee, where any issues of concern regarding attendance can be highlighted, should they arise. The Group considers therefore, that the spirit of this key action is implemented insofar as is reasonable and feasible.

### *Key Action 7*

*Conduct research/evaluation of offender treatment programmes and develop metrics on reoffending rates.*

The Implementation Group accepted this key action in its October 2018 progress report but indicated that the matter of evaluation would be raised with the Probation Office. The Group agrees that research and evaluation of offender treatment management programmes should take place on an ongoing basis and recognises the importance of the development of metrics on rates of reoffending. Having consulted with the Probation Office, the Group is satisfied that research projects have, and are being undertaken.

The Group notes for example, that a study has been proposed to examine the impact of the Building Better Lives (BBL) prison-based sexual offending treatment programme, jointly run by the Irish Prison Service and Probation Service, on recidivism. The Group is advised that the study would also review the impact of engagement in Probation Service post-release supervision following custody. It is anticipated that the researcher in this instance will complete this project as part of an already established PhD, co-ordinated by the Irish Prison Service and UCD.

While the Group is satisfied that Key Action 7 can be regarded as implemented on the basis that some projects are completed and others are underway, it is important that projects involving research and evaluation continue into the future, to facilitate the ongoing development of data metrics on reoffending rates.

### *Key Action 8*

*Provide ongoing SORAM refresher training as well as training for those criminal justice representatives involved in cases in court.*

This key action was not accepted in the Implementation Group's October 2018 Progress Report as clarification was required from the Garda Inspectorate as to what refresher training in particular was envisaged, and for whom. The Group noted that the DPP and Bar Council members can avail of training provided in-house or by their own Governing Bodies and as part of their Continuing Professional Development (CPD) system. The Garda Inspectorate subsequently clarified that the intention of this key action was that latest guidance/training should also be extended to all involved in applications before the District Courts for breaches of post-release supervision orders, with the objective of ensuring consistency in approach.

This key action has now been accepted by the Implementation Group. Concerns had emerged in relation to the manner in which cases involving breaches of Post Release Supervision Orders were being dealt with in the District Court. These concerns are somewhat alleviated in circumstances where Chief Prosecution Solicitors are now involved in these applications before the District Court. Presentation of such applications by trained solicitors should allow for greater consistency in approach.

The Group notes as a positive development, that the Detective Chief Superintendent with responsibility for the National Child Protective Services Bureau has delivered a CPD module to District Court Judges.

### **Recommendation 2.7**

**The Inspectorate recommends that the Garda Síochána review the procedures for managing sex offenders contained in the Policy on the Investigation of Sexual Crimes, Crimes against Children and Child Welfare.**

The Implementation Group accepted this recommendation in its First Progress Report. As the Group is not yet in a position to verify implementation of this recommendation (and associated key actions 1-4), this matter will be addressed substantively in a later progress report. Key Action 5 is however, considered to be implemented, see below.

#### *Key Action 5*

*Provide training for those Gardaí conducting risk assessments.*

The Implementation Group is satisfied that the verification of training arrangements in place, as set out under Recommendation 2.6 Key Action 3 above, also satisfies Key Action 5 for Recommendation 2.7.

### **Recommendation 2.8**

**The Garda Inspectorate recommends that the Department of Justice convene a multi-agency group to review legislative issues in connection with managing sex offenders and particularly those at most risk of causing most harm.**

The Implementation Group accepted this recommendation in its October 2018 Progress Report, but with modification and a medium term timeframe. While the Group agreed that a review of legislative issues in connection with managing sex offenders could have merit, it was noted that proposed legislative changes were already underway that could potentially address many of the issues raised in the substance of the report. The Department of Justice and Equality is committed to progressing the Sex Offenders (Amendment) Bill, which is currently with the Office of the Parliamentary Counsel (OPC). As the Bill is currently at drafting stage, amendments can be made (subject to the agreement of the OPC) to address any potential gaps identified in this area.

#### *Key Action 1*

*Consider extending the Sex Offenders Risk Assessment and Management (SORAM) model to include other categories of offenders who post a significant threat to public safety.*

The Implementation Group accepted this key action in its October 2018 Progress Report, but with modification on the basis that further evaluation would be necessary and legislation required. Having examined the matter further, the Group's findings are that this key action should be modified.

The SORAM model is working very well. It is accepted that those other categories of offenders who pose a significant threat to public safety should be risk assessed and managed. Such assessment and management could, however, mirror the SORAM model without being included in it. This key action is therefore still accepted by the Group, with modification.

## Key Action 2

### *Review the process for the monitoring of young offenders who are under 18 years of age.*

The Implementation Group accepted this key action in its October 2018 Progress Report, but with modification on the basis that consideration would need to be given to Head 4 of the Sex Offenders (Amendment) Bill and the Juvenile Liaison Officer (JLO) system in operation. In its examination of the process currently in place for monitoring offenders under 18, the Group noted the following key points:

1. In theory, the 2001 Sex Offenders notification and post release provisions apply to persons under the age of 18 save for the specific exception provided for in the Act as amended. Further, the General Scheme for the Sex Offenders (Amendment) Bill envisages under Head 4, special consideration given to children in light of the provision of the Children's Act when a Court is considering the period for which persons are the subject matter of notification requirements. However, as these notification and post release supervision provisions are tied in with imposition of sentences of imprisonment, in practice they do not apply to children. These issues are under review by the Department of Justice and Equality with a view to dealing with them by the addition of further amending provisions to the Sex Offenders Amendment Bill.
2. In general, SORAM does not ordinarily deal with juveniles; the risk assessment tools employed by SORAM are not suitable for children. That is not to say that juveniles are not risk assessed or are unsupervised, as all persons under the age of 18 who come before the Criminal Justice System are ordinarily assessed by Probation Services and a report furnished to Court in accordance with section 99 of the Children's Act 2001. In such cases, Probation Officers utilise the AIM2 framework. The Group is advised that this is an assessment model that offers an initial evidence-based tool that can be used to consider both the level of supervision that is required for young people, and their therapeutic needs. It is holistic in nature and based on research about young people who sexually abuse others. Reports to the Courts containing recommendations are informed by the AIM2.

This key action was raised with the Garda Inspectorate for clarification, bearing in mind points 1 and 2 above. As those juveniles who do not come within the ambit of the Criminal Justice System are diverted to the JLO system and are being risk assessed by JLOs, the Inspectorate raised the issue of the adequacy of the training provided for JLOs.

The Group is advised that the number of children coming before the Courts for adjudication in relation to sexual offences is very few. Children who admit to such offences may be dealt with under the Juvenile Diversion Scheme, in conjunction with Tusla where there is a child protection consideration. Two group programmes have been in operation in Dublin for some time and Probation Officers have been involved over a number of years in the co-facilitation of these programmes. These programmes (originally called NIAP) formed the model for the National Inter-Agency Prevention Programme (NIAPP), a national approach by Tusla for intervention in respect of some of these children.

The Implementation Group is advised that consideration is currently being given to inclusion in the National SORAM Office's Strategy for 2020-2023, of an action whereby the National SORAM Office would liaise with agencies involved with juveniles convicted of sexual offences and examine the possibility of bringing those juveniles into SORAM arrangements. If agreed, work would have to be undertaken to determine what criteria should be applied in such circumstances, and whether AIM2 or an alternative assessment tool would be most appropriate.

In view of the above legislative and other developments, the Group is satisfied that the process for the monitoring of young offenders who are under 18 years of age is being reviewed and that a medium timeframe is realistic and appropriate.

### *Key Action 3*

*Review those sexual offences that are currently excluded from the schedule of offences.*

The Implementation Group accepted this key action in its October 2018 Progress Report but needed to consider the rationale behind the exclusion of two categories of offenders. Following clarification from the Garda Inspectorate that the offences in question are those of burglary and indecency, the Implementation Group consulted with the Department of Justice and Equality in order to consider the matter further.

The Group notes that the offence of burglary is committed under section 12 of the Criminal Justice Theft and Fraud Offences Act 2001, where a person is guilty of burglary if he or she;

- a. Enters any building or part thereof as a trespasser and with intent to commit an arrestable offence or
- b. Having entered any building or part of a building as a trespasser, commits or attempts to commit any such offence therein.

Burglary ordinarily involves entering as a trespasser to commit a theft or criminal damage or assault. When the offence of burglary arises where the intent is to commit an arrestable offence of a sexual nature, it is more often than not in the experience of practitioners accompanied by a *substantive offence* of a sexual nature or attempted offence of a sexual nature being charged at the same time as the burglary offence. It would seem therefore, that the number of stand-alone offences of a burglary involving an arrestable sexual offence would be very small. A further significant complication in adding burglary to the schedule of sex offences would be that section 12 involves multiple ways of committing burglary, most of which are completely unrelated to sexual offending. Once an offence is added to the schedule of the Sex Offender Act 2001, many of the notification requirements become automatic on a finding of guilt.

In relation to the indecency offences, the Group is of the view that section 45 of the Criminal Justice (Sexual Offences) Act 2017 should be welcomed in that it provides a clear, statute-based offence of Exposure and Offensive Conduct of a Sexual Nature. A full and comprehensive review of this and other issues has been furnished to, and considered by the Group and it would seem disproportionate to add this section to the Schedule.

The Implementation Group is satisfied insofar as this key action is concerned, that the exclusion of the offences of burglary and indecency offences from the schedule of offences is well founded, and the review in relation to this issue is deemed to have been implemented.

#### *Key Action 4*

*Address gaps in the powers to deal with those who refuse to engage with monitoring gardaí.*

The Implementation Group accepted this key action in its October 2018 Progress Report, but with modification on the basis that it required consideration in light of 2001 legislation and the General Scheme of the Sex Offenders (Amendment) Bill, and Head 11 in particular.

Having conducted a review of the General Scheme of the Sex Offenders (Amendment) Bill, it appears to the Group that many of the concerns expressed by the Inspectorate in relation to the gaps in powers to deal with those who refuse to engage with monitoring Gardaí will be addressed when the Bill is enacted into law, in particular but not confined to:

- Section 5 - Amendment of section 10 of the Principal Act (Notification requirements)
- Section 7 - Amendment of section 12 of the Principal Act (Offences in connection with notification requirements)
- Section 9 - Insertion of new section 14A in the Principal Act (Assessment and Management of risk posed by sex offenders)
- Section 10 - Insertion of new section 14B in the Principal Act (Disclosure of Information in certain circumstances)

Having regard to the above-mentioned legislative amendments, the Group is of the view that the objective behind this key action is very close to being achieved, subject to the timeframe for enactment of the legislation.

#### *Key Actions 5 and 6*

*The Inspectorate recommends that consideration should be given to remove the need for a supervision order for SORAM monitoring to take place and consider an obligation to request a pre-sanction report for all adult persons convicted on a sexual offence.*

*Consider an obligation to request a pre-sanction report for all adult persons convicted of a sexual offence.*

In considering these key actions (which were accepted with modification in the October 2018 Progress Report), the Implementation Group consulted with the Department of Justice and Equality.

The Group notes that section 28 (3) of the Sex Offenders Act 2001 envisages the Court receiving evidence or submissions from any person concerned in determining whether to impose a sentence involving post-release supervision. This section can be used as a vehicle for Counsel for the DPP to seek pre-sanction reports from the Probation Services.

The concerns that have led to these key actions relate to some instances of sex offenders remaining outside of the SORAM monitoring process when they are not the subject matter of post-release supervision orders.

Having given the matter due consideration, the Group believes that the objective behind these key actions can be met by giving effect to Key Action 6 rather than the more extreme action envisaged in Key Action 5. If a pre-sanction report was mandated in cases involving adult offenders coming under the provisions of the Sex Offenders Act as amended, it would in the Group's view, go a long way towards ensuring that convicted sex offenders who should be monitored do not escape the SORAM net.

If the Courts order a pre-sanction report prepared by a Probation Officer, the Court will then have available to it a full assessment in relation to the offender including his level of risk for future offending. Should an offender require supervision, either under the Probation Services as part of a suspended sentence or as part of a Post Release Supervision Order, a pre-sanction report can be instrumental in ensuring that the Courts are advised and informed of such a requirement.

The Implementation Group therefore accepts that legislation should be considered to request a pre-sanction report for *all* adult persons coming under provisions of the Sex Offenders Act 2001. While acknowledging the existence of section 28 (3) of the Sex Offenders Act 2001, it is considered that the use of mandatory terms would give effect to the objectives of this recommendation, as expressed in section 99 of the Children's Act 2001, for example.

The Implementation Group has conveyed this view to the Department of Justice and Equality, and, subject to the views of the OPC, will be considered for the purposes of inserting such a provision in the proposed Sex Offenders (Amendment) Bill.

### **3.2. Garda Inspectorate's Recommendations - Chapter 3**

#### **Recommendation 3.3**

**The Inspectorate recommends that the Garda Síochána review the policy of not approaching child abuse victims as part of third party referral (including clerical notification cases) that are initially unwilling to make a complaint.**

The Implementation Group accepted this recommendation in its October 2018 Progress Report but acknowledges that this is a sensitive issue. In some instances, child abuse victims, who are now adults, may have taken the decision not to make a complaint and an unsolicited approach by An Garda Síochána on foot of a third party referral could be traumatic. Therefore, in practice, each case will need to be considered on its own particular facts and circumstances.

All new and reviewed policies are considered by the Garda Executive, and if approved, are introduced by way of a HQ Directive. The Group is advised that the policy in question has been reviewed by An Garda Síochána and a decision has been taken to rescind the procedure, in accordance with the Garda Inspectorate's recommendation.



The amendment of this policy is taking place as part of the ongoing review of the policy on the *“Investigation of Sexual Crime, Crimes against Children and Child Welfare”* and the Group is advised that the removal of the procedure has been factored into relevant training courses. The Group therefore considers this recommendation to be implemented in principle. The recommendation will be deemed to be fully implemented when the HQ Directive giving effect to the policy change has issued.

#### **Recommendation 3.4**

**The Inspectorate recommends that the Garda Síochána take immediate action to increase the numbers of members trained to Level 3 and Level 4 interview standard and to ensure there is sufficient suitably trained members to conduct interviews with suspects and take statements from adult victims of child sexual abuse.**

The Implementation Group is satisfied, having received confirmation from An Garda Síochána of the numbers trained at Levels 1, 2, 3 and 4, that there has been an increase in the numbers trained to Level 3 and Level 4. See below details of Investigative Interview Training provided in 2017/2018.

<b>Standard</b>	<b>Number Trained</b>	
Level 1	Nil trained in 2017	92 trained in 2018
Level 2	311 trained from 2017 to 2018	
Level 3	38 trained in 2017	93 trained in 2018
Level 4	16 Sergeants trained in 2018	

#### **Recommendation 3.5**

**The Inspectorate recommends that the Garda Síochána specifically include interviewing of suspects and the taking of statements from witnesses in child sexual abuse cases in the detective training programme.**

This recommendation was accepted by the Implementation Group in its October 2018 Progress Report, but with modification, on the basis that the delivery of bespoke training would not be feasible. The Implementation Group stands over this finding, for the reasons set out below.

The Implementation Group has ascertained that the Detective Training Programme consists of many levels and encompasses a range of different training courses. The specific detective training course, commonly referred to as the CID Course, is a general detective training course. Training in aspects of child abuse is covered specifically on three other training courses, namely;

- Level 3 and Level 4 Interviewers Course, which covers the interviewing of suspects and witnesses of serious crime;
- Specialist Interviewer Course, which covers the interviewing of children and persons with intellectual disabilities;
- Sexual Crimes Investigators Course, which is currently being rolled out to all Divisional Protective Services Unit (DPSU) staff.

The rollout of the DPSUs nationally (to be completed by end 2019) should ensure that only specially trained members are involved in the investigation of child sexual abuse. The addition of the training elements to the general detective training course would not appear necessary given the existing specialist courses. The Group therefore considers that the rollout of DPSUs with associated training will fulfil the spirit of Recommendation 3.5.

### **Recommendation 3.6**

**The Inspectorate recommends that the Garda Síochána, in conjunction with Tusla, move to a standard operating procedure for conducting joint interviewing of child victims.**

While the Implementation Group is satisfied that progress is being made, it recognises the challenges that will arise in relation to the substantive implementation of Recommendation 3.6 and its associated key actions. As the Group is not yet in a position to report fully on Recommendation 3.6, the matter will be addressed in a later progress report. Key Action 1 has, however, been considered by the Group, as outlined below.

#### *Key Action 1*

*Ensure that sufficient numbers of social workers are trained as specialist interviewers to allow joint interviews to take place.*

A policy change took place in 2016 whereby the training allocation for participants attending the Specialist Interview training course moved from a position where the majority of attendees were members of An Garda Síochána, with a very limited proportion of social workers from Tusla. The ratio in this regard has changed from 90:10 to 50:50, and is implemented wherever possible. The objective behind the 50:50 ratio is that Tusla social worker participants are paired with Garda participants from the same area, thereby supporting improved work practices when the training is completed.

The Implementation Group acknowledges the difficulties involved in meeting demand for this specialist training, particularly when capacity for delivery of these residential training courses is affected by the availability of a suitable venue and demand for training of new entrants to An Garda Síochána is increasing. The Group considers therefore, that implementation of this key action must be kept under ongoing review, and the provision of such training prioritised wherever and whenever possible.

### **Recommendation 3.7**

**The Inspectorate recommends that the Garda Síochána in conjunction with the DPP review the processes and develop joint protocols and approaches for the management of child sexual abuse cases.**

#### *Key Action 1*

*Clarify the types of cases that should be referred to the Director of Public Prosecutions.*

This key action was accepted by the Implementation Group in its October 2018 Progress Report, and it was noted that work was underway in relation to the issue of a HQ Directive. The Group is not yet in a position to report fully on this issue, the matter will be addressed in a later progress report.

### *Key Action 2*

*Consider the findings and recommendations of the 2015 independent review of the investigation and prosecution of rape cases by the Metropolitan Police Service and the Crown Prosecution Service.*

Although this key action was accepted by the Implementation Group in its October 2018 Progress Report, there were some reservations as to its potential benefit and further evaluation was necessary. The Group will address this key action in a later progress report.

### **Recommendation 3.8**

**The Inspectorate recommends that the Garda Síochána develop a mandatory welfare referral process for gardaí and garda staff carrying out child sexual abuse investigative or examination roles.**

The Implementation Group accepted this recommendation in its October 2018 Progress Report. As the Group is not yet in a position to verify implementation, the matter will be addressed substantively in a later progress report.

### **Recommendation 3.9**

**The Inspectorate recommends that the Garda Síochána complete the roll-out of all Divisional Protective Services Units by the end of 2018.**

This recommendation was accepted by the Implementation Group in its October 2018 Progress Report but with a medium term timeframe for implementation. While it was not among the recommendations/key actions identified for verification in this progress report, the Implementation Group is pleased to note the significant progress that has been made.

As of January 2019, a total of 10 DPSUs are up and running, the most recent having been set up in Kerry, Waterford, Limerick, Galway, Carlow/Kilkenny and DMR South Central. The remaining 19 DPSUs are anticipated to be up and running in three phases during 2019, with 6 in May 2019, a further 6 in August 2019 and the remaining 7 to be established in December 2019.

Notwithstanding the progress made to date, the rollout of DPSUs is at a relatively early stage, and there is potential for best practice and expertise to be further developed as the programme advances. The Group would consider it prudent therefore, that the efficacy of DPSUs be monitored, evaluated and reviewed in due course, having regard to their resources, capacity and efficiency. The timeframe involved would however, exceed the anticipated lifespan of the Implementation Group. It is suggested therefore, that this task might be undertaken by the Policing Authority initially, and subsequently by the new independent oversight body to be established under the Policing and Community Safety Bill, as recommended by the Commissioner for the Future of Policing in Ireland (CoFPI), in its September 2018 report.<sup>3</sup>

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<sup>3</sup> The CoFPI Report 2018 recommended that oversight should be streamlined, more coherent and strengthened in a new Policing and Community Safety Oversight Commission, superseding the Garda Síochána Inspectorate and the Policing Authority.

### **Recommendation 3.11**

**The Inspectorate recommends that the Department of Justice and Equality convene a criminal justice multi-agency working group to deliver a more victim-centred service to child sexual abuse victims.**

While accepted by the Implementation Group in its October 2018 Progress Report, it was noted that an expert Working Group chaired by Mr. Tom O'Malley BL, had been established to review the Investigation and Prosecution of Sexual Offences. Both Groups will share all substantive work done in this area.

It is expected that the expert Working Group will significantly address Recommendation 3.11. The associated key actions, all of which were accepted by the Implementation Group, are however broader in nature. The timeframe for implementation has been identified as long term as their implementation, as noted, will necessitate legislative amendments.

Regarding the key actions associated with this recommendation, the Implementation Group makes the following three observations.

Firstly, there already exists a range of legislative measures that provide for support to both witnesses and victims who come before the Criminal Justice System. An indicative list of these legislative measures is set out in the tables below for information purposes<sup>4</sup>.

<b>Assessment, Information and Review</b>
<ul style="list-style-type: none"><li>• Obligation of An Garda Síochána to inform complainant of procedures and support measures - s.7 Criminal Justice (Victims of Crime) Act 2017 (Victims of Crime Act 2017)</li><li>• Obligation to inform regarding investigations and criminal proceedings - s.8 Victims of Crime Act 2017</li><li>• Information to victims of domestic violence on support services - s.28 Domestic Victims Act 2018</li><li>• Right to know of decision not to prosecute/right to review - s.9 and s.10 Victims of Crime Act 2017</li><li>• Obligation to assess victim in relation to support measures - s.15 Victims of Crime Act 2017</li><li>• Application of protection measures and special measures during investigations and criminal proceedings - s.16, s.17 and s.19 Victims of Crime Act 2017</li></ul>
<b>Anonymity / Reporting Restrictions</b>
<ul style="list-style-type: none"><li>• Anonymity of complainant – Rape and sexual assault offences - s.7 Criminal Law (Rape) Act 1981</li><li>• Anonymity of witnesses - medical condition/criminal proceedings - s.181 Criminal Justice Act 2006</li></ul>

<sup>4</sup> This list of legislative measures was compiled in January 2019 for information purposes and is not intended to be exhaustive.

- Anonymity of person charged with offence and person to whom offence relates - s.3 Criminal Law (Incest Proceedings) Act 1995 restricts publication of matters relating to offences under the Punishment of Incest Act 1908
- Prohibition of publication or broadcast of certain matters - s.36 Domestic Violence Act 2018
- Restrictions of any reporting where children are concerned - s.93 Children Act 2001
- (*Anonymity of accused – Rape s.8 Criminal Law (Rape) Act 1981*)

#### **In Camera / Otherwise than in public**

- s.2 Criminal Law (Incest Proceedings) Act 1995
- s. 6 Criminal Law (Rape) Act, 1981 as amended by s.11 Criminal Law (Incest Proceedings) Act 1995 and s.7 Criminal Law (Sexual Offences) Act 2006 and s.29 Victims of Crime 2017
- Indecent/obscene criminal proceedings – s. 20 Criminal Justice Act 1951(as amended by s.27 Victims of Crime Act) (*also applies to accused where under 21*)
- Clearing the court when a person under 18 years of age is giving evidence - s.257 Children Act 2001
- s.19 (2)(a) and s.20 Criminal Justice (Victims of Crime) Act 2017
- s114 and s.131 Children Act 1908 as amended by s.29 Children Act 1941
- Punishment of Incest Act 1908 as amended by s.29 Criminal Law (Sexual Offences) Act 2017
- Exclusion of public from hearings of proceedings under Punishment of Incest Act 1908 as provided for by s.29 Criminal Law (Sexual Offences) Act 2017 (excluding verdict and sentence)

#### **Videolink**

- For child witnesses (relevant offences) and victims (any offence) s.13 Criminal Evidence Act 1992
- Persons in fear or distress (TOI) - s.39 Criminal Justice Act 1999
- For civil proceedings under this Act - s.25 Domestic Violence Act 2018

#### **Recorded Testimony**

- Pre-trial recording of examination in chief testimony for victims under 18 in relation to any offence and witnesses under 18 and persons with an intellectual disability for relevant offences - s.16(1)(b) Criminal Evidence Act 1992
- s.255 Children's Act 2001 applies to s.4F of the Criminal Procedure Act 1967 and the taking of evidence of a child on deposition or by live television link through s.13 Criminal Evidence Act 1992 where the health, safety or wellbeing of the child is at risk.

#### **Intermediary**

- For children and persons with an intellectual disability (relevant offence) and victims (any offence) - s.14 Criminal Evidence Act 1992 (Questions to witness only)

#### **Screens**

- For children and persons with an intellectual disability, victims (relevant offence) and victims (any offence) - s14A Criminal Evidence Act 1992 as amended by Victims of Crime Act 2017
- For adult witnesses other than victims - R v Smellie (1919) 14 Cr App R 128

**Removal of wigs and gowns for persons under 18**

s.14B Criminal Evidence Act as amended by Victims of Crime 2017

**Unsworn or unaffirmed testimony for children/persons with an intellectual disability**

s.27 Criminal Evidence Act 1992

**Corroboration of evidence by unsworn testimony**

s.28(1) Criminal Evidence Act 1992

**Discretionary corroboration warning**

s.28(2) Criminal Evidence Act 1992

**Relaxation of personal identification**

s.18 Criminal Evidence Act 1992

**Court accompaniment**

- s.26 Domestic Violence Act 2018
- Right to accompaniment during complaint/investigation/medical examination - s.12 and s.14 Criminal Justice (Victims of Crime) Act 2017

**Restriction on cross examination of previous sexual history**

s.3 Criminal Law (Rape) Act 1981 as amended by s.13 of the Criminal Law (Rape) (Amendment) Act, 1990

**Separate legal representation in respect of restriction on cross examination of previous sexual history**

s.4 Criminal Law (Rape) Act 1981

**Restriction on cross examination of the private life of a victim**

s.19 (2)(b) Criminal Justice (Victims of Crime) Act 2017

**Restriction on personal cross examination by the accused**

- for a specified order under the Act) s.16 Domestic Violence Act 2018
- for under 18/ relevant offence/sexual offence) - s.14C Criminal Evidence Act 1992 as amended by Victims of Crime Act 2017

**Definition of Consent**

s.9 The Criminal Law (Rape) (Amendment) Act 1990 as amended by s.48 Criminal Law (Sexual Offences) Act 2017

**Translation**

Communication, interpretation and translation - S.22 Criminal Justice (Victims of Crime) Act 2017
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<b>Restorative Justice</b>
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s.26 Criminal Justice (Victims of Crime) Act 2017
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<b>Victim Impact Statements</b>
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| <ul style="list-style-type: none"><li>• Right to provide victim impact evidence through live television link and intermediary</li><li>• s.5 and s.6 of the Criminal Procedure Act 2010, which amends the Criminal Justice Act 1993, as amended</li></ul> |
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Secondly, the Group notes that in addition to the above-mentioned legislative measures, the Courts have invoked their inherent jurisdiction in a number of cases to provide additional special measures when required. This use of a Court's inherent jurisdiction is known as a Ground Rules Hearing and its first use in this jurisdiction was in November 2015, in the case of a person with intellectual disability. Since then, the Courts have continued to engage in this process when requested, and can require that in addition to any relevant legislative provisions that might assist a vulnerable victim it can also direct the use of further additional measures be put in place. Those additional measures are moulded to suit the individual child or vulnerable witness and are intended to ease the child's experience in the Court process. They set out the rules under which practitioners and the Court must operate and require both practitioners and the Court to adapt to the child's needs.

These measures, which can be straightforward but very significant for the child, include;

- a. Using a gentle tone;
- b. Using language and terminology that is appropriate to the age and intellectual ability of the witness/victim;
- c. Affording appropriate breaks and rest period;
- d. Allowing appropriate adult accompaniment and support.

Other measures may be far more complex and in determining what measures are appropriate for the purpose of a special measures/ground rules hearing, the assistance of various experts will usually be sought.

Thirdly, the Implementation Group notes that the range of legislative support measures is extensive and the use of ad hoc special measures is a positive development. The Group awaits the findings of the expert Working Group chaired by Tom O'Malley BL, and very much on a preliminary basis suggests that the Criminal Justice system could be improved and enhanced if the following could be put into effect;

- A single consolidation of legislation for support measures streamlining offence/age/witness/victim eligibility. Work done and concerns addressed by Dr. Delahunt both in this regard and in relation to potential deficiencies in the legislation have been sent by the Group to the Department of Justice and Equality and shared with the expert Working Group.

- Legislation for intermediaries to provide training and a panel of impartial intermediaries, and divorce the measure from video link so that the witness has greater choice of support measures.
- Dedicated and expedited court lists to minimise delays.
- Place ground rules hearings and pre-trial hearings on a statutory basis. The Department of Justice and Equality has acknowledged that this would be a positive development and indicated that the appropriate vehicle for any changes to give statutory effect to special measures would be the Criminal Procedure Bill, currently at drafting stage. The Group is strongly of the view that inclusion of such a provision, subject to the agreement of the Office for Parliamentary Counsel from a drafting perspective, will be critical in reducing delays.
- Comprehensive feedback system to allow updating of support measures as necessary.
- A website in plain English for the general public detailing support measures/assistance available as well as outlining the characteristics of the adversarial system.
- A professional detailed practitioner's website which will outline legislation and current case law.

### **3.3 Garda Inspectorate's Recommendations - Chapter 4**

#### **Recommendation 4.1**

**The Inspectorate recommends that the Garda Síochána conduct a review of the findings emanating from the response to the Garda Inspectorate's request for information on the management of referrals of child abuse material.**

As the Implementation Group is not yet in a position to report substantively on Recommendation 4.1 and associated key actions, the matter will be addressed in a later progress report.

#### **Recommendation 4.2**

**The Inspectorate recommends that the Garda Síochána implement a standard operating procedure for assessing, managing and investigating child abuse material referrals and for tackling online child sexual abuse.**

As the Implementation Group has not yet had the opportunity to consider this recommendation and some of the associated key actions in their entirety, this matter will be addressed in a later progress report. Findings in relation to Key Actions 1 and 7 are however, set out below.

#### *Key Action 1*

*Review the resourcing need for pro-active operations and re-active investigations.*

The Implementation Group accepted this key action in its October 2018 Progress Report. An Garda Síochána has shown to the satisfaction of the Group, that the resourcing needs of all



units within the Garda National Protective Services Bureau (GNPSB), including the Online Child Exploitation (OnCE) Unit, are under constant review.

Resourcing needs were reviewed in 2015 and again in 2017. As a result of the 2017 review, the allocation of additional resources facilitated the division of the OnCE Unit into two sub-units, i.e. an Investigation Unit and a Victim Identification Unit. The Unit strength was increased by 6 staff over 2017 and 2018. With a further review of resources underway, the current strength of the Unit stands at;

Rank/Grade	Number
Detective Inspector	1
Detective Sergeant	2
Detective Gardaí (Investigation Unit)	8
Detective Gardaí (Victim Identification Unit)	2
Garda Staff (Administration)	1
<b>Total</b>	<b>14</b>

#### *Key Action 7*

*Develop a dedicated Victim Identification Unit.*

The Implementation Group accepted this key action in its October 2018 Progress Report. The Group notes that a dedicated Victim Identification Unit was established within the Online Child Exploitation (OnCE) Unit in September 2017. This Unit comes under the supervision of a Detective Sergeant and 2 full time detectives are attached to it. In addition to the regular training received by the OnCE staff, the Unit receives other international training from Interpol and more recently from the Canadian Police.

A target of 40 identified victims was agreed for the purposes of the GNPSB Policing Plan. For the year ending 2018, a total of 52 children were identified by the Victim Identification Unit, exceeding its target by 30%. The Group is satisfied that implementation of this key action has been verified.

#### **Recommendation 4.4**

**The Inspectorate recommends that the Garda Síochána, in consultation with key partner agencies, conduct an annual joint strategic assessment process on the threats posed by the internet to the safety of children.**

This recommendation was accepted by the Implementation Group in its October 2018 Progress Report. As this is a complex area involving multiple stakeholders however, it was noted that further evaluation would be required.

Having conducted an initial evaluation, the Group notes that a range of significant and progressive steps have been, and continue to be taken to tackle the threats posed by the internet. These include existing legislative provisions, the refocusing of what was formerly the Office for Internet Safety in the Department of Justice and Equality into the Crime and Security Directorate of the Department with a specific focus on cybercrime, Hotline.ie (which provides a

secure, confidential service for the public to report suspected illegal content), the Action Plan for Online Safety with implementation driven by a Sponsors Group, the National Advisory Council for Online Safety (NACOS) and Operation Ketch – see Key Action 3 on page 27. Tackling the threats posed by the internet however, is a worldwide problem that many jurisdictions are struggling to fight, and the overall effectiveness of these measures remains to be seen.

To enhance the Group's awareness of the challenges faced in tackling the threats posed by the internet and of relevant initiatives in this regard, in December 2018 the Chair (accompanied by the Secretary) met with officials of the Department of Justice and Equality with responsibility for cybercrime. This is a new area of responsibility within the Crime and Security Directorate tasked with developing policy in relation to the criminal use made of the internet and information technology generally, and co-ordinating a range of cyber initiatives at national and international level. The functions of the Office for Internet Safety, which had existed for some 10 years previously, were incorporated into this policy area together with a renewed focus on issues of law enforcement, illegal content online, oversight of Hotline.ie and the Garda Blocking Initiative.

The Group was particularly interested to note the existence of the Action Plan for Online Safety 2018-2019 (also referred to on page 5 of this report), which was launched in July 2018. Under this Action Plan, specific actions have been assigned to the following Departments;

- Communications, Climate Action & Environment;
- Children & Youth Affairs;
- Justice & Equality;
- Health;
- Business, Enterprise and Innovation;
- Education & Skills.

An interdepartmental Sponsors Group, chaired by the Department of Education & Skills has been established to drive the implementation of the Action Plan. Pages 32 - 38 of the Action Plan, and specifically Actions 13 and 14, relate to objectives similar to those put forward in the Garda Inspectorate's Follow-up Report. Action 20 involved the establishment of a National Advisory Council for Online Safety (NACOS), a forum for non-governmental, industry, and academic stakeholders to discuss online safety issues.

The role of this Advisory Council includes identifying emerging issues where Government intervention might be needed, examining national and international research and communicating its key findings to Government, stakeholders and the wider public.

Notwithstanding the existence of some common goals, it is important to acknowledge that the Implementation Group's work in relation to Chapter 4 of the Garda Inspectorate's Follow-up Report is focused on children in particular. The Action Plan for Online Safety and the work of the above-mentioned Sponsors Group and NACOS has a broader focus of online safety for all.

In the next stages of its work, the Group will seek to further inform itself as to what work is already underway and planned in this field. This will include consultation with the relevant

Units in An Garda Síochána, the Department of Communications, Climate Action and Environment, and follow-up with the cybercrime policy area as necessary.

#### *Key Actions 1 & 2*

*Develop problem profiles and plans for CSE and internet-related CSA crimes.*

*Develop crime prevention plans including opportunities to promote the use of blocking, take down and filtering.*

As the Implementation Group is not yet in a position to report fully on these key actions, the matter will be addressed in a later progress report.

#### *Key Action 3*

*Develop pro-active policing approaches to tackle online CSE.*

The Implementation Group accepted this key action in its October 2018 Progress Report. As outlined on page 25 of this report, the OnCE Unit was divided into an Investigation Unit and a Victim Identification Unit in September 2017. The Investigation Unit is specifically dedicated to the proactive identification and investigation of persons suspected of breaching the law in relation to child trafficking and pornography.

An example of the proactive approach being taken by An Garda Síochána to tackle online CSE, which has received significant media publicity is “*Operation Ketch*”, an intelligence-led operation launched in 2018, which proactively targets those in the community who possess, import and distribute Child Abuse Material (Child Pornography) on the internet. The objectives of Operation Ketch are to;

- I. Identify child protection concerns at each premises searched and engage appropriately with Tusla, the Child & Family Agency;
- II. Target persons suspected of possessing, importing and distributing online child abuse material (child related pornography).

The Implementation Group notes that in the course of four phases of Operation Ketch during 2018, a total of 137 suspects were targeted and a similar number of premises were searched. Further operations are planned to take place during 2019 and into the future.

Operation Ketch, the existence of a new cybercrime area of responsibility within the Crime and Security Directorate of the Department of Justice and Equality, the existing legislative provisions, the Action Plan for Online Safety 2018-2019 and Hotline.ie are all progressive steps that seek to deal with the threats posed by the internet to the safety of children. Such threats are however, a worldwide problem that many jurisdictions are struggling to fight. Given the scale of these problems, the effectiveness of the above measures will only become apparent over time.

#### **Recommendation 4.5**

**The Inspectorate recommends that the Department of Justice and Equality consider introducing legislation in child sexual abuse related cases to provide power to compel any person who appears to have lawful access to a computer or other device to provide a password and any encryption key or code in order to operate the computer. Failure to comply with this requirement should be an offence.**

The Implementation Group accepted this recommendation in principle in its October 2018 Progress Report, but noted that there are broader implications to consider as it would be intended that such powers would also be applicable in the investigation of other categories of crime including fraud.

Arising from its consultation with the Department of Justice and Equality, the Group notes that there has been an overarching view for some time that the Garda powers of search, arrest and detention should be consolidated. This view is further reflected in the Law Reform Commission's 2015 Report LRC 115-2-15 (see relevant extract on page 32 of this report) which recommends the provision of additional powers under the Search Warrants Act, to include power to compel persons to facilitate access to information on a computer, and persons who fail to comply would be deemed to have committed an offence.

The Group is of the view that such legislative amendment would address Recommendation 4.5, but accepts that such amendment would have been considered in the context of other categories of offence, such as fraud.

The Commission on the Future of Policing in Ireland (CoFPI) Report highlights the challenges emerging in the area of cybercrime, and the need for additional and specialised resources to tackle it. It also recommends (on page 11 of its report) that legislation defining police powers of arrest, search and detention should be codified, with statutory codes of practice, and Government has accepted this recommendation. The Group believes that this may serve as an additional driver for the implementation of the Law Reform Commission's recommendation for the provision of the additional powers, such as those outlined above.

#### **4. NEXT STAGE**

The Implementation Group envisages that the next stage of its work will focus on;

- a. Further evaluation and consideration of Recommendation 2.1
- b. Further consideration of section 3 of the Childcare Act 1991
- c. Chapter 4 of the Garda Inspectorate's Report and its recommendations/key actions to assist in tackling online child sexual abuse and child sexual exploitation
- d. Verification of the implementation of recommendations and key actions where possible

It is intended that work in relation to these issues will be informed by meetings with the Ombudsman for Children, the Special Rapporteur for Children, Rape Crisis Network Ireland (RCNI), the CARI Foundation, Cosc, OnCE Unit and Legal Compliance Unit of An Garda Síochána,

the Victims Liaison Unit in the Office of the Director of Public Prosecutions, Department of Justice and Equality, Department of Children and Youth Affairs and others as appropriate.

## **5. ACKNOWLEDGEMENT**

This Second Progress Report has been prepared with input from all members of the Implementation Group, whose work has been facilitated by the officials of relevant Departments and Agencies who attended meetings, supplied briefing material and provided comprehensive responses to queries raised. The co-operation and assistance of all those who contributed is acknowledged and appreciated.

On behalf of the Implementation Group, I would also like to thank Dr. Miriam Delahunt BL who compiled the list of legislative provisions and potential improvements for consideration, Mr. Tom O'Malley BL for his collaboration and assistance, the Garda Inspectorate for facilitating the work of the Group with any necessary clarifications and the Policing Authority for its input in relation to verification and oversight matters.

**Caroline Biggs SC**  
**Chair to the Implementation Group**

## Implementation Group Actions and Meetings

### Meetings Held October 2018 to January 2019

Action/Meeting/Consultation	Date
First Quarterly Progress Report	11 October 2018
Chair's Meeting with Policing Authority	16 October 2018
Chair's Meeting with Cybercrime Unit, DJE	3 December 2018
Chair's Meeting with AGS Verification Process	3 December 2018
<b>Fourth Meeting of the Implementation Group</b>	<b>6 December 2018</b>
Chair's Meeting with National SORAM Office	8 January 2019
Chair's Follow-up Meeting with AGS re Verification Process	8 January 2019
Chair's Clarification Meeting with Garda Inspectorate	9 January 2019
Chair's Follow-up Meeting with Criminal Law Reform, DJE	10 January 2019
Chair's Follow-up Meeting with Office of the DPP	15 January 2019
Chair's Meeting with Tom O'Malley BL, Chair of Expert Group	22 January 2019
<b>Fifth Meeting of the Implementation Group</b>	<b>23 January 2019</b>

### Meetings Held and Planned - February 2019 to June 2019

Action/Meeting/Consultation	Date
Chair's Follow-up Meeting with Policing Authority	11 February 2019
Chair's Meeting with Cosc	14 March 2019
Chair's Meeting with Equality Division	14 March 2019
Chair's Meeting with OnCE Unit re Chapter 4 and Online Safety	15 March 2019
Chair's Follow-up Meeting with DCYA	15 March 2019
Chair's Meeting with Rape Crisis Network Ireland (RCNI)	19 March 2019
Chair's Meeting with Ombudsman for Children	21 March 2019
Chair's Meeting with AGS Legal & Compliance Unit	22 March 2019
Chair's Further Follow-up Meeting with Policing Authority	9 April 2019
Chair's Meeting with the CARI Foundation	6 June 2019
Chair's Meeting with the Special Rapporteur for Children	6 June 2019
Chair's Meeting with Courts Service	10 June 2019
Chair's Meeting with AGS re Verification	10 June 2019
<b>Sixth Meeting of the Implementation Group</b>	<b>13 June 2019</b>

## **Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences**

### **Terms of Reference of Expert Working Group Chaired by Tom O'Malley BL**

1. To review the adequacy of the mechanisms available in law and practice relating to protect vulnerable witnesses the investigation and prosecution of sexual offences, including in particular:
  - access to specialist training for An Garda Síochána, members of the judiciary and legal professionals dealing with sexual offences;
  - practical supports for vulnerable witnesses through the reporting, investigation and trial processes;
  - provision of additional legal supports to witnesses during the court processes;
  - measures in place to protect vulnerable witnesses during evidence, including the use of measures such as pre-recorded evidence or video-link;
  - the causes of delay in sexual offence trials, and the effect of delay upon vulnerable witnesses;
  - the use of pre-trial hearings to determine evidential issues including conflicts of evidence and sexual experience evidence;
  - provision for restrictions on public attendance at, and media reporting on, trials of sexual offences, and;
  - such other relevant issues that may arise during the course of the review process.
2. The review group shall, in particular, have regard to the recommendations of the publications by the Rape Crisis Network of Ireland entitled 'Hearing Every Voice – Towards a New Strategy on Vulnerable Witnesses in Legal Proceedings.'
3. The review group shall make recommendations to the Minister for Justice and Equality no later than 31 December 2018 or at the earliest date thereafter. The Minister will be provided with an interim report after 3 months.