

RCNI Submission to the Justice Reform Unit on the Proposal to establish an
independent Policing Authority June 2014



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Introduction – Rape Crisis Network Ireland Overview:

1.0 Rape Crisis Network Ireland broadly welcomes the Proposal to establish an independent Policing Authority. In our view, an independent police oversight body which draws on a wide range of outside experience as it sets long term goals and supervises their implementation, and which has the necessary powers to ensure that its goals are adhered to, can benefit victims of sexual crimes significantly. This overarching role will become even more important when the EU Directive establishing minimum standards on the rights, support and protection of victims of crime, is transposed into Irish law in November 2015¹. In addition, an independent Policing Authority could do much to ensure that complaint mechanisms addressed victims' concerns about An Garda Síochána swiftly and effectively.

Our own research on attrition of rape victims in the criminal justice system, Rape and Justice in Ireland,² highlighted the difficulties they faced in their interactions with An Garda Síochána when deciding whether to report, and once they had reported, maintaining a formal complaint. **It confirmed our daily experience that how victims are treated by An Garda Síochána is a very significant factor in whether they can initiate and then sustain formal complaints against their attackers.** While there was much very good Garda practice reported, the authors of the report made specific recommendations addressing key victim concerns identified in the research. These were: maintaining ongoing contact between Gardai and victims, providing information, behaving with sensitivity and compassion towards victims, interviewing victims with due regard to the effects of trauma, and never dissuading victims from maintaining a complaint. An Garda Síochána lost no time in incorporating versions of these key recommendations in its Garda Síochána Policy on the Investigation of Sexual Crime, Crimes and Children and Child Welfare, published in April 2010.³

Rape Crisis Network Ireland: Aims, Activities, Goals, Members, Staff

2.0 RCNI is the national representative body for its 13 member Rape Crisis Centres. The RCNI role includes the development and coordination of national projects including data collection, supporting Rape Crisis Centres to reach best practice standards, legal advice and policy development, and using our experience and knowledge to influence national policy and social change. Our member Rape Crisis Centres provide free advice, specialised counselling, advocacy and supports such as Court and Garda accompaniment, for survivors of sexual abuse in Ireland, including a growing number between the ages of 14 and 18.

¹ This Directive may be accessed online through this weblink: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

² "Rape and Justice in Ireland" (2009), Hanly & ors, Liffey Press, Dublin (RAJI). The recommendations may be found in the Executive Summary, available for free download through this link: <http://www.rcni.ie/wp-content/uploads/Exec-Summary.pdf>

³ Available online through this weblink: <http://www.garda.ie/Documents/User/WEB%20Investigation%20of%20Sexual%20Crime%20Crimes%20Against%20Children%20Children%20Welfare.pdf>

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3.0 This Submission – Structure:

This submission will follow the structure set out in the Justice Reform Unit information for ease of reference, and will be directed mostly at the first part of that structure, the functions and responsibilities of a Policing Authority.

4.0 Functions and Responsibilities of a Policing Authority

In general:

In our view, an independent Policing Authority should have the power to

- set policy and long-term goals for An Garda Síochána,
- appoint and supervise the most senior office holders (Garda Commissioner, Deputy Commissioner and Assistant Commissioners),
- ensure that all operational policies and procedures are published, unless there are compelling reasons for non-disclosure in particular cases (security related etc),
- set standards for performance across a range of areas, including the compassionate and professional treatment of victims,
- review those standards and monitor compliance with them,
- ensure that high quality training appropriate to their role is given to all members in the impacts of sexual violence (and other crimes of course) on its victims,
- consult with the general public and with victim support groups to help improve performance and also, awareness of the concerns of both victims and the community at large, and
- be answerable not to the Minister for Justice but to the Oireachtas as a whole.

We agree with the Irish Human Rights and Equality Commission (Designate)⁴ that in order to fulfill its functions, any independent Policing Authority should have control over a stable and sufficient budget, and further should have control over selection and appointment of its own staff.

In particular:

Any independent Policing Authority should oversee implementation of the EU Directive on Victims' Rights by An Garda Síochána, by ensuring that

(a) structures are in place to provide the information specified in their role as the "competent authority" to victims of sexual (and other) crime under both Article 4 (right to receive information from first contact with a competent authority) and Article 6 (right to

⁴ See IHREC (Designate) Submission to the Cabinet SubCommittee on justice on the Establishment of an Independent Policing Authority, May 2014, available online through this link: http://www.ihrc.ie/download/pdf/ihrec_designate_submission_on_independent_policing_authority_may_2014.pdf

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receive information about their case), across all Divisions of An Garda Siochana and Garda HQ;

(b) systems exist to identify, pilot, and where appropriate generalize to all non-piloted areas, new and original ways of working (including inter-agency working) which give priority to victims' needs and to their rights to information and support from the Gardai as a "competent authority" under the Directive;

(c) systems exist to ensure that in both general and specialist roles, An Garda Siochana, including Garda HQ staff as necessary and appropriate, are given training to "increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner" (Article 25). In our submission,

(d) systems are in place to ensure that all Divisions (and Garda HQ staff as necessary and appropriate) are provided with enough training, information and other supports, to implement fully in their professional roles An Garda Siochana's responsibilities to victims of crime under the EU Directive, and under Articles 3 (right to understand and be understood), 4 (right to receive information about their rights, in effect), 5 (right to receive acknowledgement of their formal complaint), 6 (right to information about their own case), 7 (right to interpretation and translation), 8 (facilitation of referrals to specialist support agencies), 18 (victims' right to protection from secondary and repeat victimization, from intimidation and retaliation, including right to physical protection), 20 (right to protection of victims during investigative stage, including accompaniment), 22 (right to individual assessment to identify specific protection needs), 23 (right to protection of victims with specific protection needs in criminal proceedings) in particular;

(e) international best practice underpins timely and thorough ongoing evaluation of all these systems, in collaboration with the Garda Inspectorate;

(f) international best practice underpins data collection systems, without which it would be very difficult to implement (e) above. These systems should include qualitative and quantitative anonymised data from victims of crime, which is collected in a robust and reliable way.

(g) effective inter-agency structures are maintained, and new ones established and maintained as necessary and appropriate to enable more efficient support and provision of information to victims of crime.

2. Any independent Policing Authority should analyse and continue to monitor, the effectiveness of the Garda Ombudsman Commission from the perspective of victims of crime, and relay its findings to GSOC, making recommendations as appropriate. In particular, it should look at:

(a) whether victims of crime have confidence, generally speaking, in GSOC's ability and willingness to resolve complaints about An Garda Siochana's behaviour, from the most serious to the most minor, to the satisfaction of the complainant?

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(b) if not, would the complainants have more confidence in a more independent complaints structure, which did not ever involve informal resolution procedures or formal investigations by An Garda Síochána members? Our daily work tells us that many victims of sexual crime do not have confidence in the independence of the process, despite reassurances, and also, that they fear that making a formal complaint to GSOC, or to a local Superintendent, will have a negative effect on the investigation of their complaint of sexual crime. This fear often results in no complaint being made about the conduct of the member of An Garda Síochána, and therefore to the loss of the information about that conduct to management structures.

(c) the GSOC complaints procedure itself: is it easily accessible and understandable, is it constrained by rules which are not appropriate to the nature of many complaints, does it take too long, for example? And so on;

(d) the available remedies for GSOC complainants: are they adequate and/or appropriate?

3. Independent Policing Authority should adopt a whole-system approach to maintaining and where necessary, improving services provided to victims of crime by An Garda Síochána, and should ensure that systems are put in place at all levels to place victims of crime at the centre of An Garda Síochána activity. It should not be for IPA to devise and manage these systems on a day to day basis, but it should be their role to ensure that effective systems are in place and are maintained across An Garda Síochána.

5.0 Appointment and Membership of the Policing Authority

Our view is that membership of the Policing Authority should be varied, should be temporary, and should be open and transparent in its method of appointment. It should not include a preponderance of elected representatives, but should include people with relevant expertise, including representatives of relevant State agencies and victim representatives. There should be special provision for representation from minority groups, and the Authority should make every effort to be gender-balanced.

6.0 Its relationship with the Government and the Oireachtas

As indicated above, our view is that the Authority should be answerable directly to the Oireachtas, rather than to any specific Minister.

7.0 Implications for GSOC, the Garda Síochána Inspectorate and the Confidential Recipient

In our view, GSOC should retain its independence, including from any Policing Authority, but the Authority should be able to make recommendations and give advice to GSOC, and should be able to bring anything which in its view warrants investigation, to the attention of GSOC for further determination. If GSOC itself is not to be under the control of any Minister, it should be answerable to the Oireachtas in the same way as the Policing Authority.

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We feel that the Garda Siochana Inspectorate should make its reports to the Policing Authority rather than to any Minister, and the Authority should be able to refer issues of concern to Inspectorate where appropriate. Finally, we think it is important that **general** concerns raised with the Confidential Recipient should be received by the Authority, as this is a route through which **general** victim concerns can be identified and measures taken to address them effectively.

8.0 Conclusion

Finally, our view is that any Policing Authority should have as a **headline statement** not just to all members of An Garda Siochana, but also to all victims and their supporters, as well as the community at large, that victim concerns **are fundamental to their philosophy, strategy and objectives**. Without victims' willingness to come forward and without the willingness of Gardai to support them throughout the criminal justice process, attrition will not be reduced and ultimately, serious crimes will not be detected, prosecuted and punished appropriately.

**Rape Crisis Network Ireland
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10 June 2014

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Appendix II:

LISC composition: The Legal Issues Sub-Committee is a sub-committee of the National Steering Committee on Violence against Women, on whose behalf it conducts research and discussions and formulates agreed recommendations on domestic and sexual violence legal issues, wherever possible and appropriate. It works to an NSC agreed annual Work Plan based on the National Strategy to prevent Domestic, Sexual and Gender-Based Violence⁵, and in addition addresses legal issues whenever requested to do so by NSC. Like the NSC itself, it is a multi-agency body, whose volunteer membership meets quarterly and includes senior and junior representatives from the Law Library, a Law Society representative, a Legal Aid Board representative, domestic and sexual violence NGO representatives (in the case of sexual violence, this means both RCNI and Dublin Rape Crisis Centre), and representatives from An Garda Síochána, the Department of Justice, the Probation Service, and the Courts Service. All members are encouraged to contribute their views, and all recommendations put forward are agreed by LISC members. The variety of experiences, roles and perspectives within LISC has allowed it to make informed and thoughtful recommendations, well grounded in the daily reality of our justice system.

*Its remit is purely **advisory** and non-executive, as is that of the NSC itself.*

⁵ available online in both summary and full form at www.cosc.ie/publications