

Justice, 2018

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As has been the case for a number of years now, I begin the review of the year with a brief snapshot of the issues which have engulfed An Garda Síochána and the Department of Justice and Equality in relation to the treatment of Garda whistle-blower Sergeant Maurice McCabe. On that note, the third interim report of the Disclosures Tribunal was published in October 2018. The Minister for Justice and Equality, Charlie Flanagan, TD, noted that Justice Peter Charleton had now concluded his investigation and had presented the final report to the Dáil; this report is currently under review. On foot of the publication of the interim report, however, the minister made an apology to Sergeant McCabe for the manner in which he had been treated over a prolonged period. The interim report concluded that a smear campaign had been conducted against Sergeant McCabe by former Garda Commissioner Martin Callinan and former press officer Dave Taylor. The report also concluded that there was no evidence that former Garda Commissioner Nóirín O Sullivan had played any role in this smear campaign, and that former minister Frances Fitzgerald, TD, had acted in good faith in her handling of the matter.

Crime

There is a continuing advisory on the crime statistics, which are presented by the Central Statistics Office (CSO) as ‘Under Reservation’, indicating that the quality of crime statistics does not

meet the standards required of official statistics published by the CSO.¹ Notwithstanding this caution, the crime statistics for Q4 2017 indicated an increase in fraud and sexual offences and most crime groups in 2017. There was an increase of 23 per cent in the number of fraud and fraud-related offences recorded in 2017 compared to 2016. Sexual offences rose by 16.9 per cent (from 2,520 to 2,945) in the same period, while attempts/threats to murder/assault rose by 13 per cent (from 16,640 to 18,803). However, the CSO stresses again that citizens must approach these figures with considerable caution as to their accuracy.

Due to the ongoing issues, the crime figures for 2003 to 2016 have been substantially revised, particularly the figures relating to homicide. The net increase in the number of homicide incidents for 2003–16 is 234, or 18.3 per cent. This is in large part due to the number of incidents of ‘dangerous driving leading to death’, which was revised upward by 196, or 38.9 per cent. This follows on from a Garda review into suspicious deaths recorded on PULSE (the Garda system for crime recording), and the subsequent reclassification of some of these cases.

Some promising findings emerged from a pilot scheme to target prolific offenders and reduce crime. The Joint Agency Response to Crime (J-ARC), which commenced in 2016, published preliminary findings in 2018 which suggested that the strategy was having positive effects. J-ARC is a coordinated response between the Irish Prison Service, the Probation Service, An Garda Síochána and the department which aims to manage prolific offenders, with the aim of reducing crime for local communities. J-ARC offers an intensive supervision approach, working with identified offenders in three pilot studies operating in the Dublin region: STRIVE, which is aimed at working with people causing high levels of harm and disruption in their community; Change Works, working with persons with a history of violent offending; and ACER 3, in the Garda districts of Kevin Street and Tallaght, aimed at persons with a prolific history of burglary. Although it is difficult to draw definitive conclusions, the preliminary evaluation is positive – that the programmes have reduced the frequency and severity of offending and have helped some persons desist entirely from crime. The independent evaluation found that almost 30 per cent of STRIVE participants did not reoffend, 37 per

¹ This warning follows on from a 2014 Garda Inspectorate report, *Crime Investigation*, which levelled serious criticism at the accuracy of the national crime statistics.

cent of Change Works participants did not reoffend, and 15 per cent of ACER 3 participants did not reoffend, with a reduction in offending among a further 45 per cent of participants. In 2017 a youth J-ARC initiative was launched and the ACER 3 programme was also extended to Dundalk, Waterford and Limerick.

An Garda Síochána

An Garda Síochána has a new Garda Commissioner in the figure of Drew Harris. Mr Harris was previously the Deputy Chief Constable of the Police Service of Northern Ireland.

One of the most significant items of policing news through 2018 was the publication of the report of the Commission on the Future of Policing in Ireland (2018) in the autumn. The commission, which was established in 2017 and chaired by Kathleen O'Toole, was given a broad remit to collect submissions from the public, review the functions carried out by An Garda Síochána and examine all aspects of policing in Ireland.

The report outlined some key principles that guided the organisation and structuring of the recommendations:

- human rights are the foundation and purpose of policing;
- policing and national security are not the responsibility of the police alone;
- accountability and oversight structures for policing should be clear and effective;
- internal governance must be strong and efficient;
- police duties should be clearly defined and resources deployed accordingly;
- the police should be structured and managed to support front-line policing;
- the people of An Garda Síochána are its greatest resource;
- policing must be information-led;
- policing should be seen as a profession;
- policing must be adaptive, innovative and cost-effective.

Under these headings, fifty recommendations were proposed. Some of the headline recommendations included the codification, for the purposes of clarity, of the police powers of arrest, search and detention; the establishment of a human rights unit within the organisation; and a strengthened role for the Garda Commissioner,

who is solely to deal with internal matters of pay and conditions, rather than the department.

The report proposes a Policing and Community Safety Act to prioritise the concept of harm prevention, which it states should be established as a core objective of policing in Ireland. The report also recommended the creation of an independent examiner for terrorist and serious crime legislation, and a review of law in the area of national security. Another key recommendation was that an inquest should be mandatory following a death in Garda custody.

The commission also recommended that all non-core duties be delegated to bodies outside the Gardaí, including, for example, decisions on prosecution and Garda powers to prosecute certain offences, as well as handing prisoner transport and certain court duties over to the relevant agencies. The report also proposes alternative routes of entry to policing and the restructuring of the organisation, and argues that the organisation should better reflect the diversity of Irish society.

Contentiously, the report recommended a number of new oversight bodies, such as the proposed Policing and Community Safety Oversight Division, which would supersede both the Policing Authority and the Garda Inspectorate. The Policing Authority warned that if the recommendations of the commission were implemented, it could cause an overcrowded oversight landscape with less transparency.

In December a four-year plan to implement the recommendations of the commission's report was announced. The department agreed in full with the overwhelming majority of the commission's recommendations, including the scrapping of the Policing Authority and the Garda Inspectorate, and the establishment of the new oversight body. The work of ensuring effective implementation will be led by an Implementation Group on Policing Reform, to which an independent chair will be appointed. Of immediate concern is the enhancement and overhaul of essential ICT systems.

Other key items include the creation of a new post of National Security Co-ordinator and a Strategic Threat Analysis Centre (STAC). This new body will be tasked with assessing threats to the state. In addition, legislative provision will be made for body-worn cameras and the creation of the role of independent examiner of terrorist and serious crime legislation, as well as increased clarity in the powers of search, arrest and detention – viewed by the commission as necessary

to ensure clarity in this area. A Policing and Community Safety Bill will also be drafted as a matter of priority, with the aim of redefining policing in Ireland. This legislation will also provide for a new governance and oversight framework to empower the Garda Commissioner to act as CEO, to improve internal governance.

The minister has announced also that a programme of limited and highly targeted redundancy would be put in place before reforms were implemented.

Prisons and probation

Michael Donnellan announced that he would step down as director general of the Irish Prison Service at the end of November 2018. In December Caron McCaffrey was appointed as the new director general. McCaffrey has worked in the justice sector for eighteen years, and is the first woman to be appointed to the position of director general.

Patricia Gilheaney was appointed as the Inspector of Prisons, effective from May 2018. Gilheaney was previously the CEO of the Mental Health Commission. In November the minister announced a review of allegations of covert surveillance of prisoners in Irish prisons and prisoner transports. The Inspector of Prisons will review this claim urgently.

The Irish Prison Service's annual report for 2017 was published in June. The overall daily average number of prisoners in custody in 2017 was 3,680, compared to 3,718 in 2016. The average number of female offenders in custody in 2017 was 144, compared to 140 in 2016 (an increase of 2.9 per cent). There were 9,287 committals in 2017, which is a significant decrease (38.5 per cent) on the figure of 15,099 for 2016. Of individuals committed to prison through 2017, 85.5 per cent were male and 14.5 per cent were female. Looking at just female committals, there was a decrease of 54 per cent (from 2,937 to 1,344). The large decreases in the numbers of persons committed to prison in 2017 is a direct result of the Fines (Payment and Recovery) Act, 2014, which came into operation in January 2016. There was a 73 per cent decrease in the number of committals to prison as a consequence of the non-payment of a court-ordered fine (from 8,439 in 2016 to 2,261 in 2017).

Despite the decreases in prison committals shown in the 2017 report, in June 2018 the Irish Penal Reform Trust issued a press

release cautioning that overcrowding in Irish prisons was undermining much reform work. The organisation stated that numbers were creeping towards 4,000, and particularly highlighted the constant overcrowding in the Dóchas Centre (the women's prison on the Mountjoy Campus in Dublin), which hovered around 130 per cent capacity. On 19 December there were 3,906 persons in custody throughout the Irish prisons, representing a drop in numbers from June.

The Irish Prison Service (2018b) published its first report on self-harm in Irish prisons. The *Self-Harm in Irish Prisons* report is part of the SADA Project (Self-Harm Assessment and Data Analysis), developed to aid in the creation of safer prisons. Rates of self-harm were 4.4 times higher among women than men (16.0 for women compared to 3.6 per 100). The highest rates of self-harm were among younger prisoners: male prisoners aged 18–24 years (5.0 per 100) and female prisoners aged 25–9 years (12.0 per 100). Rates of self-harm were also higher for prisoners on remand than for sentenced prisoners (7.4 for those on remand compared to 3.1 per 100 for sentenced prisoners). Three-quarters (77 per cent) of self-harm episodes involved prisoners in single-cell accommodation.

The *Sixth Report of the Implementation Oversight Group* was published in autumn 2018. The chairperson of the group, Dr Mary Rogan, noted that although progress had been made in completing milestones, the 'big picture' regarding reform of penal policy was being lost. Dr Rogan identified, in particular, issues with regard to numbers of women in prison, whether there was a commitment to non-custodial sanctions, and a failure to rigorously examine Irish sentencing practice.

The Parole Board's annual report for 2017 was published in October 2018. The report noted criticism of lengthy delays in the process. The Parole Bill, 2016, will, when enacted, ensure that hearings on parole are heard within six months of the review date. In 2017 a total of 66 cases were referred to the Parole Board, and all identified prisoners were asked to participate, with 48 accepting the invitation. In total the board reviewed 114 cases, the highest number since its establishment. The government accepted the recommendations in full in 102 of these 114 cases. The report also stated that in January 2017 a total of 349 prisoners were serving life sentences in Irish prisons, 10 of whom were women. The Parole Board recommended that 21 life-sentenced prisoners should be granted parole on a phased basis of 12 to 18 months. Release planning would

include periods of day release and weekend temporary release, with a focus on gradual reintegration with families. The minister agreed in these 21 cases, and 14 have so far received full parole.

The Probation Service's annual report was released in June 2018. The report outlined that the service had worked with over 15,000 offenders, referred to them by the courts nationally. Through 2017 the service managed 2,200 community service orders (in lieu of 973 years in prison), and this amounted to over €3 million in unpaid work completed by offenders. Women represented 16 per cent of all new offenders referred, and the service worked with 1,446 women through the year.

Youth justice

An operational review commissioned to investigate Oberstown Children Detention Campus was completed in 2018. The review was commissioned in response to serious incidents at Oberstown in both 2016 and 2017, including a fire which caused significant damage, protests by young persons at the campus, as well as strike action by staff. The exercise was led by independent experts Professor Barry Goldson (University of Liverpool) and Professor Nick Hardwick (former chair of the UK Parole Board). Although the review has now been completed, the Minister for Children, Katherine Zappone, TD, caused consternation by her decision not to publish its findings. According to Zappone, the failure to publish relates to the 'passing of time', the fact that certain named groups have not been given right of reply, and the assertion that the review strayed beyond the terms agreed.

The first report of the board of management of the new campus was published in 2018, covering the period from June 2016 to December 2017. From June to December 2016 a total of 112 young people were detained in Oberstown. Of these, 110 were male and 2 were female. In 2017 a total of 135 individual young people were detained in Oberstown – 133 male and 2 female. From 2017 anonymous data are published on those young people who come to Oberstown, presenting an overview of the adversity and disadvantage that most of these young people have experienced. Of the 135 individuals detained in 2017, 49 were not engaging in education prior to detention, 31 had been in care prior to detention, 38 had a mental health need and 54 had substance-misuse problems.

Legislation

In 2018 a significant piece of legislation was enacted which provides a legislative framework for those who suffer from domestic abuse. The Domestic Violence Act, 2018, consolidated the law in this area. While domestic assaults have not been categorised as a specific offence, the legislation creates a new offence of coercion.

Meanwhile, following the referendum on the thirty-sixth amendment to the Constitution in May 2018, the Health (Regulation of Termination of Pregnancy Bill), 2018, passed the Oireachtas and was signed into law by the president before Christmas.

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