

Meeting of the Joint Oireachtas Committee on Justice and Equality – 30 May 2018

Opening Statement by Josephine Feehily, Chairperson of the Policing Authority

Chairperson

Thank you for the opportunity to make a brief opening statement. It is quite an unusual but interesting position for a public body to be invited to discuss in person legislative proposals to give it new powers after they have passed second stage, but on reviewing the second stage debates it seems that the Minister for Justice and Equality may have suggested it – so perhaps I should thank him!

There were several references in the course of the second stage debate to the obligation on the Authority under Section 62(0) to report within two years on its effectiveness and the adequacy of its functions. For that reason, it seems to me that the most useful opening remarks I could make is to refer Members of the Committee to that Report, which was sent by the Authority to the Minister for Justice and Equality on 22 December 2017 and laid before the Oireachtas on 19 January 2018 and is published by the Authority in its website. The report made a range of observations and recommendations and 29 specific proposals for legislative change within the existing statutory framework.

Our overall assessment is that the Authority has been a positive disrupter in the Garda/Justice realm and had made a difference. We set out a range of achievements but the report acknowledges that there is quite a way to go. Regarding our functions, we consider that that they are broadly adequate for the tasks assigned to the Authority in the Garda Síochána Act, although frequently cumbersome, overly circumscribed, and inefficient.

Subsequently, the Authority made a submission to the Commission on the Future of Policing which is also published on the Authority's website. The Section 62(0) Report was incorporated into that submission, and for ease of reference for Committee members, the combined document is attached.

Governance and Oversight of the Garda Síochána

At the outset, I should repeat the Authority's position that oversight and accountability are essential to give legitimacy to public bodies and that the greater the power, the greater must be the accountability. The Authority would share the view expressed by the Patten Commission that:

"In a democracy, policing, in order to be effective, must be based on consent across the community. The community recognises the legitimacy of the policing task, confers authority

on police personnel in carrying out their role in policing and actively supports them. Consent is not unconditional, but depends on proper accountability, and the police should be accountable in two senses – the ‘subordinate or obedient’ sense and the ‘explanatory and cooperative’ sense”.

The Authority’s view is that a weakening of the consent to policing is a strategic risk for Garda Síochána organisation, and that transparency and accountability, which may be challenging for the system in the short term, is essential to mitigate that risk.

The Authority’s view is that while the Garda oversight architecture is necessarily complex it is unnecessarily confusing and siloed. There is a widely held perception within the Garda Síochána that there is “too much oversight” or “too much accountability”. The Authority does not agree. Indeed all of the oversight functions currently in place are common to most progressive jurisdictions and we consider that they must continue – inspection, review, performance oversight and challenge, complaints handling, Comptroller and Auditor General, accountability to the Government and to Parliament etc. but that there is scope for rationalisation, reducing ambiguity, limiting duplication and at the same time making sure there are no gaps. We hope that the Commission on the Future of Policing will take a whole of system approach to the recommendations it will make about oversight and accountability.

Barriers to the effectiveness of the Authority

In our Report under Section 62(O) of the Garda Síochána Act we identified some significant barriers to the effectiveness of the Authority including lack of performance management information and weak governance within the Garda Síochána. We also spoke about the challenge of overseeing the performance of an organisation, the Garda Síochána, while the Head of that organisation is simultaneously accountable to someone else, in this case the Minister for Justice and Equality.

Importantly we offered the view that uncertainty among stakeholders about the role and function of the Authority has the potential to affect public confidence in its effectiveness and that in our view it had impacted on the manner in which some stakeholders and groups, including the Garda Síochána and the Department of Justice and Equality engage with the Authority. This is largely as a result of a cumbersome legislative scheme, which is why we recommended to the Commission on the Future of Policing that the entire architecture be streamlined to remove duplication.

In this context we pointed out that the role provided for the Minister and the Secretary General of the Department of Justice and Equality is an essential part of the future consideration because their

current role is so all encompassing that it leads to the Department being critically conflicted in its responsibilities in relation to the Garda Síochána and simultaneously to the oversight bodies.

We also proposed to the Commission that it be put beyond doubt in statute that the Garda Commissioner is the Chief Executive of the Garda Síochána, is the de facto employer of all those who work in the Garda organisation, and is independent in the performance of his or her functions, and this recommendation is relevant to the Bill on your agenda today.

Conclusion

I hope Chairperson that these brief remarks about the Authority's recent reports gives the Committee a sense that the Authority would welcome new powers, but would welcome even more if the overall architecture was well defined and clearer, if the expectations of oversight bodies was clearer, and the limitations of oversight inherent in the current statutory framework was better understood.

Regarding the Bill before you, there are parts of it that are really clear, some where I think there are other solutions, and others where the Authority is not clear about how they might fit into the existing architecture. I welcome the opportunity to better understand the intentions of the sections and to discuss the Authority's views.

Finally Chairperson, if I may make a plea. In our report on our effectiveness, we point out that there was no real lead in time for members of the Authority between their appointment and the commencement of our statutory responsibilities. If this Bill is enacted by the Oireachtas, may I ask for a provision that requires a commencement order? Having new responsibilities before you have time to get ready is high risk. However, as we have done with the existing statute, I assure the Committee that the Authority will work to the best of our ability with the statutory framework and the powers and responsibilities given to us.

Thank you

