

DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART

JOINT COMMITTEE ON JUSTICE

Dé Máirt, 22 Meitheamh 2021

Tuesday, 22 June 2021

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Pa Daly,	Robbie Gallagher,
Martin Kenny,	Vincent P. Martin,
Niamh Smyth.	Lynn Ruane,
	Barry Ward.

Teachta / Deputy James Lawless sa Chathaoir / in the Chair.

Civil Liberties during the Covid-19 Pandemic: Discussion

Chairman: We have a quorum of members and will commence our meeting. We are opening in public session. When the witnesses are speaking I ask them to ensure they are not on mute and when they are not speaking I ask them to mute their devices so we do not cut across each other. This goes for members also. It is straightforward but even though we are all very familiar with online meetings now sometimes we can forget. If people have headsets they may wish to wear them to minimise interference. It is not mandatory but if they have them sometimes it can help with background noise.

I welcome everyone here today. We have not received apologies to date from members but some may come in during the course of the meeting.

The purpose of today's meeting is to engage with stakeholders who have made written submissions, and I thank them for these, to assist the committee in our deliberation on civil liberties during the Covid-19 pandemic. This covers a range of questions that have been addressed in many of the written submissions and I look forward to exploring them further in oral testimony today.

I welcome the witnesses to our meeting today. We are joined by Dr. Pete Lunn, head of the behavioural research unit at the Economic and Social Research Institute; Professor Caroline Fennell and Mr. Tony Geoghegan, commission members of the Irish Human Rights and Equality Commission, IHREC; Mr. Liam Herrick, executive director, and Ms Elizabeth Carthy, policy officer, of the Irish Council for Civil Liberties, ICCL; Ms Antoinette Cunningham, general secretary, and Mr. Paul Curran, president, of the Association of Garda Sergeants and Inspectors, AGSI; Deputy Commissioner Anne Marie McMahon, Assistant Commissioner Anne Marie Cagney, and Ms Kate Mulkerrins, executive director of the legal division, from An Garda Síochána.

Can everybody hear me? Everyone is nodding their head. We are all hooked up.

Before I ask the witnesses to deliver their opening statements I want to advise them of the position regarding parliamentary privilege. Some of them will be familiar with Oireachtas committees and others will not. Even for those who are familiar, the rules have changed slightly as we are holding remote sessions in a Covid age and I ask them to note the following. All witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity they will be directed to discontinue their remarks. It is imperative that they comply with any such direction if given. For witnesses attending remotely outside the Leinster House campus, which is pretty much all of the witnesses today, there are some limitations to parliamentary privilege accruing from same. As such, they may not benefit from the same level of immunity from legal proceedings as a witness being physically present would in the normal course of events.

Members are reminded of the long-standing parliamentary practice to the effect that they shall not comment on, criticise or make charges against a person outside of the Houses or an official either by name or in such a way as to make him or her identifiable. The same goes for members and witnesses. I have already mentioned that the level of privilege does not extend

outside the House as it does inside the House. Unfortunately, members cannot participate remotely in a public meeting so all members of the committee who are participating today should be present in the Leinster House precinct.

We have quite a few witnesses today and I am looking forward to the engagement. Some of the opening statements are detailed and some may have quite a lot of content. We have to stick to the two-hour limit. I remind all participants, including members and witnesses, to adhere to the subject matter as scheduled for today's discussion. Unfortunately, we do not have the latitude to have a wider-ranging debate because of various restrictions, primarily because of the two-hour limit. I will keep it on topic and if it begins to move off I may have to cut across people and I apologise in advance if I need to do so.

The provisions of Standing Orders also extend to any matters that are *sub judice*. If the topic does stray into any such matters I will ask members to avoid, if at all possible, comments which may prejudice the outcome of any proceedings that may be in being. I will not be able to permit any discussion that may occur in the course of the meeting that segues into current litigation, and I ask people to be aware of this.

I will invite each organisation to make an opening statement. Each organisation has five minutes. If they choose to divide that between speakers, as some of them have more than one person in attendance, they may do so but the time for each organisation is five minutes. Some of the opening statements have quite a lot of detail and I ask speakers to keep to the five minute limit. If necessary, I will flag when the five minutes have been reached to keep things moving. After opening statements there will be a round of engagement with committee members. We will try to get to everybody once and there may even be time for a second round of questions or observations if we get on well. The first speaker will be Dr. Pete Lunn. He is very welcome to the committee. I have enjoyed watching him on various programmes over the past 12 months. His commentary has been very useful.

Dr. Pete Lunn: I thank the Chair and many thanks to the committee for the opportunity today to present evidence. I see my role here primarily as a behavioural scientist who can provide evidence and analysis about the public response to the pandemic. I am happy to share my observations on how scientific evidence has been used to inform policy decisions but I should be clear that at no stage have I had any decision-making role, although at various points I have supplied evidence and advice to NPHE, the Department of the Taoiseach, the Department of Health, the HSE and HIQA. Mostly, what I have to offer is insight into public support for restrictions and factors associated with compliance.

The response to the Covid-19 pandemic consists of what behavioural scientists call a "collective action problem". It perhaps differs from most instances where concerns about civil liberties are raised in response to attempts by governments to constrain behaviour. Behaviour in a pandemic affects not only the individual actors and those who engage with them but it has rapid, direct and serious consequences for multiple members of society at a remove. Solving a collective action problem requires co-ordinated behaviour through which individuals are willing, or in some cases coerced, to make sacrifices to pursue better outcomes for all. My team's research evidence has consistently shown that people in Ireland understand Covid-19 as requiring such a collective response.

At the beginning of the pandemic, in contrast to advice given in the UK, the ESRI's behavioural research unit, which I lead, provided evidence that in the face of a collective emergency, public tolerance for restrictions on behaviour could be high and enduring. I do not know

whether this evidence influenced decisions but it supported rapid initial implementation of strict public health measures. In my view, this policy and the high adherence to the measures saved thousands of lives and is the main reason that the death toll per person is lower in Ireland than in most of our European neighbours.

Once the initial curve was flattened, however, deciding the appropriate level of ongoing restrictions was always going to be difficult. People have different tolerance for risk and data by which to gauge the threat constantly change. Restrictions fall harder on some than others and reasonable people disagree about how to strike the balance. Nevertheless, the evidence is unequivocal that prior to the most recent, third, wave of Covid-19 infections, Government decisions were consistently less restrictive than majority public opinion wanted. I have made this point repeatedly and demonstrated it via multiple pieces of data analysis, but I continue to find that it comes as a surprise to many, including, it seems, the media today. For instance, from June 2020 to February 2021, the Department of Health's publicly available tracking data showed that the majority of the population thought Ireland was trying to return to normal too quickly. The proportion who thought the Government response was too extreme never climbed above 10% during 2020. Other indicators and data sources tell a similar story.

Of course, restricting the rights of an unwilling minority is not necessarily justified by the size of the majority in favour but it is important to recognise that the overwhelming majority of the Irish population supported the public health restrictions and, throughout most of the pandemic so far, would have preferred them to be more, not less, restrictive. This remained true prior to Christmas, when average public opinion favoured a less liberal easing of restrictions than was implemented.

In my submission, I refer to several reasons that I think Ireland can be proud of how it responded to the pandemic. Nevertheless, the need to decide policy flexibly in an uncertain environment exposed problems. In much of public life, people adopt and argue for positions, with rewards for consistent communication of apparent truths and penalties for expressing doubt or changing stance. This extends beyond politicians to officials, stakeholders, journalists, lobbyists and researchers. This aspect of democratic discourse has not helped us in the face of rapidly changing and uncertain evidence during the pandemic.

In this opening statement, I have focused my remarks on the policy response and the appropriate level of public health restrictions. My submission also contains material relevant to public engagement, inter-county travel and sunset clauses, which I am happy to discuss. There is one further point I would like to make, which is not contained in my submission as, when I wrote it, the analysis was incomplete. The point concerns enforcement. Most behaviour change in response to the pandemic has been voluntary. People have reduced activity without coercion, although social pressure has doubtless been important. However, as we know, some legal sanctions were introduced. Since January, my team has recorded data on people's perceptions of how likely they are to be caught and fined if they violate various restrictions. We have used statistical models to test whether the people who perceive a high likelihood of being penalised behave differently, that is, testing for an effect of deterrence. We found that the people who judged the likelihood of being caught and fined to be highest were less likely to meet up with many people from other households, although we found no effect on how likely they were to visit other homes or have a close contact. This effect is statistically significant but small compared with comparable effects that influence voluntary compliance. Overall, the analysis does not prove, but is consistent with, a modest deterrence effect limiting larger social gatherings. I thank members for their attention.

Chairman: I thank Dr. Lunn for his opening statement and for keeping within the time-frame. I now invite Professor Fennell to make her statement and she has five minutes to do so.

Professor Caroline Fennell: I thank the Chairman and members for the opportunity to speak to them today. I am joined by my colleague, commissioner Tony Geoghegan. The Irish Human Rights and Equality Commission is Ireland's independent national human rights institution and equality body. In this role, the commission holds a specific mandate to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality, and examine any legislative proposal and report our views on any implications for human rights or equality.

While there has been no single Irish legislative Act specific to the treatment of civil liberties since the outbreak of Covid-19, there has been a raft of emergency regulation and guidance, which the commission has examined in our report, Ireland's Emergency Powers During the Covid-19 Pandemic, undertaken with experts from Trinity College Dublin's Covid-19 Law and Human Rights Observatory. Among our conclusions in the report was that the Government has blurred boundaries between guidance and regulations, leading to considerable confusion with regard to the boundaries of legal liability. We found that certain groups were potentially disproportionately affected by policing powers, but we lack the data to clarify this because they have not been provided. We also concluded that defects in the lawmaking and review process have led to a lack of human rights and equality expertise in decision-making structures.

There has arguably never been a time in Irish democracy when our normal day-to-day lives and activities have been so restricted. The commission recognises that the Covid-19 crisis presented an unprecedented challenge to the State and its obligation to protect the rights to life and health. However, unprecedented times raise the bar for a scrupulous regard for, and safeguarding of, civil liberties. In this regard, our report on the Covid-19 pandemic has found the State wanting in a number of respects.

During our appearance before the Special Committee on Covid-19 Response in September 2020, we stated that emergency legislation must only be used in exceptional circumstances and must be subjected to strict human rights standards and oversight. The response to the pandemic, however, has revealed a lack of human rights and equality expertise in the decision-making structures put in place to tackle the pandemic and the systems that implement and scrutinise those decisions. In addition, shifting relationships between the Government and the National Public Health Emergency Team, NPHE, and limited opportunities for Oireachtas oversight have made it difficult to ascertain where, if at all, human rights and equality concerns are being addressed.

The commission has been clear from this experience that the Government should at all times and in all communications maintain a clear distinction between measures that are legally obligatory and public health advice. In particular, the Government should not present public health advice as if it were criminally enforceable. A fundamental principle of the rule of law is that people subject to that law have clarity about what is expected of them.

The commission remains of its long-standing view that a dedicated Oireachtas committee on human rights, equality and diversity would bolster parliamentary oversight of the implementation of legislation generally, particularly emergency legislation such as that introduced in response to Covid-19, and the equality and human rights implications of the pandemic. Noting the extensive powers afforded to An Garda Síochána under emergency legislation, the commission has consistently, along with others such as the Policing Authority, raised the need for com-

prehensive, detailed and disaggregated data and information on the implementation of these emergency powers. The need for this is clear, to ensure the powers are being exercised in a transparent manner and in line with human rights and equality principles, such as non-discrimination. As I speak today, these data are still not fully available.

In conclusion, while certain human rights can be limited on the grounds of the protection of public health, restrictions on rights must meet certain minimum requirements - in particular, legality, necessity, proportionality and non-discrimination. I thank the committee members for their focus specifically on civil liberties. This is an important discussion to have, particularly now as we hope the mix of our vaccination programme and collective action will allow us to turn a corner. Around that corner, there should not be any lingering of the pandemic powers that were introduced *in extremis*. This parliamentary oversight process and its insights can act as a significant bulwark in protecting against the erosion of our values, our democracy and the rights that underpin them.

Chairman: I thank Professor Fennell for her contribution and for also keeping to the time. It helps with the smooth running of the meeting. The next speaker is Mr. Liam Herrick, who is familiar with and to the committee. He has five minutes to give an opening statement.

Mr. Liam Herrick: I thank the Chairman and members for their invitation to appear before the committee today. Over the past 16 months, the Government has taken a number of drastic and far-reaching measures to protect life and health and maintain economic activity and income. Some of those measures have involved very significant interferences with human rights. The choices the Government and the Oireachtas have faced have been onerous and complex and often had to be executed in a changing environment. Ireland did not suspend constitutional rights or derogate from its international human rights obligations. Everything that was done by the Government, unlike in some other jurisdictions, has been executed within human rights norms and subject to those norms. Against those norms, the impact of Covid-19 and the State's response have been enormous. To step back and reflect on how extraordinary this period has been, we have seen that the role of our elected representatives in considering and enacting our laws has been diminished. Access to the justice system has been frustrated, including with regard to matters of liberty and the punishment of crime. We have been prevented from leaving our homes without a reasonable excuse under threat of fines or criminal prosecution and we have also been prevented, again under threat of criminal sanction, from meeting family or exercising our constitutional rights, such as those to worship and to protest. In addition, new systems of detention have been established to deal with those who may be ill or for people arriving into Ireland.

Since the onset of the pandemic in March 2020, the ICCL has assessed a wide range of measures introduced by the Government and recommendations have been made to the Government and to the Oireachtas across a broad range of policy areas. We have published reports, held public meetings and participated in public discussions on these matters. All our submissions and analyses are captured in our Human Rights in a Pandemic report, and that has been circulated to the committee as our submission in respect of the questions posed in this regard. At all times we have supported the public health effort, but we have also articulated our view that human rights standards provide a framework for how all these difficult decisions facing the Government could be made.

Our analysis is that the Government has done well in many areas, but the restrictions introduced in other areas have been disproportionate or have impacted disproportionately on some sections of society. I will focus on just some of these issues. The Government has failed to fol-

low good practice in the development of laws during Covid-19. This topic has already been addressed by Professor Fennell, but the ICCL is deeply disappointed that the Oireachtas recently approved, albeit narrowly, the Government's proposal to extend extraordinary ministerial powers until November, with the possibility of further extension. The refusal by the Government to accept even modest amendments which would have provided the Oireachtas with the role of reviewing regulations and to cease the use of criminal sanctions in a public health sphere is deeply regrettable. The ICCL calls for an urgent return to normal democratic practice in this regard.

The choice to rely on criminal law and police enforcement is a key theme in our report. The ICCL believes in following the science, and we have relied in our work throughout the pandemic on the work of behavioural scientists, such as that of Professor Lunn and his colleagues at the ESRI and the International Covid-19 Awareness and Responses Evaluation, iCARE, project of the National University of Ireland Galway, NUIG. We believe behavioural science indicates that while law and enforcement using criminal sanctions may play some part in underpinning a public health effort, the key elements in securing public compliance with public health guidelines lie in voluntary actions, clear and simple messaging and peer influence on behaviour.

We must remember that the behaviours addressed in public health guidelines are not criminal acts in any ordinary sense of the meaning of that word. The decision to involve An Garda Síochána in the enforcement of guidelines through criminal punishment rather than having a role as a front-line service protecting public health carries great dangers of damaging Ireland's model of community policing by consent. These risks and dangers have been managed well during the pandemic through strong leadership from Garda management and robust oversight by the Policing Authority, but a return to normal policing must be a key stage in the recovery process. These extraordinary police powers also carry a risk of discriminatory application. In the early stages of the pandemic, this risk was largely mitigated by the inclusion of safeguards, such as prosecutions requiring consultation with the Director of Public Prosecutions, DPP. However, since the shift to fixed penalty fines, we have seen an emerging pattern of discriminatory application, particularly concerning enforcement against young men from certain urban areas.

While at present the restrictions on movement have largely been suspended, restrictions with criminal sanction continue for events. We are also seeing the emergence of a pattern of uneven application of those enforcement mechanisms. The ICCL is also deeply concerned about the continuing system of deprivation of liberty under mandatory hotel quarantine. The Government's failure to provide clear criteria and justification for the continuance of the system and to meet certain minimum standards concerning conditions, inspection and accountability mean we can no longer support the continuance of the quarantine system as it prevails.

Finally, regarding all these areas, access to justice is crucial as a protective measure against potential denial of rights. There is an urgent need for additional resources in the courts system to allow it to address the backlog of cases built up during the suspension of hearings. This situation is especially acute concerning the criminal courts. We are now at a crucial stage of reopening Irish society, but we are not yet seeing a commitment to and a clear plan for returning to normal democratic rights and civil liberties. The ICCL calls on this committee to send out a strong message to the Government, and to the Department of Health especially, to commit to the end of the use of criminal sanctions in public health matters. Taking policing and criminal justice out of public health, restoring civil liberties and a return to democratic oversight should be the ultimate priority for the Government.

Chairman: I thank Mr. Herrick. Next, I call Ms Antoinette Cunningham of the Association of Garda Sergeants and Inspectors, AGSI. She is very welcome and I thank her for joining us today.

Ms Antoinette Cunningham: I thank the Chair and the members for the opportunity to address the committee. I should make it clear we are not here representing An Garda Síochána. We are representing the middle-ranking sergeants and inspectors as a staff representative association. The committee will also appreciate that many of the matters discussed already are grounded in political decisions and the AGSI, as a staff association, is bound by our rules to be apolitical. Therefore, commentary on political decisions is not within our remit and is not appropriate for us to engage in. However, a specific question was asked by the committee about Garda training resources and other matters concerning An Garda Síochána. Therefore, the majority of our submission concentrates on these areas. I just wanted to clarify those matters.

As we know, on 11 March 2020 the director general of the World Health Organization, WHO, declared Covid-19 a global pandemic. The effect in Ireland was immediate, with the closure of schools, colleges, childcare facilities and cultural institutions. Large gatherings were cancelled, pubs, restaurants and businesses were closed and restrictions were placed immediately on the movement of people. On 16 March 2020, the Garda Commissioner notified us, as a staff association, that a policing requirement was needed and that, with immediate effect, all members of our association would be moved from their regular pattern of duty, namely, six days on and four days off, and mainly ten-hour shifts, to a 12-hour policing requirement with a shift pattern of four days on and four days off.

This shift pattern also meant the movement of AGSI personnel from key roles in training, traffic, non-core units, community policing and various crime and training functions to ensure the availability of as many front-line personnel as possible. With no objections and overnight notice and with considerable disruption to family life, childcare and carer arrangements, the members of the AGSI moved immediately to the shift patterns required by the Garda Commissioner in an effort to meet the policing requirement. We did this to support the Garda Commissioner, the Garda organisation and do whatever was required of us to ensure the safety of the people while policing this pandemic.

It is important to state again that the AGSI is not a part of the decision-making process regarding public health regulations or any related restrictions imposed during the health emergency. It will be appreciated that it was difficult at times to hear the role of the Garda being played out in public debate. However, AGSI members were steadfast in supporting the Garda Commissioner to provide the service required and we continue to do our jobs in the most professional way possible.

One of the major challenges for us involved the enforcement of health regulations. Included in our written submission to the committee is a visual representation showing a sample of some of the regulations members of the AGSI had to, and continue to have to, enforce. The committee will appreciate that it was exhausting for sergeants and inspectors to try to keep up with the new legislation and regulations imposed by the Government. The training function in An Garda Síochána was cancelled to support the policing requirement on the front line. It was mainly left to us, the sergeants and inspectors, as middle-ranking supervisors to interpret, to disseminate and to instruct our Garda colleagues on these new and additional powers. This interruption to training placed an additional burden on our members. The committee can appreciate the regulations were frequently lengthy, complex in nature and required deep reading to understand and implement. As the supervisory rank, this fell mainly to the members of AGSI.

While some assistance was provided through the Covid unit established at Garda headquarters, this was deemed insufficient for our needs and again, it was mainly left to us to try to find a way to implement and understand these regulations.

On a positive note, the “four Es” approach, namely, to engage, explain, encourage and, as a last resort, enforce regulations, was very quickly understood by AGSI members. We constantly reminded our colleagues we must be fair, reasonable, equitable and respectful of members of the public and must ensure all human rights were adhered to and that engagement with the public was a key element to ensuring co-operation with the regulations. This was received very positively at the start with a high level of interactions with the public, and co-operation from them, being reported by our members. However, as the policing requirements moved on, we remained concerned at the various legislative measures being debated over the national airwaves. These included suggestions Garda members could enter people’s homes to check whether they were self-quarantining and on matters relating to house parties and gatherings in private dwellings. We tried to provide clarity as best we could via the platforms and forums available to us. Again, we were deeply concerned about any possible implications this might have for our members, who are very conscious of the constitutional rights of citizens at all times.

We are very concerned about the impact of the pandemic on the health and safety of our own members. This was particularly relevant when mandatory hotel quarantining was introduced. The role of the Garda in it, while downplayed at first, became very important very quickly when difficulties emerged almost immediately. The vaccination programme for Garda members was unsatisfactory at this point, with everybody else involved in the process being vaccinated while members were not.

On another positive note, the establishment of the divisional protective services units, DP-SUs, prior to the pandemic proved invaluable in allowing our members to continue to make regular contact with victims of domestic violence and provide reassurance and support, as well as to progress investigations. The AGSI used every opportunity we had, through our own internal communications, media and social media, to remind our members that the regulations and travel restrictions did not apply to victims of domestic violence.

The protest on Grafton Street on 27 February showed the challenges between the legitimate right of people to engage in protest and the policing requirement also needed on that particular day. Members of the AGSI were severely tested with the deliberate firing of a missile at the gardaí showing the dangerous and hostile environment that can emerge from such protests. When further conflictual and public order incidents have arisen, even in recent times, criticism was levelled at members of our association appearing in riot gear, without proper debate about why it was needed in the first place, which was of course to protect the health and safety of the members of the AGSI when missiles and bottles were being thrown at them.

There was no engagement by Government with staff associations on the policing of the pandemic at any point. We think this was unacceptable. Given the short timeframe at the start of the pandemic, we understand why engagement might not have been possible but as we moved through the policing of the pandemic there was plenty of opportunity for greater engagement with the Garda staff associations and we believe this was a missed opportunity.

With the country in lockdown, the Garda focus was on high-visibility patrolling, and particularly on supporting the elderly and vulnerable in communities. The Government did supply additional community-based patrol cars to the Garda and the AGSI found these to be an invaluable resource to allowing Garda members to do what they do best, namely, interacting with

communities, delivering groceries and prescriptions, collecting messages, assisting in small domestic chores and checking on relatives for people who genuinely could not visit their own family members. Many a positive socially-distanced chat was needed. No training was needed for these tasks, as it is embedded in the culture of members of AGSI to protect and serve to do what we do best.

The resourcing of matters such as PPE for AGSI members, while slow initially, did come on stream fairly quickly. However, of particular concern to us was the number of times members of AGSI were deliberately spat at with blood or saliva, causing great distress to members of our association.

I will move on because I am conscious of time. My final point is that we are really concerned that in the end, the regulations became viewed as Garda regulations not health regulations. This is very troublesome to us and to members of our association, who are deeply conscious of the need for us to go back, to police by consent and uphold the relationship between members of An Garda Síochána, the AGSI, and members of the public. We are acutely aware of the challenges posed to us during the policing of Covid. However, unquestionably and immediately, we remain committed to the policing of this pandemic and continue to do so, although there are many concerns expressed in our submission to the committee. Perhaps there will be more time to discuss those later.

Chairman: I thank Ms Cunningham. There will indeed be more time to discuss them. I thank the AGSI for its written submission as well as the statement we have just heard. Last but not least we have Deputy Commissioner Anne Marie McMahon. She has five minutes. I thank her again for her submission and her attendance today.

Ms Anne Marie McMahon: An Garda Síochána is delighted to be here this afternoon to discuss the very important issue of civil liberties during the Covid-19 pandemic. Human rights form the firmest foundation for delivering a policing service. That respect and confidence of the community is key to the delivery of our service. It is at the fore of all our policing considerations and decision-making processes. As guardians of the peace, safeguarding human rights has been central to the work of An Garda Síochána throughout this period.

An Garda Síochána's mission is keeping people safe. Delivering on that mission has never been more important than during the Covid-19 pandemic. For many across society, the Covid-19 pandemic has been a public health crisis of new proportions. It continues to bring about exceptional challenges and that is no different for policing. As the crisis unfolded, An Garda Síochána adapted quickly and moved to deploy all available resources to provide reassurance to the public and ensure compliance with Government public health guidance and regulations. From the outset, Garda personnel have been working immensely hard under an enhanced, high visibility, national policing operation in response to the Government's strategy to reduce the spread of Covid-19. An Garda Síochána has a long tradition of close community engagement. This has been vital during the Covid-19 pandemic. Together with statutory and voluntary bodies, An Garda Síochána engaged extensively with those who are most vulnerable in our community. Throughout this time members of the Garda have provided practical help and support to vulnerable people and contributed to their overall sense of safety. We are very proud of the strengthened connections that were built during the pandemic.

We also knew that due to the constraints on movement, victims of domestic abuse would be even more vulnerable. To tackle this we provided additional proactive support and protection to victims of domestic abuse as part of Operation Faoiseamh. This operation has led to thousands

of contacts with victims of domestic abuse and over 200 directly-related prosecutions. In parallel with this work, An Garda Síochána has continued to provide a policing service to the community focusing on disrupting and detecting organised criminal activity through intelligence-led operations. These operations have led to significant seizures of drugs and money.

As committee members will be aware, the Office of the Attorney General advises the Government of the constitutionality and application of proposed legislation where relevant to the work of An Garda Síochána. Therefore, as an institution of the Irish State, it is a duty of An Garda Síochána to apply the law in accordance with the principles of necessity, proportionality and accountability. In line with our tradition of policing by consent, An Garda Síochána has at all times adopted a graduated policing response to the enforcement of the Covid-related regulations. The Garda continues to prioritise engagement, explanation and encouragement, with enforcement as a last resort in what is known as the four Es strategy. When applying the four Es, members of An Garda Síochána were cognisant of the decision-making model. Under this model, decision-making must comply with the fundamental principles of necessity, proportionality and accountability, and be applied in a non-discriminatory fashion. Decisions to charge any individual with a breach of the Covid-19 regulations for almost all of 2020 were taken following consultation with the Director of Public Prosecutions.

In a rapidly changing environment, it was vital that our personnel, particularly front-line personnel, were kept informed of the powers available to them at any particular time. To ensure balance, reasonableness and consideration, a 24-7 Covid co-ordination office was established to provide advice and guidance to operational personnel around the clock. That was in addition to daily newsletters and other communication tools which provided clear instructions on complex public health regulations.

In the 16 months since the virus first took hold in Ireland, gardaí nationwide have had millions of interactions with people. As the vast majority in society have been adhering to public health regulations or came into adherence when requested to do so, only a very small proportion of these interactions resulted in a breach of public health regulations. A number of independent surveys have found high levels of public satisfaction and support for our approach to policing during the pandemic.

In line with prevailing public health advice and regulations, people were asked not to attend crowded areas or organise or attend large gatherings such as protests. As with all planned protests that An Garda Síochána is aware of, Garda management seeks to engage with the group or groups planning the protests and advises them of their responsibilities. A decision as to whether any event takes place rests solely with the organisers. It is important to note that An Garda Síochána does not have a role in licensing or approving protests. Any Garda activity as events evolved was in line with our graduated policing response. Where crowds gather, it is our responsibility to protect public safety and prevent and investigate any offences, as they occur. An Garda Síochána has been consistent in this response, based on our tradition of policing by consent. The gardaí involved in a number of policing operations during the pandemic demonstrated professionalism in what were potentially very dangerous circumstances. The Covid-19 pandemic is now hopefully beginning to subside and the lessons will be learned by all of us, including An Garda Síochána. Already our strong connection with communities nationwide is a source of encouragement for us.

As part of the Government's Resilience and Recovery 2021: The Path Ahead plan, An Garda Síochána will be continuing to support health advice and measures to protect the public. In that context, we share the common objective with each of the stakeholders here to protect the

Irish people and the communities in which they live. I hope that these observations have been of interest to the committee and I look forward to further discussions.

Chairman: I thank the deputy Commissioner. We have now heard all the opening statements. I will open the discussion up to members who will put questions to our guests. We will have some discussion and go around the table. We will try to get every member in once and we may go around again, time permitting.

I will get the ball rolling with a couple of questions. I might direct a question to one or other of our guests but if others wish to express a view, they should feel free to do so. I noted that Mr. Herrick spoke about how these are public health regulations and should be moved out of the realm of criminal behaviour and into the public health sphere. Ms Cunningham echoed Mr. Herrick's tone. She made the interesting point that when her members were enforcing regulations, lines became blurred because these are seen as Garda regulations as opposed to health regulations. That is an interesting observation. I am not sure how else it could have been done. We have many regulations in many sectors and Departments, some of which fall to the Garda, our law and order authority, to enforce. How could they be decriminalised? Should there not be some sanction involved? What should happen if somebody breaks the law by holding a public gathering, refusing to wear a mask or doing something more serious? If somebody persists in offending behaviour without good reason, do we not need the force of criminal law to intervene? How else might we tackle that? Mr. Herrick might like to come in first and Ms Cunningham may also wish to answer.

Mr. Liam Herrick: We should recall that in the initial period after the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act was passed on 20 March 2020, there was a period of time in which gardaí were involved in operating checkpoints and engaged in other public functions to inform people of the public health guidelines but without any powers of enforcement. They appear to have performed a hugely valuable and successful function during that period as an essential front-line service without resort to punishment. The Minister for Health has, in the past year, introduced a number of regulations that have not contained penal provisions. It is clearly the position of the Government that it is possible to have regulations which do not necessarily have a consequence of criminal punishment.

The question more generally is what we are seeking to achieve. We are seeking to achieve widespread public and community compliance with a set of guidelines that does not relate to crime in any ordinary sense. As Dr. Lunn's statement indicated, there are a number of ways to achieve compliance. The effect of criminal law enforcement is probably marginal at best, particularly at this point in the pandemic. From a human rights perspective, that calls into question whether it meets the standard of necessity and proportionality.

There is a wider question about where our Garda and community policing reform process is going and the potential damage that can be done by having the Garda involved in areas that are not proper policing matters over too long a period of time. Our view is that this is the moment when we should certainly have public health guidelines and good communication. The Garda may have a function in informing and helping the public but there should be no more imposition of fines and punishment.

Chairman: I thank Mr. Herrick. I will ask Ms Cunningham to respond but before she does, I will think out loud. I represent Kildare North and County Kildare went into a separate lockdown last August. It was difficult because the rest of the country was coming out of lockdown while Kildare was going back into lockdown. People felt a sense of injustice, rightly or wrong-

ly. I noticed some commentary in the media at the time to the effect that some of the regulations were unenforceable. Unfortunately, a small minority took to flaunting the regulations on social media and took delight in it. This had a corrosive effect for public buy-in. People by and large were abiding by all of the regulations and doing their very best, with great personal difficulty at times. They were doing it anyway. A small number of people took satisfaction and delight in flaunting regulations and were actually advertising the fact and rejoicing in the fact there was no sanction. It struck me that perhaps a sanction would have been very helpful for that small number, not so much to punish or penalise those people - although they probably deserved it - but more to achieve the wider buy-in. One could then say that we are all in this together and we are holding firm, and that people could not go off and get away with it. I thought that aspect was very unhelpful. Does Ms Cunningham want to respond to those points?

Ms Antoinette Cunningham: The decision to introduce enforcement measures is a political decision. It is a Government decision and it falls to us to carry out that enforcement when we are required to do so. I agree with Mr. Herrick from the ICCL. In the initial days of the lockdown and the initial days of policing the Covid pandemic there were extremely high levels of co-operation without the need for the introduction of fines at that time. As we moved through the pandemic, the public started to tire of the restrictions and enforcement became a greater challenge for the members of the AGSI.

I agree on having more ways of communication. The difficulty for our members is that we must return to a society where we want to police by consent. If there is over-regulation at any point then that return becomes more challenging and difficult. We want to maintain the community-based approach that we have. We want to maintain relationships. More public awareness could have been done on the reasons for the necessity to continue with enforcement regulations and why they were needed by Government. The public now seems to have forgotten the reasons for the regulations being in place. Instead, they just see them as Garda regulations. It is almost becoming a situation for members of the Garda where they are damned if they do and damned if they do not. If we do not enforce, people will ask where we are. If we do enforce, we are seen as too heavy-handed. It is a very difficult situation for the AGSI members. We are concerned about this. The model of engage, explain, encourage and, only as a last resort, enforce, was a strong model and one that worked well for us.

Professor Caroline Fennell: To underscore here, there is an issue with regard to clarity. It is an incredibly important dimension of the rule of law. People need to know when it is that they are about to trip into or go over the line of criminal liability. It is undoubtedly the case that there has been a blurring of those distinctions in Government communications over the period of the pandemic and this has led to difficulties for the policing of the pandemic and for An Garda Síochána. It has also led to difficulties on the part of the public, who at times simply do not know or are confused as to what they can and cannot do, and when. This is in contrast to normal times when it is extremely clear whenever one is about to trip into that borderline of criminal liability. That is a fundamental point and is aggravated by the raft of regulations, which we saw a moment ago physically, in terms of the amount of information. That was difficult for the Garda but how difficult it was for the public, particularly in the context of mixed messaging.

Chairman: I will move onto my next question. There is a common theme. Professor Fennell spoke about clarity. With regard to my previous question, I am not necessarily stating that all of these situations should have criminal sanction, but what alternative sanction might exist? If we are passing regulations that are difficult, cumbersome and onerous on the public, it does strike me that there must be some sanction, be it civil or criminal. I believe that civil sanctions

present difficulties. I heard Ms Cunningham on radio explaining that it is very difficult to enforce. I am not quite sure how the regulation would work. What other alternatives might there be if criminal sanctions are not appropriate? Do we just hope for buy-in? Experience might tell us that hope might work for 99% of the population but it would rarely work for the extra 1%.

In recent weeks, days and even yesterday, we have seen confusion about how hospitality and businesses might operate as people begin to emerge from their shells post lockdown and as businesses begin to trade again on the streets and outdoors etc.. With the outdoor hospitality we saw earlier in the pandemic, a few weeks ago we had difficulties in the city centre and few weeks before that, the takeaway pints issue raised its head. I spoke to a publican who told me that he was scratching his head because if he was serving takeaway pints then or food for consumption off-premises, he had to contend with litter by-laws and canal by-laws because his premises is beside the canal bank. He was dealing with the public health regulations and with the licensing laws. He also realised that he was dealing with road traffic laws because if he was selling a takeaway pint to someone who was going to get in a car and bring it home with a Sunday roast, technically the person was putting an open container in the car to bring home, even if he or she was not drinking it at the time. This was all in the course of a five-minute conversation. It struck me that it is really open-ended and one could probably come up with another 100 regulations and rules if one wanted to keep looking. That has been a difficulty. I wonder if there is a point here. The Government cannot always get it right: it cannot be exhaustive and it cannot be prescriptive. In the face of something so unexpected and novel, is there a degree to which common sense will work? We have already asked about discretion. Can this be an approach? Is that enough? We know that we need to have certainty in respect of criminal law in particular but in a situation where the majority of people are doing their best, and where there is the spirit of the law if not the letter of the law, can discretion and common sense, and a call to people's better nature, work? I open that question to any witness who wishes to take it. Perhaps we can take a response first from Dr. Lunn on the behavioural side.

Dr. Pete Lunn: I will make a couple of points. Yes it can. The appeal to common sense can be effective, especially if it is made in the simplest possible terms. The crucial thing at all times in these collective action problems is that people can see rationale, whether it is a criminal sanction or just a social sanction, and that they can see the behaviour being requested is one that needs to be carried out by all for it to be best for all. If that can be communicated in a simple way, then usually voluntary compliance is sufficient. That is correct.

The Chairman was right to say this issue is linked to his previous question. We know from the behavioural evidence of collective action problems that continued non-compliance erodes the compliance of those who are acting in good faith. We have seen it within this pandemic. When there have been high-profile cases of non-compliance the overall level of public compliance falls. We also find that individual members of society who see others complying less, reduce their own levels of compliance. In a collective action problem, people do respond to what they see around them. This means that if there is no sanction for behaviour and people can genuinely simply get away with it and thumb their nose at everybody else, overall compliance will fall. It will not just be a minority that does not comply. The overall level of societal compliance will fall. In order to support a solution to a collective action problem, there has to be some degree of punishment for those who do not comply. There is a lot of behavioural evidence that would support that. In circumstances where there is, effectively, none, then one really has a problem because compliance can unravel. It becomes a question of what is the appropriate level of sanction when simple appeals to common sense begin to fail.

Chairman: I thank Dr. Lunn very much for that.

Mr. Liam Herrick: Specifically on the question of outdoor drinking, I believe that the consumption and sale of alcohol is heavily regulated in normal times because it is a highly sensitive area with regard to the commission of crime, public order, public safety and so on. What we have here is a very confused shift in policy and a lack of co-ordination between what the Government is saying, what local authorities are trying to manage, what An Garda Síochána is trying to manage, and what businesses are trying to do in the areas of takeaway drinks and the consumption of alcohol in public places. That confusion is leading to real problems. Dr. Lunn spoke of continuing periods of failure of compliance. We would be concerned at the public safety risk and the impact on community policing relationships if the Government does not come out with a pretty clear and coherent policy on what is legal and what is not in respect of the consumption of alcohol in the State out of doors. The current situation is worrying. We have seen some very serious consequences of that in recent weeks. This is an area that clearly needs to be addressed. Normally in our cities and towns the equilibrium of public order is linked to the sale and consumption of alcohol being restricted to on-licensed premises. That is not the scenario at present and that has a destabilising effect on the public order situation.

Ms Anne Marie McMahon: I will make a brief point about our response. From the outset of the pandemic we have been very conscious of the challenges the pandemic, and then the regulations, brought to bear on everybody. That is why our graduated response, using the four Es as our common theme in our overriding strategy, has worked well for us. Our approach to enforcement has been very much light touch in that context. Working our way through the four Es gave those we interacted with the opportunity to come into compliance, thereby minimising the numbers against whom we had to use the fourth E, the enforcement piece.

Chairman: I will move to other members. The first hand up is that of Senator Gallagher. For reference, I have noted the following members offering: Deputy Daly and Senators Ward and Ruane.

Senator Robbie Gallagher: I welcome all our guests and thank them for their presentations. It was very interesting to listen to all the viewpoints. I will start with Dr. Lunn, whose contribution was fascinating. I have heard him on the radio a number of times. The information he relays to us says a great deal about the Irish people. It is a credit to the vast majority of them. There is no doubt that the behaviour of the Irish people has saved thousands of lives. Everyone, in fairness, can take a bow for that. The purpose of today's meeting is to look back and then look forward. It is to look back and see how things went for us, take the lessons from that and try to implement them in the future if, God forbid, we are ever in the same situation again.

I have a few questions. Dr. Lunn made the point that at the outset the vast majority of the public were on message, which was, basically, that we were in the midst of a pandemic, none of us had been in that situation previously and everyone was doing what they were advised to do. However, with the passage of time perhaps that waned a little and led to some of the areas of concern that are being discussed here. Professor Fennell touched on some of those. I have a question for Professor Fennell relating to her contribution. She said that some groups were disproportionately affected. Will she elaborate a little further on that? She made the point, with which I agree, that the messaging is vital. Mr. Herrick made this point in his contribution as well. It is key that people understand fully what is being asked and expected of them. Mr. Herrick made the suggestion of an Oireachtas committee to oversee matters of that nature. That would be a good idea and I very much welcome it.

With regard to the Garda, I extend my gratitude to the members of the Garda Síochána and I ask Ms McMahon and Ms Cunningham to relay my gratitude and the gratitude of many people for the role gardaí played during the pandemic. The feedback I have received from the general public has been very positive about the role played by gardaí and the four Es when they met people. In many ways the bond between the Garda Síochána and the public is stronger now, post the pandemic, than it has ever been. That is a strong statement to make. It has been a massively positive experience. Meeting people in a non-confrontational manner at Garda checkpoints initially, having a chat with them and then advising them on what the regulations were went down very well and I received a lot of positive feedback in that regard. Unfortunately, when there was lack of clarity in the messaging the gardaí were the people who were on the front line. That was very disappointing and we have to learn a lesson from that.

Ms Cunningham spoke about how she felt that the members she and her organisation represent were put in a precarious position. Basically, reams and piles of regulations and legislation were thrown at them and they were more or less told just to get on with it. They had to digest it themselves first and then pass the message down to the members. That was not simple, and I compliment them on the manner in which they did it. What lessons did the Garda take from its on-the-ground experience during the pandemic? What recommendations or changes would the Garda make for the future generally?

Mr. Herrick made a very good point in his last contribution regarding the confusion among the public at present, and I fully agree with him. That brings me back to the word “messaging” again and the importance of the Government speaking clearly to the public, for example, with regard to outdoor dining at present. The current situation whereby gardaí are being told by the Garda Commissioner and the Department of Justice that an individual garda can use his or her discretion when it comes to policing the consumption of alcohol in an area that is not licensed is very unfair. First, it is unfair to the licence holder, be it a publican or a restaurateur, that there is such a lack of clarity. If I am a publican and I open my business this evening and I am serving food and a glass of wine or a glass of beer to somebody in a public area that is now being used by me for serving alcohol and food, a garda could walk down the street, close my business and tell me that I am breaking the law. That is unfair on businesses that have been through so much. Second, it is very unfair to the garda concerned as well. It puts him or her in an awful position because one garda’s definition or understanding of discretion could differ completely from another’s.

I would like the deputy commissioner to bring back the message, and the Government must listen as well, that as far as I am concerned there must be clarity on this because it is putting everyone in an awful position. It is unfair to businesses that have been through so much for so long. Even for members of the public who have been hemmed in for the last 18 months and who are going out to have a bite to eat and one or two glasses of wine or beer, to be confronted by a member of the Garda Síochána regarding illegal activity in situations such as that is clearly not good enough. Clarity is needed, and sooner rather than later.

Chairman: Senator, do you want any particular witness to respond to those points?

Senator Robbie Gallagher: No, I will leave it open. My points at the end were directed towards the Garda and its response, but it is open to anybody to make a comment.

Chairman: Some of those points were directed to the deputy commissioner and Ms Cunningham, but, as the Senator said, anybody who wishes can respond. I will start in that order and other witnesses can come in if they wish.

Ms Anne Marie McMahon: One of the key lessons learned for An Garda Síochána has been on community engagement and the value that people around the country in every community place on our engagement with them and their engagement with us. We are in the process of developing our next three-year strategy and our community policing framework will be at the centre of that. We always knew the importance of community policing, but the last six months have really emphasised it in a visceral and obvious way. That would be one learning.

In terms of our response to the vulnerable-----

(Interruptions).

Ms Anne Marie McMahon: That has been a fruitful operation in terms of taking positives out of it. Another learning for us is that there may be other areas we need to look at in the context of providing a similar type of response to other vulnerable groups. We can take that away.

In a broader sense, there have been lots of learnings for us, ranging from using technology to deliver briefings and arrange meetings to even delivering key messages to community groups using technology. These are all things that most people at this meeting would not have thought about 16 months ago. From An Garda Síochána's perspective, we were certainly not in that space.

While there are some negatives, there are many positives that we can build on for the future. We are constantly reviewing and learning. Another point relates to our communication, which was referred to earlier in respect of the four Es and our engagement with-----

(Interruptions).

Ms Anne Marie McMahon: With regard to our internal communications with everybody in the organisation, our new internal communications strategy has worked very well during Covid-19. We distilled a lot of complex messaging, some of it on regulation and in other cases related to our own protection, such as the use of PPE, social distancing and public health guidelines. That has been well received. There are many things like that which we will take forward after the pandemic.

Ms Antoinette Cunningham: I thank Senator Gallagher. As regards lessons learned, greater and clearer communication is a lesson for everybody in this pandemic. In the initial stages, I could understand the need for some decisions that had to be taken quickly. However, the Government missed an opportunity to engage on any level with the Garda staff associations, which represent the gardaí who were operating the enforcement and engagement of these regulations on the ground. It was a missed opportunity to engage more with the Garda staff associations as such engagement could have been useful in giving the on-the-ground experiences as to what may or may not work. There were mixed messages from the Government, which was unhelpful. If messaging is going out from the Government, it needs to be crystal clear. I agree with Dr. Lunn that people need to know the point at which they are stepping into non-enforcement and which sanction could be applied to them. There are, therefore, lessons to be learned around communication during the pandemic.

The Senator asked about the use of discretion. If the Garda Commissioner issues an instruction within the organisation about the use of discretion, as a rank-structured organisation that operates on a command structure, we obey the instructions as they are set out for us. However,

the Senator will appreciate that in using discretion, gardaí act on their own authority and judgment. They have to be crystal clear about how they will apply discretion. Discretion should always be applied fairly and equitably in similar circumstances. It cannot be applied differently to the same set of circumstances. We need to be careful, therefore, when we use discretion that we use it appropriately and apply it fairly and equitably to everybody. There cannot be an uneven application when it comes to the use of discretion. When a law is crystal clear it is clear what is or is not allowed.

Professor Caroline Fennell: On the question regarding the differential impact, one group I would mention is older people. This applies in particular in relation to the blurring and uncertainty with regard to the requirement to cocoon. There is no doubt that older people were disadvantaged by the communication of that, as well as by the implication that it would be a criminal offence not to cocoon and stay at home. I mention also the differential impact depending on what one's home is like. Being confined to home is a very different experience for someone in a congregated setting or a home shared with many others. In addition, the home proved to be a very unsafe place for women in respect of domestic violence. There was a very differential impact there. Additionally, there is no doubt that there was a differential impact for children in terms of the digital divide and access to education. There was also a differential impact in the context of law enforcement and policing, but I will defer to my colleague, Mr. Geoghegan, on that point.

Mr. Tony Geoghegan: To build on what Professor Fennell has outlined, it is a given that the pandemic has adversely affected some groups more than others. Professor Fennell outlined some of those. The impact of the pandemic has been much worse on the elderly, women, homeless people and people who are socio-economically disadvantaged.

Dr. Lunn mentioned voluntary compliance and how we ensure full compliance. Now that we are over a year into this pandemic, we should be learning lessons. These regulations and guidelines were put together quickly, but we have time to review them now. We should be engaging the elderly, the homeless and people with disabilities on the types of supports they need to ensure compliance. In framing the type of restrictions or guidelines that are needed, we should also engage the people who are most directly affected. They should be involved in drawing them up. As Ms Cunningham from the AGSI said, it is important that gardaí are consulted on how regulations are to unfold if they are going to have to implement them. People in society who are adversely affected by these regulations should have a voice in how they are drawn up.

Senator Gallagher asked what evidence there was for the particular groups being disadvantaged in the implementation of the restrictions. IHREC's report on Ireland's emergency powers during Covid-19, done in conjunction with the human rights observatory of Trinity College Dublin, TCD, suggested that Garda enforcement has disproportionately affected younger people and ethnic and racial minorities, including Travellers and Roma. It is important to acknowledge that.

A common theme in the input of a number of speakers so far has been the need to learn lessons this far into the pandemic. How do we learn lessons? We learn them by reviewing what is going on. It is impossible to review the implementation of these restrictions without having proper data, that is, disaggregated data that show people who have been fined, told to go home or whatever. That information should be available, broken down to include ethnicity. IHREC has been pushing for this for a long time. We have written to the Garda Commissioner on this matter and have pushed for it. It is basic. If we want to review the regulations and ensure they

are implemented in a human rights and equality frame, they must be capable of being reviewed. However, we need the data to be able to do that. This is a big issue. I know the Policing Authority also came out on this to encourage An Garda Síochána to include the publication of the data broken down in this way. It is part of our overall duty now. The public sector equality and human rights duty places an obligation on all of the institutions to show their actions are compliant with national and international human rights and equality legislation. Disaggregated data is very important tool we need if we are going to be able to review this whole pandemic and the responses to it properly and effectively for the future.

Chairman: I thank Mr. Geoghegan. I am afraid on this occasion I must cut Dr. Lunn and Mr. Herrick from responding because I am anxious to get to all of the members. I will now move on to the next member. The witnesses who did not get in on this question can come in on other questions. For housekeeping, we have approximately 40 minutes left. Deputy Daly and Senators Ward and Ruane have indicated. I will allocate ten minutes each to exchanges with the three members who are offering, which leaves us with ten minutes at the end for a short wrap-up. We will probably be a little bit tighter on time as we reach the end. It is a function of the restrictions, as is everything we are speaking about. I invite Deputy Daly to take the floor.

Deputy Pa Daly: I will keep it as brief as I can. I welcome all of the speakers and thank them for coming before the committee, in particular Mr. Geoghegan, if he is still with us. I have had some contact with him over the years when I worked in the Bridewell. He turned the lives of many of my clients around or gave them some bit of help along the way.

A common theme is the frustration all around and the proportionality of what went on. My experience of dealing with sergeants, inspectors and gardaí in Kerry was that they were frustrated. They were getting a lack of notice of the regulations. For example, they were receiving them very late on a Tuesday night and expected to implement them at 7 a.m. the following day. They were frustrated that they were receiving a lot of complaints from members of the public, for example, that people were spotted more than 5 km from home, walking on a beach or going up a mountain, when we were probably two weeks into the pandemic. People knew the virus was not being transmitted in that way. Gardaí spoke to me. Members of the public were frustrated that time was being taken up with this.

With regard to what was mentioned earlier about regulations, Sinn Féin introduced a Private Members' Bill, the Health (Parliamentary Oversight of Certain Instruments Relating to Covid-19) Bill 2021. We suggested the regulations be laid before the House for 14 sitting days or 21 days so they could be looked at before a vote would take place. This would have avoided the frustration that came, for example, from the regulations and the chaos that emanated last August when restaurants had to keep receipts. When it was challenged, it was dropped fairly quickly. This is something that could have been done. While the Bill was supported on First Stage, it has not yet been implemented.

There is an ongoing difficulty in Killarney, where there is a contrast or conflict between the by-laws in place for drinking on the street and the new regulations. Gardaí are being told from on high by the Government that they are to allow people to drink when more than 100 yards from a premises, but the by-laws of the town itself are in conflict with this.

Moving on to proportionality, Professor Fennell raised the point that many older people spent the last year of their lives in isolation when they were in lockdown, when it was not actually illegal for them to leave but they believed it was. Nobody was prepared to clarify this for them. There was a lot of isolation going on. We had an increase in domestic violence, and

today we heard about the 43% increase in complaints to Women's Aid. It has been difficult for me to obtain information, because of how Garda statistics are compiled, on whether there was a similar 40% increase in complaints of domestic violence-type incidents to An Garda Síochána and in charges, particularly in the second, third and fourth quarters of 2020 compared with the second, third and fourth quarters of 2019. Perhaps one of the gardaí could answer this question.

The ICCL, or perhaps it was Professor Fennell, spoke about following the science and the continuing restriction of events. What I heard six or seven months into the lockdown from the HSE in Cork and Kerry was that it did not know of one case of Covid from outdoor sports or outdoor transmission. Under the regulations, which are still in place, we can have only 100 people at a football match. This will be increased to 200 and perhaps to 10% over the coming months. Without looking at what is happening around Europe and the lack of a spike, certainly that I can see, these continuing restrictions on people's lives remain in place and this is unfortunate. It is especially unfortunate for the groups that are not slick lobbyists and do not have a PR team in place to push their agenda. I am thinking in particular of some of the sporting organisations where on a return to play, even in July and August of last year, hundreds of thousands of children returned to outdoor sport without, correct me if I am wrong, one case of Covid transmission but their lives were restricted. This was a lack of proportionality.

Approximately 100,000 people participate in the Parkrun events every year. A total of 50% of participants are women, 7% have disabilities and 17% are from lower socioeconomic groups. Approximately 12,000 people run every week and 100,000 people over the year. This event is still closed down. In the dealings I have had with the Department of Health, the group is being asked for preregistration. There is a lot of bureaucracy still in place. The events are returning in England, and perhaps Dr. Lunn has some knowledge of this, at the beginning of next month but there is no sign of it opening here. Why are these continuing restraints on people's liberty in place?

I note what the ICCL has said about a reluctance to let go of these new powers, and there had to be an extension of the powers until November rather than what we had suggested, which was to look at the vaccination rates until the middle of July, before the Dáil breaks up for the summer, and pitch it at a shorter term until the middle of July. Do the witnesses think this should have been followed? I thank the witnesses.

Chairman: As one of the 12,000 park runners myself, I completely agree with the Deputy's points on it.

Mr. Tony Geoghegan: I am in agreement with Deputy Daly's comments. From IHREC's point of view, the main issues regarding the human rights and equality provisions are about clarity to ensure the blurred boundaries Deputy Daly mentioned are clarified and that we have very clear advice. This would make it easier for everybody, including gardaí and the public. We need the data to review the impact of the restrictions. Our sense is they have impacted much more on certain groups than others. To hold this up we need the data. To have a proper review we need disaggregated data broken down.

The final point the commission is strong on is about democratic oversight. While our exercise today is part of that democratic oversight, to ensure equality and human rights issues are in the frame all the time, there should be an Oireachtas subcommittee on diversity, human rights and equality, given so many of these decisions are made between NPHET and the Government. There was a human rights subcommittee on NPHET which was discontinued. We are not sure there is adequate expertise in human rights and equality available to NPHET. We would

encourage there to be a human rights and equality subcommittee or someone on the main committee who has expertise in that to ensure measures are proofed through equality and human rights lenses and to look at the democratic oversight. As Deputy Daly said, how much time does Parliament have to oversee the new regulations and legislation which came in? Those are the important points I wanted to push.

Professor Caroline Fennell: On the issue of sunset clauses and review, we are strongly of the view there should not be automatic renewal for long periods of time of this type of emergency legislation. On the point made with regard to the tendency of such emergency legislation to continue, it has been our experience, in this jurisdiction and others, that if you have emergency provisions or temporary arrangements which are outside the norm or expand powers of the State, that tends to persist, unfortunately. It is enormously important we review and keep accountable those powers and that they cease when no longer necessary.

On this occasion, it would have been preferable if the latest extension had not been for so long. There needs to be a position taken that an emergency is for a limited period of time. There has to be justification and accountability with regard to the use of those powers. There also has to be a period of time - a sunset clause - when those powers disappear, and that they do not persist and are not transferred into the system ordinary. This was an emergency situation. We may have others. This may not be the last pandemic. This may not be the last extreme situation we have to face. It is *in extremis* we demonstrate our commitments to human rights and equality. That is where IHREC has pointed out that, on occasion, the State has been found wanting.

Ms Kate Mulkerrins: I welcome the opportunity to respond, especially to Mr. Geoghegan's request that we take back the issue of disaggregated data to the Commissioner, as well as Mr. Geoghegan's reference to ethnicity. IHREC, will know, because it is a valued member of our strategic human rights committee, that there have been persistent calls for us to do this. The Commissioner has received our advice in this regard and a report is with him.

The consideration is whether An Garda Síochána should be the collector of those data or the referrer of those data to entities within the State which already hold those data. That would require an action and legislative permission to take a unique identifier which is then transferred. That approach is congruent with Government policy, in that you take such data once but use them often, rather than have An Garda Síochána do it, which is not an expert in the collection of such sensitive data and, more importantly, is not the appropriate body to collect it in the context of such adversarial circumstances as suspects, in particular, and vulnerable persons may find themselves in *vis-à-vis* An Garda Síochána.

I want to assure this committee the Commissioner has heard loudly and clearly and is absolutely supportive of our need to collect these data, not just, as was said, pursuant to our section 42 responsibilities to ensure non-discrimination, and proactively to seek to do so, but based on empirical data. I wanted to intervene in that regard.

Since I am in, I ask the Chair to indulge me for 30 seconds. I will try to do a *tour de force* of a couple of points made. Deputy Daly, on behalf of his constituents, raised the issue of the lack of notice to members of An Garda Síochána of new regulations. I offer my deep sympathies to all of his constituents, but he will be aware the legislative architecture of Covid-19 encompassed five primary Acts and more than 100 statutory instruments, communication of which to An Garda Síochána, almost invariably because of our democratic legislative process, followed only after a late Cabinet meeting on a Friday evening in particular. It came into An

Garda Síochána in a form-----

(Interruptions).

Ms Kate Mulkerrins: -----as the Deputy spoke about, translated into usable advice for our members.

In this regard, I give a particular vote of thanks to our colleagues in the Office of the Director of Public Prosecutions, DPP, who, like our team here in legal, converted to a 24-7 on-call service for legal queries in this regard. However, it is a fair comment to make that we were always put to the pin of our collar, even with the help of our colleagues in the Department of Justice, to get that advice out in a timely manner. Ms Cunningham's comment and demonstration of holding up an example of those 100 statutory instruments is always more powerful than words. The legal department and my colleagues reverted to a 24-7 on-call service, so there was always available and timely advice.

As Mr. Herrick said, the great check and balance on us was that these were summary offences. Every single offence was referred to the office of the DPP, which was also on-call 24-7. There have been enormous efforts made to translate what was the most extraordinarily complex legislative architecture into usable and user-friendly advice.

Senator Barry Ward: At the outset, I will deal with some of the Garda issues. I have huge sympathy for the Garda. Its members have done a fantastic job under difficult circumstances. The country got into the mode of having a national pastime of catching friends, neighbours and family out, who were in breach of regulations, which was one of the most unfortunate features of the pandemic. Sometimes, gardaí got involved in that and ended up being the fun police rather than people who were enforcing regulations which were reasonable in some instances and unreasonable in others. There have been legitimate and unfair criticisms in the course of this meeting.

One of the most of important features of what the Garda has done is policing by consent and exercising discretion. It is, if not the most important, one of the most important aspects of policing in Ireland. It does not exist in many other jurisdictions. If you look at the rigidity of policing elsewhere in Europe, never mind places such as America, it results in injustice. We should be grateful for the fact we have highly trained and highly experienced gardaí who are in a position to exercise discretion and prevent things getting beyond a certain point. That is tremendously important.

You see an awful lot of criticism of gardaí online. You seem some tremendously unfair comparisons. You see video clips which are highly selective and take an incident without showing the context that gave rise to the incident etc. I accept the Garda has been in a difficult position in that and in respect of what has been said about the speed at which regulations have come down for enforcement and understanding.

At the same time, when we talk about discretion, the press release which went out earlier this week about the licensing laws was highly unhelpful and that difficulty in terms of the inconsistency of licensing laws has existed for a long time. It may have become more acute in the context of the outdoor dining scheme, but it is a key example of where the Garda can exercise discretion and manage things without having to make things worse.

In terms of the legitimate criticism I have heard, mandatory hotel quarantine is something

of which I have been critical. I just do not think it works. When there is an open border with a neighbouring jurisdiction it is a pointless exercise as it is very easy to circumvent.

The points Mr. Herrick made earlier about the deprivation of liberty are entirely valid and remain so. The issues with access to justice must be addressed as well and I absolutely support him in that regard. Clarity is also coming up as an issue and it is important. Of course, on the flip side of that, I point out the Government has been put to the pin of its collar as well. The Government is reacting all the time to the advice coming out from the experts, be that NPHEC, the National Immunisation Advisory Committee or whoever. Reacting to that is not easy either. The lack of clarity and the fact that the ground is shifting all that time is a product of that changing advice as much as anything else. That is why what Mr. Herrick said about the need to return to normal democratic practice is a little unfair. Sometimes legislation must go through quickly and that is the reality. In the Seanad I have also been critical of the speed with which items have gone through and the lack of time there has been for Members to actually consider their implications. One particular issue came to a head on a Friday night in the Seanad last year, namely the health Bill which brought in the offences related to parties. Again, Garda members were expected to enforce something which was totally unworkable but which the Government was desperately trying to get in place in time for the weekend, and we ended up with a law that was actually unworkable. However, that happens all the time. When legislation is urgent it is sometimes necessary to push it through.

Again, on the flip side, there was talk about a Private Members' Bill from Sinn Féin which would have required Ministers to lay regulations before the Houses for two weeks to allow Members to consider it. While that sounds lovely the reality is that hamstringing the ability of the Government to react in a timely fashion. If the Government had to wait two weeks to implement any regulations then its reaction time would be massively slowed, especially when one takes into account that advice must be got and proposals must go through Departments and then the Cabinet. To have a two-week period piled on top of that actually creates more problems than it solves, although I agree that the volume of regulatory law that has passed is impossible for lawyers to digest, including those in the office of the Director of Public Prosecutions, DPP. I am delighted to hear they have been so helpful to the Garda but the notion that non-lawyers, or gardaí who have work to do on the beat, would be able to digest that material in a quick or accurate way is a difficult one.

Another fair criticism is there has not been a single authority to rule on things, be that what constitutes essential travel or what constitutes a breach of regulations, etc. I said a long time ago that there should have been a single person in either the Department of Justice or the Department of Health, or a call centre that could be rung, in order that one could get a definitive answer as to what was or was not within the regulations. The absence of that was unfortunate. Of course that is hindsight and it is easy to deal with the problems after they have become apparent.

I also accept what Mr. Geoghegan and others said about how certain groups have been disproportionately affected. There is no doubt about that. It is unfortunate and even now is something that must be addressed. Mr. Herrick talked of young men being particularly affected. Young men are disproportionately represented throughout the criminal justice system. It does not make it excusable or a good thing but I am not sure that is a particular feature of the pandemic. A much more clear feature is the impact on people in lower socioeconomic groups, those who did not have the capacity to react or survive during restrictions that made their lives very difficult. They were definitely disproportionately hit by that.

I know we are all pushed for time but I have a further main point to make. Enforcement

is necessary. Dr. Lunn referred earlier to the erosion of confidence if there is ongoing and unchecked noncompliance with a regulation. We can all see that. We have particularly seen it recently as people feel we are exiting the pandemic, and God knows we all hope we are. There is definitely a feeling the rules no longer apply or are less important but the enforcement is still necessary. Mr. Herrick referred earlier to these matters, which he I think said were not crimes in the ordinary sense. I do not know if that is a fair characterisation of this. Take speeding for example. Speeding could go into exactly the same category in that there is not a victim when a person speeds, until things go wrong and he or she crashes into another car or a person. The same is true of a breach of these regulations. There is not a victim when a person who has been told to self-isolate goes outside, until things go wrong and he or she passes the virus on to another person. They are crimes and there is an absolutely legitimate reason there are restrictions in place. We can argue over whether they are proportionate or not, and I agree and disagree with some of what has been said on that front, but the restrictions are there for a good reason.

As a general question, I ask how we should enforce that without crossing the proportionality boundary. Can we accept enforcement is necessary because if we accept there is no penalty, notwithstanding what was said about certain regulations which have no penal element, how can we possibly expect everybody to get on board with abiding by regulations that are there for everyone's protection?

Chairman: The Senator made some strong points there and many observations. He summarised matters in his final question. Mr. Herrick was first to indicate.

Mr. Liam Herrick: I thank the Chairman and thank members for their questions. To be very brief, a huge amount of the points raised come down to questions of policing. That is appropriate because in terms of civil liberties, the interface between our civil liberties and rights and the power of the State is policing.

Ultimately, when we talk about enforcement there are two possible legacies from all this for the process of Garda reform that is ongoing and before the Oireachtas at the moment. One is a positive legacy in that we have seen more transparency around the use of policing powers during the pandemic. We have seen the Garda play an essential role in protecting vulnerable groups and we have seen, for some period, a community policing by consent model around the four Es which are about graduated engagement, all of which is hugely positive. However, there is another potential legacy too. We had 21,000 impositions of fixed penalty fines between January and 9 May this year. Most of those, 75%, have been imposed on men with 53% being on 18- to 25-year-olds. We have also seen concentrated application in socially disadvantaged areas. We have seen a confused application of public order policing and we have also seen a problem with irregular and uneven policing of protests, all of which could lead to a very negative legacy and a further alienation of some sections of society.

The choice is really one for the Oireachtas, namely, do its Members wish to start removing the criminal justice sanctions and the fixed penalty notices and get back to normal policing? Senator Ward talked about whether these were normal crimes. What we have talked about is criminal sanctions for people leaving their home without a reasonable excuse or meeting other people without a reasonable excuse. They are not crimes in any ordinary sense of the word. They are, appropriately, the subject of public health guidelines, advice and restrictions but other than in the most extreme circumstances when people are of their own volition trying to break the law, they are not properly policing matters. At this point in time we have a choice of roads here. One is to return more strongly than ever to community policing and the other is to potentially damage the relationship between the Garda and the community if we do not start to

unravel these controls.

Chairman: I thank Mr. Herrick. We move to the final member to contribute, Senator Ruane. She will close and then we will have responses from the witnesses.

Senator Lynn Ruane: I thank the Chairman. So much has been covered and commented on and some of it may seem repetitive but I will try to go a little further with the questions. I have about six questions and I will name which witness each is directed to so if someone can take note of that it will help us move more effectively than just opening them to the floor.

To the deputy commissioner, IHREC has prepared a report on the enforcement of emergency Covid-19 powers and how it has disproportionately affected young people and we have just heard similar from Mr. Herrick. I know the need for different, disaggregated data, etc. has been talked about but is there currently, or should there be, data on the number of Garda interactions with individuals which tracks all prohibited grounds of discrimination under the Equal Status Act? Protests were mentioned so I want to ask a question around the protests and the activity and movements of the far-right groups and again that is directed to the deputy commissioner. Is there a particular strategy that is employed by the Garda in dealing with those protests? As an outside observer, apart from that awful incident on Grafton Street, it appears that there is not as much policing of those groups as is there of other protests or other groups in general. Ms McMahon mentioned the four Es. When I think of these particular groups, which are protesting to publicise resisting enforcement, I wonder how the first three Es can ever be deployed. The whole purpose and point of these groups in attending a protest is the complete opposite of what Ms McMahon says is being promoted by the four Es approach.

There are a great quantity of data on the use of fixed-charge fines. Whether one agrees or disagrees with those charges being applied, the question that arises for me is whether they were applied as proportionately to those who broke the restrictions at the particular marches I mentioned as they were so liberally used elsewhere. For example, up until May, 2,910 fixed-charge fines were issued in Ballymun but only 75 were issued in Dún Laoghaire. My fear is that the issue of policing discrimination and bias is already built into the decision-making process, going right back to when the decision is made on where and whom to police. Will Ms McMahon comment on that?

My next question is for the witnesses from the ICCL and relates to the lack of disaggregated data. Mr. Herrick said that this is making it difficult to measure the disproportionate impact the public health restrictions during the pandemic have had on vulnerable members of society. Will he comment on how impact assessments can be carried out on the groups worst affected by the pandemic and unrepresented in the provision of services and supports?

I have a number of further questions for the representatives of An Garda Síochána but I will confine myself to one because of the time constraint. It relates to ethnic minority women and the fact they make up a disproportionate number of the victims of gender-based violence. It can be assumed that this group has also experienced the national rise in domestic abuse during the lockdown and Covid restrictions. Will the witnesses speak about the strategy implemented under the Garda's Operation Faoiseamh to provide support and services to disadvantaged ethnic minority groups, including migrants, Travellers, direct provision residents and so on?

My next question is for the witnesses from the AGSI and relates to the geographical distribution of Garda checkpoints. Is there information on the number and geographical spread of Covid-related checkpoints? This ties into my earlier point about where we choose to police.

I also have a question for Dr. Lunn. In the absence of detailed consultations, does he think the Government did enough in commissioning, gathering and analysing relevant data relating to the social and behavioural impacts of the pandemic response in Ireland?

Finally, will Mr. Geoghegan comment on what remedial action he considers to be required by the Government to mend the fundamental societal challenges that have been caused by the pandemic, which he outlined so well in his contribution?

I hope I did not speak too quickly and that all my questions were clear.

Chairman: The Senator is spot on in her timing and it was very helpful that her questions were targeted at specific witnesses. I hope they were all taking notes. Am I correct that her first question was to the deputy commissioner?

Senator Lynn Ruane: Yes, to the deputy Garda commissioner.

Chairman: I invite the deputy commissioner to respond.

Ms Anne Marie McMahon: I thank the Senator for her questions. Policing protests is always a challenge but from our perspective, we take a very strategic approach. There is a risk assessment in advance of the protest and a continuous risk assessment methodology is applied throughout the protest as well. On some occasions, things may start peacefully but they may escalate or de-escalate and we have to be prepared to respond accordingly. As part of that risk assessment, we take into account things like the available intelligence, where the protest is taking place and the evolving and dynamic situation in which we often find ourselves. It is very often the case that we have to make time-critical decisions. These are decisions that are made on the ground by tactical commanders. We also have other operational commanders at strategic locations, depending on the size and scale of the protest and the numbers attending. I want to assure the committee that all of these decisions are made using our Garda decision-making model. In addition, our response is a proportionate one. In some instances, it is based on how the situation evolves but the strategy is always minimum direction and minimum engagement in terms of any kind of a forceful engagement. Such engagement is always only as a last resort and a decision made by the tactical commander on the ground.

In terms of engaging with vulnerable communities, ethnic minorities and others, we engaged extensively with NGOs on our delivery under Operation Faoiseamh. Those interactions were very helpful in terms of our response and formed a key part of the strategy. That engagement was very informative in terms of how we were able to network and engage with people at their time of greatest need. That was very much part of the empathetic and proactive approach we deployed.

We have seen an increase in domestic violence reports during the pandemic. In the early stage, the level was up by between 20% and 25%. Those figures have stabilised somewhat now. While the pandemic highlighted this problem, we also know from our own engagement and records that it is not just a problem of the pandemic. It also arises at holiday times, including bank holiday weekends and different times like that, when there are large groups of family and friends gathered together. While such occasions are, on the one hand, a time of celebration, there is always a downside to them. We are very attuned and sensitive to that. Certainly, in terms of lessons learned, which was mentioned several times this afternoon, one of the key lessons for us is the importance of that Operation Faoiseamh approach when Covid is gone and we return to normal life. Even in the normal setting, we still have a lot of very vulnerable people

for whom times of increased intensity in terms of the family dynamic or whatever always have a downside. We are very attuned to that.

Chairman: I thank the deputy commissioner. I believe Senator Ruane's remaining questions were addressed to Mr. Geoghegan and Mr. Herrick. I invite Mr. Geoghegan to respond first, after which we will hear from Mr. Herrick.

Mr. Tony Geoghegan: Senator Ruane's questions were very intensive. It is beyond my scope to say how we can make things better overall from a governmental point of view. I certainly think that if this pandemic continues for some time, and it looks like it will, we need to focus on the people who are most badly affected by it. There was a lot of talk about how we bring people along with us and ensure there is compliance. The key is to engage people and look at what supports they need in order to comply and move forward. For the Garda, in particular, there are concerns as we go forward in the context that we are now such a diverse society culturally. The Commissioner has previously raised concerns about the level of cultural confidence within the Garda and the policing system. There has been evidence of discrimination faced by minority groups, particularly in respect of racial profiling, as we have seen in the past, as well as the stop-and-search powers and how they are used. For the Garda going forward it is very important that this cultural confidence is embedded in everything gardaí do, from their initial training, and for all members right across An Garda Síochána.

Mr. Liam Herrick: I am mindful that Senator Ruane had questions for other witnesses also. On the data point, I am very encouraged by what Ms Mulkerrins has said about the openness in An Garda Síochána in terms of the wider collection of this aggregated data. It has been one of the positive features of policing under Covid, that An Garda Síochána and the Policing Authority have produced high-quality and detailed data on a regular basis, which is a new level of transparency that we had never seen before in policing in Ireland.

We have a concern with the increasing use of fixed penalty notices, especially with recent protests that were small, socially distanced and in compliance with public health guidelines. People are being imposed with fixed penalty points for attending or organising those events. There were a lot of other high-profile public events, however, where people were not subjected to that. This will feed a public distrust in the even-handed approach.

Ms Antoinette Cunningham: Senator Ruane asked about checkpoints. The decision in a national policing plan on where checkpoints would be located is for Garda management. We just carry out the instructions when a divisional or a local policing plan is given to us by our managers.

Chairman: I thank the witnesses for their brevity. That concludes our engagement with regard to the time we have. We could easily give another hour or two to the discussion if we had the opportunity. We may return to the topic again.

If there is anything that the witnesses feel they would have liked to have addressed, if they wish to provide follow-up answers to questions or if they wish to make additional points arising from the discussion, but they did not get the chance today due to time constraints, they are more than welcome to make a written submission to the clerk of the committee to be circulated to members for information. There is no obligation but if anyone wishes to do that, they are more than welcome to do so.

It was an excellent session. From the submissions at the outset and right through to the en-

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agement today we have had very good quality interaction. Certainly lots of topics were raised, with lots of food for thought. I thank all of our witnesses for taking part in this very important conversation. All of the opening statements will be published on the Oireachtas website.

That concludes our engagement. I thank all members and witnesses who took part today, but primarily the witnesses who took time out from their schedules to be with us at this hearing and who contributed in such a valuable manner.

The joint committee adjourned at 5.33 p.m. until 3.30 p.m. on Tuesday, 29 June 2021.