

Reforming an Garda Síochána

Presentation of Dr Vicky Conway, Kent Law School, Friday 20 June 2014, Farmleigh

Good morning all. I would like to thank the Minister for the invitation to speak to you all today and for arranging this seminar which represents a unique opportunity to discuss reform of an Garda Síochána.

In my presentation I aim to identify some of the areas which I believe, on the basis of mine and others' research, are in need of reform and to discuss some specifics about the shape such reform might take. I will focus in particular on culture, governance and accountability. Obviously as a lecturer by trade I could happily talk for hours on such matters but I promise to be brief in my remarks today. Hopefully we will have time in the Q&A to discuss points in more detail.

Acting Commissioner O'Sullivan recently made the following statement:

"We are at a defining moment in the history of the policing service, a moment at which the principles of accountability, transparency and professionalism must be at the core of a strong, confident and connected policing service and at which such principles must be seen to be at the core of everything we do in order that we are trusted and valued by the public we serve." Acting Commissioner O'Sullivan, Joint Committee on Justice, Defence and Equality, 29 May 2014

I mention this not only because I agree, but because as a starting point, I think it is worthwhile to consider what the aim of reform is and what the intended outcomes are. What kind of police service do we wish to have in Ireland? I would hope that we aim for a professional, independent, accountable, democratic, trusted, effective service that is respectful of human rights.

In order to achieve that, efforts at reform need to be embedded in an understanding of all weaknesses and strengths of the policing structures, both internal and external to the institution. I do not encourage dwelling on the past, but we need an understanding of the problems in order to move toward true accountability and regaining the trust of the public.

While not yet 100 years old, an Garda Síochána has repeatedly faced difficulties, whether those were the politically turbulent times of the Blue Shirts, the economic hardships of the 1950s and 60s, the danger and uncertainty brought by the Troubles or what must feel for many members like the interminable scandal of the past decade. In terms of morale I suspect the last decade has been the most damaging: only in these years has the previously unswerving support of the public seemingly waned and that sense of unity with the community felt deflated.

Events of the recent months have been many things for many people (shocking, alarming, embarrassing, revealing, sensational) but similarly what we are left with can be seen as many things: a crisis of legitimacy, a unique opportunity, an

insurmountable challenge or as Acting Commissioner O'Sullivan puts it, a defining moment.

I wish to submit that it is many of those things, there is momentum and desire for change but that change will be difficult and challenging.

My view is that in order to move forward we need that full understanding of the weaknesses of policing in Ireland and this can be achieved through a Patten style Commission. Only an open, independent Commission on Policing could hope to come close to appreciating all causes for concern, as well as all strengths. The aftermath of the Morris Tribunal has hopefully taught us that piecemeal reform triggered by one scandal will not cure all ills.

If government is not inclined to proceed with such a Commission it is essential that existing evidence and research both from Ireland and abroad is considered in detail. Further research should also be commissioned on certain issues.

What my research has led me to conclude is that there are three core aspects of Irish policing which need to be addressed:

- Police Culture
- Governance
- Accountability

These three issues overlap and intersect so whilst I attempt to address each separately it must be recognised that change to all is required, without which reform to any, will fail. For instance while substantial changes to accountability were made by the 2005 Act, GSOC is encountering difficulties which stem, in my view, from both cultural and governance issues.

Definitions

The police have exceptional and unique powers in society: powers to invade our privacy, powers to deprive us of our liberty, powers to demand answers to questions and powers to achieve some of these things by force if necessary. Weber wrote that the defining feature of the police is that they have the monopoly on the legitimate use of force in society.

Not only this, but the police have discretion in how they use those powers. A garda on the street makes a decision to stop and question one individual or another, and so on. We can issue regulations and guidance on how those powers should be used but often those decisions are made in circumstances where the only person who sees what decision is made is the affected member of the public. In some respects this discretion is desirable: we would not want a society where police apply the law strictly in every circumstance, but this inherent discretion means that we need to question how that discretion is utilised.

Doing so forces us to look at culture, governance and accountability.

1. Culture

The notion of police culture relates to the view that there exists within police forces and services certain values and norms which are embedded within the institution. These have been studied repeatedly over decades and across jurisdictions. Differences may be identified between ranks or differing roles but it is agreed that these cultural values inform how that discretion is exercised and assist police officers in coping with the dangers and stresses of their position. Reiner's (2000) work has identified a number of characteristics including machismo, racism, solidarity, thirst for action and conservatism among others.

Relatively little empirical work has been conducted specifically on culture within an Garda Síochána but what has been done (see Conway, Haynes & Carr, Brown), as well as various tribunals reports and court judgments, certainly indicates that this is at play.

What has perhaps been most apparent to date and which stems from this culture, is an unwillingness to accept oversight and accountability: we see this, for instance, in resistance to cooperate with Tribunals or with GSOC. Relatedly, when problems are accepted, they are often defined as the result of rotten apples, rather than accepting that apples don't rot without a problem in the barrel.

We also see evidence of machismo and racism and research would, I suspect, reveal stereotyping in the use of powers. The Garda Public Attitude Surveys, when they were conducted, documented problems with civility which would also link to culture.

The evidence that we do have, though we do need more, indicates a serious need to confront the internal culture of an Garda Síochána. That is difficult, challenging work as this culture is transmitted on a daily basis across police stations and across generations. It takes courageous and dedicated leadership and an acceptance by police of a different outlook on the same job. While many practical changes (such as training, promotions, oversight and governance) can all contribute to changing culture we cannot legislate for a new police culture. This requires a continuous process stemming primarily, as I say, from strong leadership.

It also requires in Ireland a shift in the political culture. We must accept that historically in Ireland it has been considered almost traitorous for a politician to criticise an Garda Síochána. Those who did so were almost considered subversive. Members of the police, politicians and the public generally need to accept that accountability, governance and a critical approach to policing is not a negative endeavour but is part and parcel of ensuring that we have a police service that does its job well and which the public can trust. We give the police powers, we are not only entitled to ask, but have a vested interest in ensuring those are appropriately used.

We have begun to move in that direction in Ireland but the political establishment needs to be firm in its commitment to the ideal of policing to which we aspire and must communicate effectively to all serving police that such an approach is not

about condemning, it is about working with the service to ensure it performs as close to that ideal as possible.

Much of the reform focus in the last decade has, to my mind, related to accountability but talk of a police authority in fact relates more to the idea of governance. I wish briefly to distinguish between governance and accountability of the police. Walsh and Conway have written that governance

“can be defined broadly as encompassing the procedures and methods aimed at ensuring the efficient discharge of the policing function... includes key management issues such as: policy formation & implementation; the determination of priorities & strategies; deployment choices; the allocation of resources; the maintenance of standards; & internal discipline... associated with the promotion of values such as transparency, responsiveness & the maintenance of professional, ethical & human rights standards in policing... the instruments and processes of governance can be used to deploy the police as a tool of repression, and ultimately as the facilitator of a police state.”

Accountability, we wrote, comprises

“all procedures and methods which can be deployed to render an individual police officer, and the police authority as whole, answerable to another person or body whether that person or body is located inside or outside the police force in question.” (Walsh & Conway, 2011)

One might say that governance determines what the police do, when and why (a control element), while accountability responds when questions arise as to what the police, either individually or collectively, did (an explanatory element).

In my formal submission to the consultation on the authority I reviewed the literature in some detail which I shall not do now, but what we can take from this review of the literature is that any system put in place needs to combine both controlling and explanatory elements and so consider both governance and accountability.

2. Governance

Governance in Irish policing is achieved through a linear mechanism: the Garda Commissioner works directly under the Minister for Justice. The Inspectorate may offer guidance but its views are not binding.

The primary concern which this structure generates is politicisation: that key decisions as to the nature, structure and function of policing in Ireland run the risk of being affected by political considerations, rather than by a focus on what is best for democratic policing. A core theme of my recent book has been ways in which this impacted on policing in Ireland and I'm happy to discuss that further in questions, if anyone wishes.

In the United Kingdom a different approach is taken. The Police Act 1964 instituted the tri-partite system of governance, which in effect reflects a separation of powers approach to police governance. For each force in England and Wales a triumvirate exists between the Home Secretary, the Chief Constable and the Police and Crime Commissioner (PCC). In Northern Ireland the Policing Board sits instead of the PCC.

Each of the three has certain powers and duties in respect of policing, ensuring that no one member has too much control at any one time. By no means is this a perfect system and evidence abounds of police misconduct in England and Wales in particular. What we do see however, is much less political control of policing. Further, any shortcomings may relate to issues of accountability (see critiques of the IPCC) or culture (Loftus, 2012).

If taken as a model of good police governance, and just one of three factors to be improved, this separation of powers could have many substantial benefits for Ireland. I shall now consider the specifics of how this might look.

Function:

The functions of the Policing Authority should relate to both governance and accountability, in effect I propose transferring much of what is currently the role of the Minister for Justice as regards policing to this body. Specifically:

The Policing Authority should be required to:

- (a) secure the maintenance of an Garda Síochána,
- (b) secure that an Garda Síochána is efficient and effective.

These would complement the stated functions of the Inspectorate to ensure both bodies would be working towards the same goal.

The Policing Authority should be required to hold the Garda Commissioner to account for the exercise of—

- (a) the functions of the Garda Commissioner, and
- (b) the functions of persons under the direction and control of the Commissioner.

The primary function of the Commissioner should continue to be to direct and control the force and s/he should continue to have operational independence in the performance of that function.

To achieve these functions, the Authority should set 3-5 year policing plans for the nation, taking into account any targets or priorities set by the Minister for Justice/Government of the day. In line with that long term plan, the Commissioner should then develop an annual policing plan to be approved and adopted by the Authority. It should then monitor performance of an Garda Síochána against both the long term and annual plans.

The budget allocated to the Commissioner to achieve that plan should be determined by the Authority in negotiation with the relevant government departments, and funded by government.

The Authority should have responsibility for the appointment of the Commissioner, on the approval of the Government. Serious consideration should also be given to giving the Authority the power to appoint Assistant and Deputy Commissioners. The Authority should have the power to, in the interests of the efficiency and effectiveness of the service (i.e. in line with its functions) request the Commissioner to retire.

One issue which will need to be separately addressed is that of national security. The two viable options here seem to be to either transfer matters relating to national security to an alternative agency (Mulqueen, 2012) or to reserve certain matters from the purview of the Authority. The latter is more or less the approach of the PBNI, though with some possibility of review.

Appointment/membership

Broad, democratic membership is key to the success of an independent policing authority. As was felt by the Patten Commission a majority of elected members (i.e. TDs) will give the authority that legitimate, democratic position. An Authority of 17 or 19 members would be appropriate with 8 or 9 being TDs.

The Authority will be supporting a large organisation, one with significant legislative and human rights obligations. To this end it should draw on expertise existing in Irish society. Thus the balance of membership should come from different walks of Irish life including business, community, charity, NGO, academic, legal profession and so on.

Appointments should be determined by the Minister for Justice and a diversity that represents the cultural mix of society should be achieved. The English approach of a directly elected Police and Crime Commissioner is not advised as this would, it is submitted, reinsert politics into the heart of police governance and accountability.

Relationship to Government and the Oireachtas

Under the proposals contained herein, a triumvirate would be created between the Minister for Justice, the Police Authority and the Garda Commissioner. Each would have their individual function in respect of policing, leading to the transfer of many of the current powers of the Minister to the Authority.

Numerous relationships are created within this triumvirate:

- Authority and the Commissioner
- Authority and the Minister/Dept of Justice
- Commissioner and Minister

- Authority, Commissioner and Minister

How these relationships operate will depend in part on the functions assigned to each member, but also on the personalities of those within the roles and their commitment to the relevant values.

Relationship with GSOC and the Inspectorate

In this new scenario envisaged both GSOC and the Inspectorate would play invaluable roles. The Authority would not have the capacity to consider individual complaints and so some such body is essential. In addition the Inspectorate is essential for the assessment of garda practices and procedures (promotions being one that may be in need of immediate consideration). Indeed, if anything, consideration should be given to the expansion of its remit in order to conduct examination and inspections of individual police stations with the aim of ensuring efficient and effective policing.

- **Accountability**

As was stated by the Patten Commission: “accountability places limitations on the power of the police but it should also give that power legitimacy and ensure its effective use in the service of the community” (1.13).

Accountability is achieved in a number of ways: internal discipline, through the Dáil, through GSOC or through the courts either through the dismissal of evidence in criminal cases or through civil actions taken against the police. There has in my view been far too great a reliance on the final of these options which is indicative of problems with other options. Indeed we have also had to resort all too often to tribunals and commissions of inquiry. The Minister answers questions before the Dáil while the Commissioner can in certain circumstances be called before various parliamentary committees.

In general, I believe the creation of GSOC was the correct move and it lays the ground work for great change. There are, however, reforms that are required, some legislative, some more practical.

The Commissioner should fall within the remit of GSOC. The admissibility requirements set out in the legislation should be reformed so as not to simply reflect the disciplinary regulations. In a large number of instances when people have been bothered enough to complain they have been told it does not meet the criteria: this does not enhance confidence in the accountability of the force. The Commissioners of GSOC should not be political appointees.

Until 2011 data was published on the methods adopted in relation to complaints received. These revealed that just one third of complaints were independently investigated, usually limited to instances where criminal activity was alleged. And as we know a number of gardaí are seconded to GSOC. We need greater independence in the investigation of complaints.

We also need greater transparency from GSOC through the publication of full statistics. Neither of these changes require legislative reform. Nor is it solely about resources as there have been years when GSOC has underspent it's budget.

Engagement with young people needs to be improved: when investigations are mandatory (serious injury or death) young people are represented in the statistics to a greater extent than when it is at the impetus of the victim to complain. Given that young people can have such high levels of interaction with the police it is fair to assume our picture of young peoples concerns as to policing are incomplete.

Beyond the work of GSOC, the issue of transparency needs to be more fully addressed. An Garda Síochána needs to be brought within the remit of the FOI legislation. We need the publication of more data: stop and search data is one obvious lacuna. And we need an acceptance of researchers as critical friends. AGS has been a relatively closed institution to research.

Conclusions

A unique opportunity presents itself, where there is broad agreement on the need to reform policing. For those with the capacity to reform policing in Ireland, my primary call would be for the creation of a Patten style commission which would conduct a thorough review of policing in Ireland, listening to all those with views to express.

There can be no doubt that an empowered, independent Authority has the capacity to depoliticise policing in Ireland and make a substantive contribution to the governance and accountability of policing. An Authority which is not given specific powers such as the setting of policing plans, the determining of budgets and the appointment of the Commissioner, could on the other hand be a retrograde step for Irish policing. In that scenario we create the semblance of independence and accountability without the reality, just as was done with the creation of GSOC in the last decade. That would be a disservice to Irish society and to the members of an Garda Síochána.

In the wake of the Morris Tribunal swathes of reforms were introduced and swiftly imposed on the service, in addition to the toll of the recession and its resource and financial repercussions. As can be learned from the experience of substantial reform in Northern Ireland great care needs to be taken to lead the members of the service positively through any further changes (Murphy, 2013). Chan warns 'change is traumatic, it has to be directed and continuous, people must be willing to change and, finally, planned change is difficult to achieve, especially where it is imposed by one group on another' (1997: 237). That challenge must be embraced. It is timely to look back, I think to the words of Dermot Ahern six years ago, when it was claimed that the reform package of 2005 was sufficient.

"It is now an organisation that is more open to the outside. It has a new professionalism in its management development and selection systems. It is prepared as never before to perform its functions effectively, efficiently and fairly in responding to the needs of local communities. Thanks in large measure to the

findings and recommendations of the Morris Tribunal, we now have a system of oversight in place to ensure, as far as humanly possible, that the abuses uncovered by the tribunal do not recur" (Minister for Justice, Dermot Ahern in Dáil Éireann, 2008)

Bibliography

Bowling, B. & Foster, J (2002) "Policing and the Police" in Maguire, Morgan & Reiner, eds., *The Oxford Handbook of Criminology*, 4th ed, Oxford: Oxford University Press.

Brunger, M (2011) "Governance, accountability and neighbourhood policing in Northern Ireland: analysing the role of public meetings" *Crime, Law and Social Change*, Volume 55 (2-3), pp 105-120

Carr, J and Haynes, A (2013) "A Clash of Racialisations: The Policing of 'Race' and of Anti-Muslim Racism in Ireland", *Critical Sociology*

Chan, J (1999) "Governing Police Practice: Limits of the New Accountability", *British Journal of Sociology*, 50(2) p. 251.

Conway V and Walsh, D (2011) "Recent Developments in Police Governance and Accountability in Ireland" *Crime, Law and Social Change*, 55(2-3), pp 241-57

Conway, V (2009) "A Sheep in Wolf's Clothing? Evaluating the Impact of the Garda Síochána Ombudsman Commission" *Irish Jurist*, 43 pp 109-30

Conway, V (2010) *The Blue Wall of Silence: The Morris Tribunal and Police Accountability in the Republic of Ireland*, Irish Academic Press

Conway, V (2013) *Policing Twentieth Century Ireland: A History of an Garda Síochána*, Routledge Press.

Conway, V (2014) "All that shimmers is not gold: An Garda Síochána Ombudsman Commission and garda accountability" in Dukelow and Meade, (eds) *Defining Events: Power, Resistance and Identity in Twenty-First Century Ireland*, forthcoming Manchester University Press

Lustgarten, L. (1986) *The Governance of the Police*, London: Sweet & Maxwell.

Manning, P. (1977) *Police Work: The Social Organisation of Policing*, Boston: MIT Press.

Mulqueen, M (2010) *Re-evaluating Irish National Security Policy: Affordable Threats?* Manchester University Press

Murphy, J.(2013) *Policing for peace in Northern Ireland: Change, conflict and community confidence*, Palgrave Macmillan

Patten, C (1999) *The Report of the Independent Commission on Policing for Northern Ireland*, London:HMSO.

Reiner, R. (2000) *The Politics of the Police*, 3rd Ed, Oxford: OUP.

Walsh, D and Conway. V (2011) "Police Governance and Accountability: An Overview of Current Issues" *Crime, Law and Social Change*, 55(2-3) pp 61-86