



**RCNI Submission to Policing Authority on  
Garda Code of Ethics  
May 2016**

### Introduction – Rape Crisis Network Ireland

**Rape Crisis Network Ireland** is the national representative body for its 11 member Rape Crisis Centres. It is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects including the provision of legal advice and policy development, and using our expertise to influence national policy and social change. It also includes regular and positive co-operation with An Garda Síochána at both national and local level to ensure that the Garda response to the 30% of our clients who make a formal complaint, is informed as much as possible by Rape Crisis Centres' experience and knowledge about the impacts of sexual violence.

### An Garda Síochána and Survivors of Sexual Violence

Our daily experience with our clients, our own research and other external findings all tell us that the **quality of the Garda response** to survivors of sexual violence is of the first importance as we encourage them to report sexual crimes, support them as they progress through the criminal justice system, and help them to come to terms with the outcome of the criminal justice process. Rape Crisis Centres provide specialised counselling, access to legal advice when required, advocacy and other 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. For those survivors who decide to make a formal complaint to the Gardaí, a wide range of supports is often needed, and provided, by Rape Crisis Centres. However, no outside support can replace a consistently professional, compassionate, sensitive and well-informed response from the Gardaí towards survivors of sexual violence.

### This Submission to the Policy Authority: Structure

We are asked generally to consider what the proposed Garda Code of Ethics should contain, and why? More particularly, we are asked:

1. Are there particular issues that we think should be covered in the Garda Code of Ethics?
2. If so, how could those issues be addressed? And
3. Are there any other matters relevant to the drafting of a Code of Ethics, that you wish to bring to the attention of the Policing Authority?

This Submission will address these issues 1-3 in order, and will end with a brief Conclusion.

#### 1. Issues to be covered in the Garda Code of Ethics:

- (a) The physical and psychological welfare of individual survivors of sexual (and indeed other) violence, before, during and after their experience as complainants or prosecution witnesses in criminal proceedings, should be a primary concern for members of An Garda Síochána, and should be named as such. In order to have a good understanding of trauma, including secondary trauma, **appropriate training provided at least in part by outside specialists**, is essential;
- (b) Following on from (a), the **avoidance of any further re-traumatisation** of survivors of sexual (and other) violence, at the hands of the accused and/or his associates, or in the course of criminal proceedings themselves, should also be a primary concern for An Garda Síochána, and should be named as such. In this context, we welcome very much the expression used by the Garda Commissioner in a recent communication to the effect that every contact leaves a trace and that therefore, the quality of each contact is critical. Further in this regard, in addition to Garda training as indicated above, **accompaniment services** can do much to lessen the impact of criminal

proceedings at the investigative and Court stages, and therefore, should wherever possible, be encouraged by Gardaí;

- (c) Both primary and secondary traumatising of victims of sexual (and no doubt other violent) crime should always be addressed from the standpoint that every victim's reaction to trauma is unique and individual. This is implicit in the EU Directive 2012/29 (the Victims' Directive) Article 22, which refers to the right to an **"individual assessment"** for every victim, in order to identify any "specific protection needs", and each victim's personal characteristics must be taken into account in that assessment (among other things);
- (d) The Garda response to survivors of sexual violence should **always convey acceptance of the complainant's account**, regardless of the individual Garda's personal assessment of the truth and/or evidential strength of that account. While an investigator must of course make an objective assessment of all of the evidence, and may as a result have doubts about the accuracy or truth of the complainant's account of what happened, those doubts should not be conveyed to the survivor. That does not mean that a conflicting account from the accused, or conflicting independent evidence, should not be put to a survivor – it must be. In our submission, almost always it can and should be put in a way that is positive and supportive and does NOT give the survivor the impression that the Garda has dismissed as fantasy, his or her account of what happened.

There will be very occasional cases where the objective evidence available proves beyond reasonable doubt that the complainant's account cannot be true as a matter of fact, and the available research indicates that even in these cases, there is only a tiny proportion where the difference between the two accounts is due to malice on the part of the complainant – 1% or less<sup>1</sup>. There is therefore, every reason for an investigating Garda to conceal his or her personal views if they are in conflict with an outward and visible attitude of acceptance towards the complainant.

- (e) The **privacy and confidentiality** of survivors of sexual violence, insofar as this is consistent with the rights of the accused under our Constitution, should be safeguarded by members of An Garda Síochána as far as possible. This is an area of huge concern to survivors, and it is not possible in every situation. Nevertheless there are measures which can be taken to safeguard survivors' privacy at least out of Court, and minimising the risk of inadvertent lapses in confidentiality as well as avoiding unnecessary (because irrelevant) disclosures about complainants' private lives, should be guiding principles;
- (f) A **commitment by An Garda Síochána to do their utmost to investigate complaints** of sexual violence as thoroughly and expeditiously as possible, even where this is difficult to achieve, should be stated explicitly in the Code of Ethics. While it is recognized, often by the survivors themselves, that sexual crime investigations can be very challenging and do not get past the DPP stage in large numbers, for this very reason it is important that survivors feel that everything that could have been done in their case, has been done;

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<sup>1</sup> See "Rape and Justice in Ireland" (2009), Hanly & ors, Liffey Press, Dublin, research report into attrition in rape cases in Ireland, commissioned by RCNI from NUI Galway

- (g) This commitment should be balanced by a recognition in the Code of Ethics that survivors of sexual violence and sometimes, witnesses to it, **cannot and should not be compelled to make formal statements of complaint**, nor should they be unreasonably pressed to do so by An Garda Síochána. Of course survivors should be encouraged and supported to make statements, but it must be recognized that many victims of sexual crime may never be able to make, or if they do make one, may not be able to stay with a criminal complaint from first statement to last court appearance;
- (h) **Transparency about the conduct** (as far as this is appropriate in the interests of justice) of the criminal investigation, procedural matters such as court appearances and practical matters such as arrangements for contact with the survivor and information about victim rights, on the part of An Garda Síochána towards survivors of sexual violence (and indeed other crimes), should always be a guiding principle. Very many survivors of sexual violence have difficulty trusting anyone, including the Garda in their case, in the wake of the violence, and a consistent open and transparent relationship with the investigating Garda helps to rebuild that trust. This transparency principle should also extend to errors by Gardai in the course of an investigation, so that they can be addressed and so that confidence in the investigation as a whole can be maintained by survivors of sexual violence (who are complainants);
- (i) **Timely and accurate communication** by the Gardaí of important information about criminal proceedings in general and about their own case in particular, are already rights of victims of crime under EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime. However, we would add that for survivors of sexual violence at least, what is important is regular contact with the Garda in the case – so an easy channel of communication being available to survivors, is another key principle;
- (j) Last but not least, there should be a principle to the effect that some areas of policing and in our view, the investigation of sexual crime is one of them, should be managed wholly or mainly by **specialist officers**, so that appropriate, specialisation is a key principle, and the issue of which areas should be dealt with wholly or mainly by specialist officers is one which should be revisited regularly as policing priorities, social conditions, culture and technology change.

### 2. In addition to the suggestions made above, these issues could be addressed by:

- (a) Clear statements in support of the various principles mentioned in the proposed Garda Code of Ethics;
- (b) Open, regular, honest and focussed communication, formal and informal, at national and local level, between An Garda Síochána and specialist sexual violence NGOs;
- (c) Specialist NGO input into Garda internal protocols for dealing with victims of sexual crime, in particular in relation to their new obligations under the Victims' Directive. It is not suggested that these organisations direct the Gardaí in any way of course, only that they provide their perspectives which are based on specialist training and (often) very lengthy experience with survivors of sexual violence;

- (d) Specialist NGO input into Garda training, in particular into training for the proposed new Garda specialist investigative teams (domestic, sexual violence, child abuse);
- (e) Comprehensive and well-informed referral practices, both to and from An Garda Síochána;
- (f) A proactive, victim-focussed approach to victim protection and victim welfare by An Garda Síochána members in all interactions with the DPP, defence lawyers, Courts Service officials and judges (as far as compatible with their role), expressed perhaps by way of informal agreed (local) guidelines for inter-agency use, or more formally, by agreed protocols with e.g. DPP;
- (g) Specialist NGO input into Garda protocols implementing EU Directive Article 22, ie individual assessments of each victim's "specific protection needs";
- (h) Supervision by more senior officers of Garda investigations of sexual (and other) crime, which would aim to
  - (1) ideally, prevent Garda investigative errors and failures altogether, and
  - (2) pick up and address investigative errors and failures which do occur simply, quickly, informally, so that complainants are able to have simple issues resolved without having to consider going to GSOC.

### 3. Any other relevant matters

In our experience, members of An Garda Síochána generally make very strong, positive and well-informed contributions to inter-agency structures charged with making recommendations (former National Steering Committee on Violence against Women, Legal Issues Sub Committee thereof), devising guidelines (SATU National Guidelines Committee), or hosting information and consultation sessions for victim organisations (Garda National Crime Victims Forum), to give four examples among many.

Accordingly, RCNI recommends that the value of effective inter-agency working should also be identified explicitly in the Garda Code of Ethics, and that the Code should stress the importance of real personal commitment to working effectively with other agencies (State and non-State), for victims of sexual (and other) crime.

### 4. Conclusion

These proposed inclusions in the Garda Code of Ethics will have real positive effect for victims of crime to the extent that they become embedded in the everyday practice of the Gardaí, or in Garda culture as it is lived in every station and on every shift. For them to become second nature in this way, there must be effective leadership not only at the highest levels, but **at every level**.

RCNI recommends that the drafters of the Garda Code of Ethics lay stress on the importance of **effective implementation** as they put this core document together.

RCNI/LPD 1

6 May 2016

