



CIGIREACHT AN GHARDA SÍOCHÁNA
GARDA SÍOCHÁNA INSPECTORATE

**Report of the Garda
Síochána Inspectorate**

Delivering Custody Services

A Rights-Based Review of the Treatment,
Safety and Wellbeing of Persons in Custody
in Garda Síochána Stations

July 2021

The objective of the Garda Síochána Inspectorate is:

'To ensure that the resources available to the Garda Síochána are used so as to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards of comparable police services.'

(s. 117 of the Garda Síochána Act 2005)

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Foreword

The decision to deprive a person of their liberty is a significant interference with their rights under the Constitution of Ireland and the European Convention on Human Rights. As such, it is important for the Garda Síochána to have an efficient and effective custody system in place that protects and upholds the rights of persons in custody and keeps them safe.

This self-initiated inspection adopted a rights-based approach to examining the standard of treatment, safety and wellbeing provided to persons in garda custody. Important elements included engagement with people in custody, a detailed examination of custody records and, for the first time, unannounced visits to garda stations. Fieldwork was conducted prior to the Covid-19 pandemic.

Despite custody being a challenging and high-risk environment, there was no organisational vision or strategy beyond adherence to the legal requirements, there was a lack of strategic leadership, and formal oversight of custody was weak. An assistant commissioner has now been appointed as the strategic owner for custody and this is welcomed.

While garda members had a good understanding of the fundamental rights of people in custody to legal advice, medical attention and to have a third party notified, poor record keeping meant that access to these rights could not always be verified.

Although examples of good practice were found in some places visited, a number of concerns about the safety, care and treatment of persons in custody were identified. While risk assessments were completed for most people, these were not reviewed during their time in custody and plans to manage risks were not evident. Concerns were identified in relation to the manner in which some people were searched, force was used and monitored, and records were kept. It was also the

case that the rights of children and vulnerable adults were not always safeguarded, and the needs of those with intellectual disabilities or poor mental health were not always identified and met. While custody provides an opportunity to intervene to support individuals and prevent re-offending, there was no structured process with partner agencies to do so.

It was disappointing to find that some recommendations made in previous Inspectorate reports, such as developing electronic custody records and establishing an independent custody visiting scheme, had not been implemented. Consequently, these are restated.

The recommendations in this report are aimed at strengthening the safeguards that protect the rights of people in custody, ensuring the consistent operation of custody services and, where necessary, raising standards. They also address the need for strategic and operational changes within the Garda Síochána, better multi-agency working and legislative change where appropriate. The Inspectorate recognises that implementing some of the recommendations will be challenging particularly in rural areas and some, such as those relating to the custody estate, will require investment.

I am convinced that the implementation of all recommendations in this report will result in better overall standards of treatment, safety and wellbeing for those who are taken into custody, particularly the most vulnerable.

I would like to thank the members of the garda workforce, representatives from other agencies and persons in custody who engaged with the Inspectorate.

Mark Toland

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The Garda Inspectorate would like to express its appreciation to the Garda Commissioner, garda management and personnel who shared their time, knowledge, expertise and ideas during this inspection. The Inspectorate appreciates the practical assistance provided and facilities offered during all inspection visits.

The Inspectorate would like to thank the Garda Representative Association, the Association of Garda Sergeants and Inspectors and the Association of Garda Superintendents for their contribution to the inspection at both national and local levels through meetings and submissions.

In addition, the Inspectorate is grateful for the input of the following key stakeholders who contributed to this inspection:

- > Department of Justice
- > Garda Síochána Ombudsman Commission
- > Law Society
- > Legal Aid Board
- > Mental Health Commission
- > National Disability Authority
- > Office of the Director of Public Prosecutions
- > Ombudsman for Children
- > State Claims Agency

A number of individuals, voluntary groups and non-governmental organisations were consulted during this inspection. The Inspectorate is grateful to the following for their input:

- > Dr Yvonne Daly and Dr Vicky Conway – Dublin City University
- > Irish Council for Civil Liberties
- > Irish Criminal Justice and Disability Network
- > Mental Health Reform

- > Nasc, the Migrant and Refugee Rights Centre
- > National Advocacy Service for People With Disabilities

The Inspectorate would like to thank the following international organisations for explaining relevant policing practices in their jurisdiction:

- > Cheshire Constabulary
- > Independent Custody Visiting Association
- > Merseyside Police
- > National Police Chiefs' Council
- > New Zealand Police
- > Norwegian Police Service
- > Police Service of Northern Ireland

The Inspectorate would particularly like to thank the people in custody who engaged with the inspection team and the children and young people who shared their experiences of being in garda custody. It is grateful to Foróige and the Irish Association for Social Inclusion Opportunities for facilitating the meetings with these young people.

Glossary

AO	Authorised Officer
APP	Authorised Professional Practice
ASIST	Applied Suicide Intervention Skills Training
CAT	Community Assessment Team
CoFPI	Commission on the Future of Policing in Ireland
CPD	Continuous Professional Development
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DAO	Duly Authorised Officer
DMR	Dublin Metropolitan Region
DPP	Director of Public Prosecutions
ECCU	Emergency Child Care Unit
ECHR	European Convention on Human Rights
FMHS	Forensic Mental Health Services
GOM	Garda Operating Model
GPSU	Garda Professional Standards Unit
GSOC	Garda Síochána Ombudsman Commission
HCP	Healthcare Professional
HMICFRS	Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services
HMICS	Her Majesty's Inspectorate of Constabulary in Scotland
HSE	Health Service Executive
IPCA	Independent Police Conduct Authority
LPM	Local Policing Model
MHR	Mental Health Reform
NHS	National Health Service
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the UN Convention against Torture
PACE	Police and Criminal Evidence Act
PAF	Performance and Accountability Framework

GLOSSARY

PEMS	Property and Evidence Management System
PMO	Police Medical Officer
PSNI	Police Service of Northern Ireland
PULSE	Police Using Leading Systems Effectively
SCA	State Claims Agency
SOP	Standard Operating Procedures
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

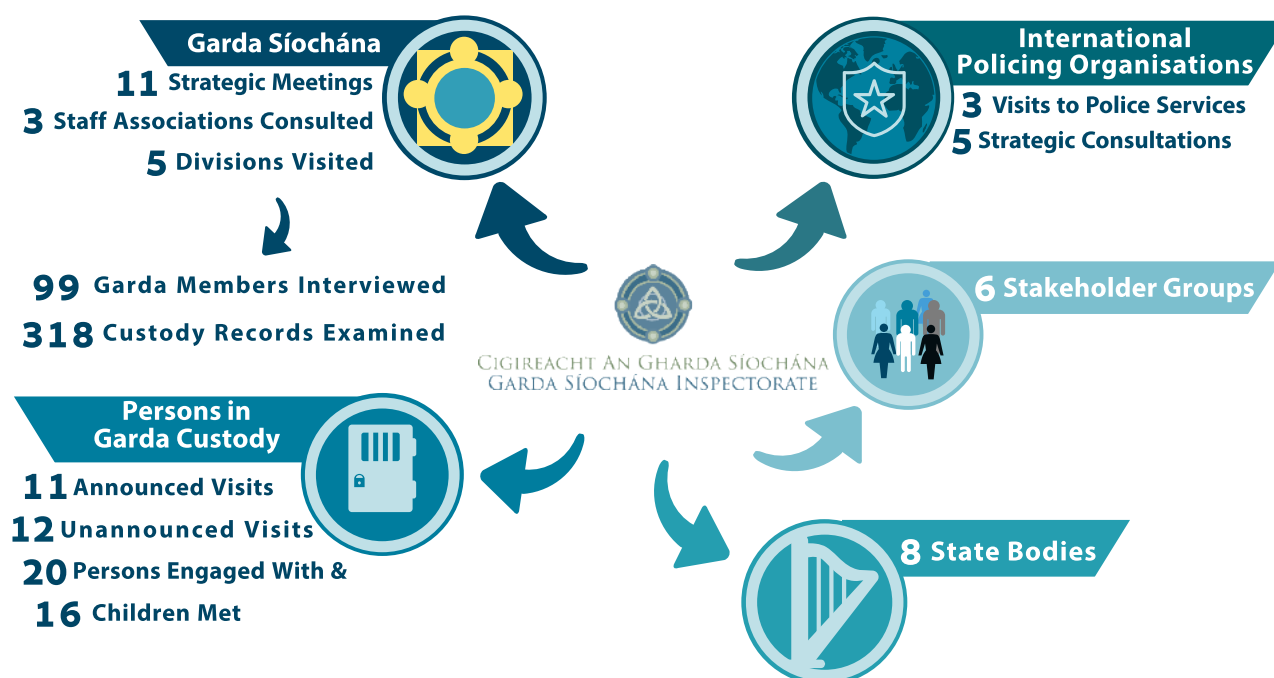
Executive Summary

Introduction

This self-initiated inspection adopted a rights-based approach to the examination of the standard of treatment, safety and wellbeing provided to persons in garda custody. Important elements of the inspection included visits to custody facilities, engagement with people who were or had been in custody, and a detailed

examination of custody records. For the first time, the Inspectorate conducted unannounced visits to garda stations. In addition, legislation, policy and practice in comparable international jurisdictions were reviewed and these informed many of the recommendations contained in this report. Figure A summarises the key components of the inspection.

Figure A: Components of the Inspection Programme



On a day-to-day basis, custody is an operational matter that takes place in local garda stations. Responsibility for its management currently sits with district or community engagement superintendents. The garda member assigned to look after persons in custody is known as the member in charge and they must complete a custody record for each person in custody. Depending on the station, members in charge may be of garda or sergeant rank. In locations where the member in charge is a sergeant, there is often a member of garda rank, called a gaoler, appointed to assist them.

As custody records are paper-based and not collated centrally, there is no definitive figure for the number of persons in custody in garda stations during any given period. Some information about persons in custody is captured electronically on the PULSE system. Although a PULSE prisoner log is not required in every case, the number of logs is a useful indicator of the total number of people in custody. The Inspectorate's analysis of logs from 1 July 2018 to 30 June 2019 showed that there were 82,013 people in custody during this 12-month period. Results

from the analysis of the PULSE prisoner logs are presented throughout the report.

The Legal, Ethical and Policy Framework for Custody

Members of the Garda Síochána who deal with persons in custody are required to operate within a multi-faceted legal, ethical and policy framework, the main elements of which are shown in Figure B.

Figure B: Key Documents Directly Relevant to Custody

 <p>International Legal Framework</p>	<ul style="list-style-type: none"> > European Convention on Human Rights > European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment > United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 <p>Domestic Legal Framework</p>	<ul style="list-style-type: none"> > Constitution of Ireland > Criminal Justice Act, 1984 > Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006 > Irish Human Rights and Equality Commission Act, 2014
 <p>30+ Internal Garda Policies Including:</p>	<ul style="list-style-type: none"> > The Garda Code > Guidance notes on the implementation of the Custody Regulations > Custody risk assessments > Interpretation services > Code of practice on access to a solicitor
 <p>Ethical Standards</p>	<ul style="list-style-type: none"> > Garda Síochána Code of Ethics

The main findings in this area were:

- > There were some aspects of custody services where changes in the law would contribute to more efficient and effective arrangements.
- > The Garda Síochána did not have a single coherent policy document that contained all of the essential information about the rights, care and treatment of persons in custody, and most of the current custody policies were not publicly available.

A number of legislative changes are proposed throughout this report. In addition, the Inspectorate recommends that custody policies, practices and procedures be consolidated into a single document. A version of this document, from which operationally sensitive material is excluded, should be published on the Garda Síochána's external website and also made available in every custody facility for consultation upon request.

Strategy, Governance and Accountability

Organisational Leadership and Strategy

Strategic leadership is needed to direct the Garda Síochána in a way that ensures that day-to-day custody activity aligns to the statutory requirements and sets the tone for how custody services should be delivered.

The main findings in this area were:

- > Despite the challenges and risks associated with custody, there was no single strategic owner in place at the time of this inspection, resulting in uncoordinated activity and inconsistent practice. An assistant commissioner has since been assigned this responsibility.

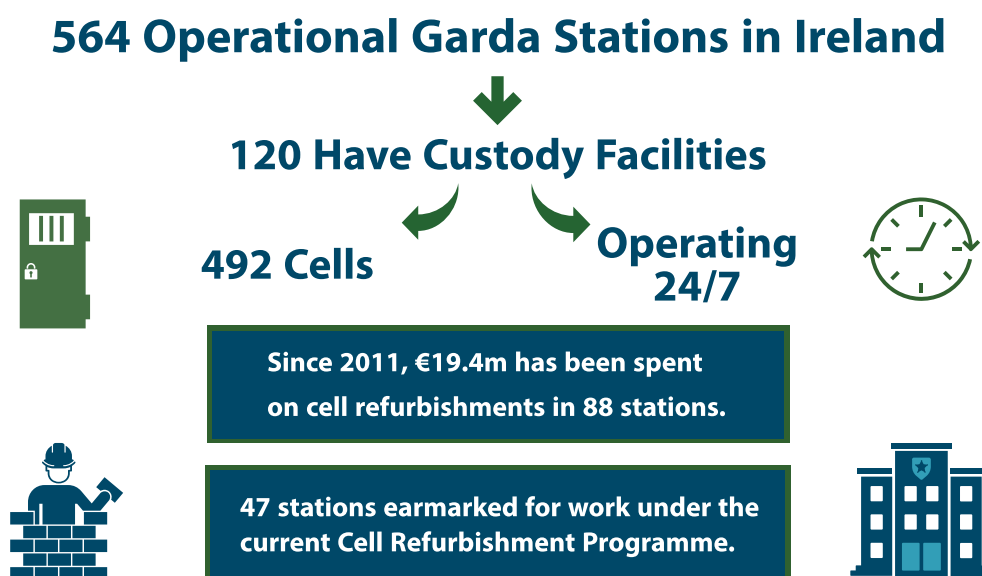
- > There was no organisational vision or strategy for custody beyond adherence with the legal requirements.

The Inspectorate recommends that the strategic owner for custody develop and oversee the implementation of an organisational strategy for custody that is based on human rights and a culture of dignity and respect.

Custody Estate Plan

An important component of a custody strategy is a custody estate plan. This should ensure that there is an optimum number of modern facilities that meet a defined specification so that the safety, rights and entitlements of persons in custody and those working there can be fully met. Figure C illustrates the garda custody estate at the time of the inspection.

Figure C: The Garda Síochána's Custody Estate



The main findings in this area were:

- > The Garda Síochána did not have a cohesive custody estate plan, although it had a Capital Works Plan and Cell Refurbishment Programme.
- > Since 2011, the total number of custody facilities had reduced, some new facilities have been built and others upgraded.

- > The standard of facilities visited during this inspection ranged from purpose-built custody suites with all the necessary components of a modern, safe and secure facility to those that were unsafe and not secure. The Inspectorate found cells in use that did not meet the safety standard defined in the Cell Refurbishment Programme.

- > Analysis by the Inspectorate showed that cell capacity exceeded peak occupancy rates in four of the five divisions visited.
- > Having too many custody facilities results in an inefficient use of resources, an unachievable training requirement and unnecessary expenditure.

The Inspectorate recommends that the strategic owner leads on the development of a custody estate plan. It should comprise fewer facilities, all of which should meet a defined specification and inform future Capital Works Plans and the Cell Refurbishment Programme. The Inspectorate acknowledges that this will require financial investment.

Strategic Partnerships in the Custody Context

Partnerships within the Criminal Justice System

Policing is one element of a complex and interdependent criminal justice system where decisions and actions by one organisation can affect the other parts. It follows that key partners should collaborate to improve the efficiency and effectiveness of custody-related processes and better safeguard the rights of persons in custody.

The main findings in this area were:

- > This inspection identified several custody-related matters that could be improved through collaborative working.
- > Many criminal justice partners referred to the Smyth Committee, established to review the adequacy of the law, practice and procedure relating to the interviewing of suspects in garda custody, as a good example of partnership working. However, the group had not met since 2018 and its eight reports have yet to be published.

To examine and drive improvements in operational custody-related issues and oversee the implementation of recommendations from all custody-related reports, the Inspectorate recommends that the Department of Justice establish a multi-agency working group on custody.

The Case for Cross-Sectoral Partnerships

The well-established connections between mental health, drug/alcohol dependency and offending are evident in the custody environment. Figure D indicates the prevalence of these factors in the custody records sampled for this report.

Figure D: Prevalence of Alcohol and Drug Use, Poor Mental Health and Self-Harm from Custody Records Examined



The main finding in this area was:

- > Although custody provides an opportunity to initiate multi-agency support to divert people from further offending, there were few interventions available at this stage of the criminal justice process.

Operation of Section 12 of the Mental Health Act, 2001

Section 12 of the Mental Health Act, 2001 gives a member of the Garda Síochána the power to take into custody a person who is suffering from a mental disorder and as a consequence is likely to cause immediate and serious harm to themselves or others.

The main findings in this area were:

- > Currently, people taken into garda custody for this reason must be brought to a garda station rather than a medical facility, even though they may not have committed a criminal offence.
- > Between 1 July 2018 and 30 June 2019, 2,091 adults and 61 children were taken into garda custody under Section 12 of the Mental Health Act, 2001.
- > In 2015, the Expert Group on the Mental Health Act recommended that gardaí should be given a specific power to remove a child believed to be suffering from a mental disorder to a place where an age-appropriate assessment can be performed. At the time of this inspection, the recommendation had not been implemented.

The Inspectorate recommends that a cross-sectoral group be established to develop post-arrest diversion and intervention services. The group's remit should include developing legislation and arrangements in order that adults to whom Section 12 of the Mental Health Act, 2001 applies can be

brought directly to a suitable medical facility and ensuring that the previously mentioned recommendation of the Expert Group on the Mental Health Act is implemented.

Internal Accountability and Governance

Good governance is essential if the Garda Síochána is to achieve its objectives, drive improvements and manage risks. It requires defined roles and responsibilities and clear lines of accountability. Information reports should be routinely available to enable managers to understand custody demand, examine trends and patterns, assess the level of compliance with regulations and policy, and improve performance.

The main findings in this area were:

- > There was a lack of formal oversight of custody at local, regional and organisational levels. Custody was the responsibility of district or community engagement superintendents, a model that dissipated responsibility and resulted in inconsistent practices.
- > The value of custody data was not widely recognised and management information reports on custody were not compiled.
- > The absence of an electronic custody management system was a major barrier to conducting routine and reliable analysis.
- > Many weaknesses previously identified by the Garda Professional Standards Unit during its examinations of custody had not been addressed.
- > There was some local auditing of custody records, but these audits did not result in any evaluation of performance at the organisational level, nor did they lead to the identification and dissemination of good practice or lessons learned.

To address these weaknesses, the Inspectorate recommends that the Garda Síochána implement a formal governance, accountability and performance management framework for custody that is overseen by the strategic owner and informed by regular management information reports.

External Accountability

Independent scrutiny of custody demonstrates transparency and accountability in an area of policing that significantly impacts human and statutory rights and can help bring about improvements.

The main findings in this area were:

- > The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visits garda custody facilities every five years and reports on how persons deprived of their liberty are treated.
- > While Ireland is a signatory to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, it has not yet ratified it and has not established a National Preventive Mechanism to carry out independent inspections of places of detention.
- > Unlike neighbouring jurisdictions, there was no independent custody visiting scheme to monitor and report on the welfare and treatment of persons in custody and the conditions in which they are held.

To enhance external accountability, as previously recommended by the Inspectorate, an independent custody visiting scheme should be established by the Department of Justice.

Protecting the Rights of Persons in Custody

Authorising Detention

Although every person in custody at a garda station has been deprived of their liberty, only those arrested for certain more serious offences need to have their detention authorised by the member in charge. In these cases, the member in charge must decide if they have reasonable grounds for believing that the person's detention is necessary for the proper investigation of the offence(s) for which they have been arrested. If a person is arrested under any other power and brought to a garda station, there is no legal requirement for their detention to be authorised.

The main findings in this area were:

- > Approximately 20% of arrests recorded on PULSE prisoner logs required detention to be authorised.
- > In 80% of arrests, there was no independent, objective assessment of the need for the person to be kept in custody.
- > In addition to the right to bring judicial proceedings to determine the lawfulness of their detention, all arrested persons in neighbouring jurisdictions have an additional safeguard whereby the custody sergeant must decide if their detention is necessary.

To provide a greater degree of protection of an arrested person's right to liberty, the Inspectorate recommends that the Department of Justice consider enacting legislation that requires the member in charge to consider the necessity to detain every person who is arrested at a garda station or brought there following arrest elsewhere, with the exception of those arrested under the Offences against the State Act, 1939.

Notification of Rights

Every arrested person must be informed of their rights, given a written notice setting them out and asked to sign the custody record to acknowledge receipt.

The main findings in this area were:

- > Garda practice was to notify every person taken into custody of their rights, even if they have not been arrested.
- > Of the custody records examined, 97% showed that the notice had been given and 75% of these had an entry acknowledging receipt.
- > Although garda policy states that arrested persons should be able to consult the Custody Regulations, only 2 of the 23

custody facilities visited by the Inspectorate had a copy available.

Rights of Persons in Custody

When a person is arrested at a garda station or brought there having been arrested, they must be informed that they have the right to consult a solicitor of their choice in private and have a third party notified of their being in custody. If they are ill or injured, a doctor must be called and the person is entitled to also be examined by a doctor of their choice at their own expense. If the person does not understand English, they are entitled to assistance from an interpreter and foreign nationals must be told that they can communicate with their consul. Figure E illustrates the key findings in respect of these rights.

Figure E: Key Findings in Respect of Rights of Persons in Custody



To better uphold the rights of people in custody, the Inspectorate recommends that the arrangements for the timely provision of medical services be improved. It also recommends that all aspects of the right to legal advice be placed on a statutory footing, including the circumstances in which a person's access to their chosen solicitor can be delayed and when an interview may be conducted before legal advice

has been obtained. The circumstances in which notification of a third party may be delayed should be defined in law, with the decision to delay being authorised by a member of the rank of inspector or above. Facilities must be upgraded in order to guarantee the privacy of legal consultations and the standard of record-keeping improved to enable better auditing of access to rights.

Safeguarding the Rights of Vulnerable Persons

It is important that every person in custody understands and is able to fully participate in the custody process.

The main findings in this area were:

- > There was good awareness among garda members of the need for adult support for children in custody, but the actual role of the adult was less well understood.
- > Identifying and providing support for vulnerable adults was limited by the absence of a contemporary definition of vulnerability and the lack of training for gardaí.

In order to identify persons in custody who are vulnerable and to safeguard their rights, the Inspectorate recommends that relevant experts continue to be involved with the Garda Síochána in the development of guidance documents and in the delivery of garda custody training. In addition, it recommends that the Department of Justice consider updating the legislation relating to the arrangements for providing support to children and vulnerable adults in custody. This should include establishing a legal definition of vulnerability. The Department of Justice should also set up a formal scheme that enables children and vulnerable people to be supported by suitably trained and vetted adults.

Care and Treatment of Persons in Custody

Risk Management

Identifying, assessing, managing and reviewing risks associated with each person in custody is a vital part of the custody process.

The main findings in this area were:

- > Initial risk assessments were carried out for almost every person in custody, but were not reviewed and updated during the time in custody or prior to release. There were no documented risk management plans.
- > The Garda Síochána advised that it had developed a revised version of the risk assessment form and accompanying guidance notes to support garda members dealing with people with mental illness. This was not in place at the time of the inspection.
- > The information available to the member completing the risk assessment form was limited by the inability to access other custody records and risk assessment forms, the *ad hoc* approach to updating and checking PULSE and the narrow scope of the categories of warnings that were required to be recorded on PULSE.

In order to adequately protect all those in the custody area, the Inspectorate recommends that action is taken to improve the identification, assessment, management and recording of risk in respect of every person in custody.

Checking Health, Safety and Wellbeing

There are many ways, both physical and technological, to check the health, safety and wellbeing of persons in custody. These include the use of CCTV systems and regular visits to the person by the member in charge or gaoler.

The main findings in this area were:

- > Details of in-cell visits were often poorly recorded in custody records.
- > Although in-cell technology that can assist with monitoring the health and safety of people in custody is available, this had not been installed.

- > CCTV was not routinely reviewed to check that people in custody were treated with dignity and respect.

To address these matters, the Inspectorate recommends that the Garda Síochána improve the monitoring of the health, safety and wellbeing of persons in custody.

Meeting the Needs of Persons in Custody

Everyone in custody should have the basic human needs of rest, food and hygiene attended to, with the particular requirements of each individual accommodated where possible.

Figure F: Aspects of Care and Treatment that Require Improvement



The Inspectorate recommends that the Department of Justice consider enacting legislation that provides every person who is in custody for a lengthy time with a reasonable period of rest that does not depend on that person's consent. It also recommends that the Garda Síochána

The main findings in this area were:

- > In some circumstances, the agreement of the person in custody was required before they could be provided with a period of rest.
- > There were some examples of good practice and high standards of treatment during this inspection, but these were not consistently adopted in all of the places visited.
- > There are a number of aspects of care and treatment that need to be improved, these are illustrated in Figure F.

improve the standard of care and treatment for all persons in custody and that the Department of Justice consider incorporating these aspects in the proposed statutory codes of practice.

Safety and Suitability of Custody Facilities

An important element of the care and treatment provided to persons in custody is the physical environment in which they are held.

The main findings in this area were:

- > With the exception of the purpose-built custody suites, very few of the stations visited had all the components required in a modern, safe and secure custody facility.
- > A number of shortcomings were identified in the custody facilities visited. These are described in Figure G.

Figure G: Shortcomings Identified in Custody Facilities



The Inspectorate recommends that urgent action be taken to improve the overall safety and security of custody areas and that cells that do not meet the defined safety standard be immediately closed.

The Roles of Member in Charge and Gaoler

Member in Charge

The member in charge is responsible for ensuring that the statutory duties imposed under the Criminal Justice Act, 1984 and the Custody Regulations are carried out in respect of every person in custody at the garda station at which they work. For certain offences, the member in charge must

consider whether the person's detention is necessary for the proper investigation of the offence(s) for which they have been arrested and, if so, authorise their detention.

The main findings in this area were:

- > In most stations, the role of member in charge was performed by garda members from the regular unit on a rotational basis. Often they had additional non-custody responsibilities.
- > In Dublin and in some stations in Cork and Limerick, the member in charge was a sergeant.
- > Some probationers were required to act as member in charge despite this being contrary to garda policy.
- > Refusals to authorise detentions were extremely rare.
- > The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment supports the creation of a specialised group of custody officers to professionalise the role and as a way of breaking '*the harmful esprit de corps that often prevents officers from speaking out against their colleagues in cases of ill-treatment*'.

To bring more objective and independent decision-making to the custody process, the Inspectorate recommends that the role of member in charge be assigned on a permanent basis to trained and operationally competent sergeants.

Assisting the Member in Charge – Role of the Gaoler

In the Garda Síochána, another member who assists the member in charge is known as a gaoler.

The main findings in this area were:

- > The role of gaoler was not defined and few

of those deployed as gaoler had received specific training for the role.

- > Internationally, this role is carried out by police staff who are designated in law and given the necessary powers to do so.

To improve the contribution of the gaoler, the Inspectorate recommends that the role and responsibilities be defined. The Garda Síochána should consider recruiting police staff to perform this role in locations where demand justifies it.

Training for Custody Duty

Given the risks associated with custody, it is important that members in charge and gaolers are adequately trained and operationally competent to perform the role.

The main findings in this area were:

- > Most members spoken to felt that they were not adequately trained for the role of member in charge.
- > The main, and sometimes only, custody-related training received by gardaí was that provided during their foundation training programme.
- > There is a Custody Management course, but very few of the members in charge engaged with had attended the course and many were not aware of its existence.
- > Many members in charge were not trained in custody-specific use of force techniques and de-escalation skills and did not have up-to-date first aid training. Most would welcome training or guidance to increase their awareness of learning disabilities and mental health issues.

To address these gaps, the Inspectorate recommends a mandatory training and development programme for members in charge and gaolers, with key stakeholders involved in its development and delivery.

Local Supervision and Management of the Custody Process

Role of Local Sergeants

In stations where members of garda rank perform the role of member in charge, the regular unit sergeant assigns a member to this role and has supervisory responsibility for them. In addition, the Garda Code assigns specific custody-related responsibilities to sergeants.

The main findings in this area were:

- > Sergeants adopted a variety of approaches to supervising members in charge and not all were aware of their custody-related obligations under the Garda Code.
- > In certain circumstances, sergeants were required to authorise the taking of photographs, fingerprints and palm prints, and DNA samples from arrested persons, but there was no explicit requirement for them to make and sign an entry to this effect in the custody record or for a copy of their written authorisation to be attached to it.
- > It was also the case that there was no requirement for members of other ranks who gave authorisations to make and sign an entry in the custody record or to have a copy of their written authorisation attached to it.

The Inspectorate recommends that the Garda Síochána improve the supervision of members in charge. In addition, there is a need to improve record-keeping and accountability in relation to authorisations. Therefore, when an authorisation is given by a member of a specified rank, the custody record should contain either an entry signed

by the person granting it or a copy of that person's written authorisation.

Role of Local Inspectors

The Garda Code contains no defined role or responsibilities for inspectors in relation to the management of custody.

The main findings in this area were:

- > The extent of inspectors' involvement varied across locations visited by the Inspectorate.
- > Compared to other similar jurisdictions, inspectors had a very limited role in custody, in terms of both management and legal responsibilities.

To improve custody services, the Inspectorate recommends that divisional inspectors have a stated role in the delivery of efficient and effective custody services during their shift.

Role of Superintendents and Chief Superintendents

Superintendents and chief superintendents have management responsibility for custody and are required to conduct regular audits of their area. This may include visiting custody facilities and examining custody records.

The main findings in this area were:

- > The level of attention paid to custody by superintendents and chief superintendents often depended on the interest of the individual officer.
- > Return rates for audit reports were described as poor.

The implementation of the governance, accountability and performance management framework for custody, as recommended earlier in this report, would address these shortcomings.

Extending Time in Detention

Superintendents and chief superintendents are required to consider applications to extend the length of time a person who has been arrested under certain legislation is kept in custody. The rank of the decision-maker and the duration of any extension is determined by the power of arrest used.

The main findings in this area were:

- > Garda inspectors had no role in extending detention.
- > The law did not preclude applications to extend detention being made to superintendents who were involved in the investigation of the offence for which the person had been arrested.
- > Decision-makers were not legally obliged to consider how the time in detention prior to the application for an extension had been utilised.
- > Unlike the situation in some other jurisdictions, when extensions of detention were being considered, representations were not invited from the person in custody, their legal representative or an appropriate adult if the person was under 18.

The Inspectorate recommends that the Department of Justice consider introducing legislation that standardises the periods of time for which detention can be extended by members of the Garda Síochána and the rank of those who may do so. Consideration should be given to assigning to inspectors responsibility for considering extensions in the first 24-hour period. The legislation should specify the test to be satisfied before an extension is authorised and the need for the decision-maker to be independent of the investigation. It should also include the right for the arrested person or their representative to make representations to the decision-maker about their time in custody.

Although the Inspectorate considers that the Offences against the State Act, 1939 should be treated separately, it recommends that the views expressed in this report regarding extensions of detention should be brought to the attention of the Independent Review Group recently established to examine all aspects of that legislation.

Other Custody-Related Powers and Safeguards

Searching a Person in Custody

It is important to search persons in custody to protect their safety, reduce the risk of harm to others and allow items of evidentiary value to be seized. However, the Inspectorate identified a number of concerns about the powers, policies and practices for doing so.

The main findings in this area were:

- > The human rights considerations of necessity and proportionality were not to the forefront of members' minds when deciding if a search should be carried out and, if so, in what manner.
- > There was a lack of clarity about the powers to search people in custody, including searches that involve the removal of all items of clothing or examination of body orifices.
- > There was an absence of safeguards for searching children and vulnerable adults.
- > The technique for carrying out a search that necessitates the removal of all items of clothing was not aligned with the position of the Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
- > There were several policy documents that dealt with searching, but the information in them was insufficiently detailed to assist members conducting searches.

To address these matters, the Inspectorate recommends that the Department of Justice consider enacting new legislation relating to the searching of persons in custody that defines the different types of search, specifies the powers to conduct such searches and sets the level of authorisation to be obtained before carrying out more intrusive searches. Additional legal safeguards should be defined in relation to searching children and vulnerable adults. The legislation should require that detailed records be made when persons in custody are searched. The Inspectorate also recommends that the Garda Síochána review its policies, procedures and practices on searching people in custody and develop a single source of information that emphasises the need for human rights-based decision-making.

Dealing with Property in the Possession of Persons in Custody

It is the responsibility of the member in charge to look after items of property taken from persons in custody.

The main findings in this area were:

- > The practice for recording such property was generally poor and was hampered by a poorly designed custody record.
- > Property was usually stored in lockers in the custody area, but these were often insecure and larger items of personal property were sometimes left on the floor outside cells.

To improve the management of property in the possession of people in custody and reduce the opportunities for it to be mishandled, more comprehensive record-keeping is required. Adequate lockers should be available in all custody facilities and these should remain locked at all times.

Use of Force

When a garda member uses force, they must make a record of it in their notebook or journal. At the time of this inspection, not all use of force incidents needed to be recorded on PULSE. However, since the introduction of a new policy in October 2020, all such incidents must be recorded on PULSE.

If force is used on a person who is subsequently arrested, this must also be reported to the member in charge of the garda station on arrival and recorded in the custody record.

The main findings in this area were:

- > Not all incidents of use of force prior to arrival at a garda station were reported and recorded in accordance with garda policy.
- > Among members spoken to, there were low levels of awareness of the potentially fatal consequences of restraint in custody.
- > At the local level, there was no formal process to routinely monitor the use of force in custody and no requirement for superintendents to examine use of force incidents unless injury was caused as a result.

To ensure that legal, human rights and policy obligations in relation to use of force are achieved, the Inspectorate recommends that the Garda Síochána improve the monitoring of use of force in custody. It should review all incidents of use of force in custody involving children. Comprehensive data on the use of force associated with custody should be published.

Complaints Against Members of the Garda Síochána

All complaints against members of the Garda Síochána must be referred to the Garda Síochána Ombudsman Commission (GSOC).

The main findings in this area were:

- > There was no clear information available to persons in custody advising them that they could make a complaint and no specific instruction for garda members regarding the recording of such a complaint.
- > Some members said that they would ask a person if they wished to make a complaint about their time in custody. Others said that unless the person explicitly made a complaint, they would make an entry in the custody record to indicate that no complaint was made.
- > The number of complaints recorded by GSOC in the category 'During police custody' was small.

The Inspectorate recommends that all persons in custody be informed that they have a right to make a complaint and be given written information about how to do so. The process for dealing with complaints made by persons in custody should be clearly

defined. Information on complaints should be used by the Garda Síochána to improve custody policy, procedures and practices.

Release

There are a number of important actions that should be taken when releasing a person from garda custody or transferring them into the custody of others.

The main findings in this area were:

- > There was no formal process for release/transfer.
- > Vital actions, such as explaining to the person the next stages of their case, were often omitted.

To ensure that all important actions are completed, the Inspectorate recommends the development of a structured process for release/transfer. Figure H illustrates the main actions that should be included in this process.

Figure H: Actions on Release/Transfer



Evaluating the Custody Record

The primary source of information about how a person in custody has been treated is the custody record, which is currently in paper format.

The main findings in this area were:

- > Poor recording of many aspects of custody was identified throughout this inspection.
- > Flaws in the design of the current version of the custody record contributed to poor record-keeping.
- > Although the Garda Síochána accepted a previous recommendation to introduce an electronic custody record, this has yet to be implemented.
- > The absence of an electronic custody management system prevents routine analysis of custody data and the assessment of compliance and performance levels at local, regional and organisational levels.

The Inspectorate advocates the expeditious introduction of an electronic custody management system as the best solution to improving the scrutiny of custody performance and the standard of record-keeping. Pending the introduction of such a system and as an interim measure, the Inspectorate recommends that the paper custody record be redesigned to include a number of changes identified in this report. These changes should also be incorporated in the design of the new electronic custody record.

Report Recommendations

Chapter 1

Recommendation 1

The Inspectorate recommends that the Garda Síochána consolidate its internal policies, procedures and practices relating to custody into a single document.

A version of the single document, from which operationally sensitive material is excluded, should be:

- Published on its external website; and
- Available in every custody facility for consultation upon request and its availability made known to persons in custody.

Chapter 2

Recommendation 2

The Inspectorate recommends that the Garda Síochána's strategic owner for custody develop and oversee the implementation of an organisational strategy for custody that is based on human rights and promotes a culture of dignity and respect.

Recommendation 3

The Inspectorate recommends that the Garda Síochána develop a custody estate plan that supports the overarching vision and strategy for custody.

The plan should:

- Include a defined specification and standard for all custody facilities that as a minimum is the specification for new custody suites;
- Comprise fewer custody facilities, all of which should meet the defined specification and standard;
- Where feasible, include larger capacity standalone facilities;
- Inform future Capital Works Plans and the Cell Refurbishment Programme; and
- Be developed by the strategic owner for custody.

Recommendation 4

The Inspectorate recommends that the Department of Justice establish a multi-agency working group on custody, comprising key partners in the wider criminal justice system.

The remit of the group should include:

- Examining and driving improvements in operational custody-related issues; and
- Overseeing the implementation of all recommendations in this and other custody-related reports.

Recommendation 5

The Inspectorate recommends that the Department of Justice establish a cross-sectoral group on custody in garda stations with the Department of Health and other relevant government departments, agencies and organisations.

The remit of this group should include:

- Development of a range of diversion and intervention services for persons in custody;
- Enactment of legislation and development of arrangements whereby people to whom Section 12 of the Mental Health Act, 2001 applies can be brought directly to a suitable medical facility rather than only to a garda station; and
- Enactment of legislation and development of arrangements whereby children believed to be suffering from a mental disorder can be brought to a place where an age-appropriate assessment can be performed.

Recommendation 6

The Inspectorate recommends that the Garda Síochána implement a formal governance, accountability and performance management framework for custody at organisational, regional and local levels.

The framework should:

- Be overseen by the strategic owner for custody;
- Monitor compliance with the Custody Regulations, Section 42 of the Irish Human Rights and Equality Commission Act, 2014 and internal policy;
- Examine local, regional and organisational performance against key objectives and performance indicators;
- Be informed by regular management information reports on custody;
- Examine outputs from Inspection and Review reports and any subsequent analysis of them;
- Establish and oversee a process to quality assure custody records and provide feedback where appropriate; and
- Ensure that all custody-related recommendations, including from internal and external sources, are actioned expeditiously.

Recommendation 7

The Inspectorate recommends that the Department of Justice establish an independent custody visiting scheme to monitor and report on the welfare and treatment of persons in custody and the conditions in which they are held.

Chapter 3

Recommendation 8

The Inspectorate recommends that the Department of Justice consider enacting legislation that requires the member in charge to consider the necessity to detain every person who is arrested at a garda station or brought there following arrest elsewhere, with the exception of those arrested under the Offences against the State Act, 1939.

The legislation should include:

- Provision that detention should be authorised only if there are reasonable grounds for believing that it is necessary for the proper investigation of the offence for which the person has been arrested, or to charge them and bring them to court;
- A requirement to tell the arrested person the reason for their detention; and
- A requirement to make a record of the decision, the notification to the arrested person and any response made.

Recommendation 9

The Inspectorate recommends that the Garda Síochána improve its arrangements for the provision of medical services to persons in custody.

To achieve this it should:

- Improve the standard of recording of medical information in custody records;
- Proactively monitor the time between when a doctor is called and when a medical examination is carried out and address any shortcomings with the service provider; and
- As part of its custody strategy, consider embedding healthcare professionals in custody facilities.

Recommendation 10

The Inspectorate recommends that the Department of Justice consider incorporating in statute all aspects of a person in custody's right to legal advice.

This should include:

- The circumstances in which a person's access to their chosen solicitor can be delayed;
- The circumstances in which an interview may be conducted before legal advice has been obtained; and
- The requirement for such decisions and the rationale for them to be recorded.

Recommendation 11

The Inspectorate recommends that the Garda Síochána better safeguard the right to consult a solicitor in private.

To achieve this the following actions are required:

- Direct members in charge to record the decision of the person in custody regarding legal advice, ask the person to provide written confirmation of their decision and record any refusal to do so;
- Ensure that the design specification for all custody facilities includes soundproofed consultation rooms;
- Base the decision to observe a legal consultation on an individual risk assessment and record the decision and the rationale in the custody record;
- Ensure that the Garda Station Revised Legal Advice Scheme is brought to the attention of arrested persons, where applicable; and
- Use the lists of solicitors available on the Law Society website when persons in custody request a solicitor but are unable to name one.

Recommendation 12

The Inspectorate recommends that the Garda Síochána direct members in charge to record the decision of the person in custody regarding a third-party notification, ask the person to provide written confirmation of their decision and record any refusal to do so.

Recommendation 13

The Inspectorate recommends that the Department of Justice consider incorporating in statute all aspects of a person in custody's right to a third-party notification.

This should include:

- The circumstances in which a notification may be delayed;
- The applicable time limits; and
- The requirement for such decision to be authorised by a member of the rank of inspector or above who is independent of the investigation.

Recommendation 14

The Inspectorate recommends that the Department of Justice establish a broader and more contemporary statutory definition of vulnerability.

Recommendation 15

The Inspectorate recommends that the Garda Síochána continue to work in partnership with relevant experts to further develop guidance documents and provide training to help members to identify persons in custody who are vulnerable and to safeguard their rights.

Recommendation 16

The Inspectorate recommends that the Department of Justice consider updating the legislation relating to the arrangements for providing support to children and vulnerable adults in custody.

The updated legislation should:

- Standardise the definition of the adult whose role is to assist or support children or vulnerable adults in custody;
- Define the adult's role and describe who can perform it; and
- Set out the circumstances in which this adult is required.

Recommendation 17

The Inspectorate recommends that the Department of Justice introduce a formal scheme consisting of suitably trained and vetted individuals who are available to support children and vulnerable adults in garda custody.

Chapter 4**Recommendation 18**

The Inspectorate recommends that the Garda Síochána take action to improve the identification, assessment and management of risk in respect of every person in custody.

This should include:

- Assigning overall responsibility for the risk management of each person in custody to the member in charge and ensuring they are suitably trained to do so;
- Ensuring that all available sources of information, including PULSE, are checked as part of the initial risk assessment;
- Developing a risk management plan for each person in custody;
- Conducting periodic reviews of the risk assessment and management plan during the time in custody;
- Conducting a risk assessment prior to release and putting in place any appropriate safeguards;
- Ensuring that a copy of the risk assessment and management plan accompanies every person being transferred from a garda station into the custody of other garda members or another agency;
- Ensuring that all aspects of the identification, assessment and management of risk are recorded in the custody record; and
- Ensuring that all identified risks and vulnerabilities associated with a person are flagged on PULSE.

Recommendation 19

The Inspectorate recommends that the Garda Síochána improve the monitoring of the health, safety and wellbeing of persons in custody.

To achieve this, the following actions should be taken:

- Ensure better recording and supervision of in-cell observations;
- Include the installation of in-cell technology in the specification for custody suites in the custody estate plan;
- Routinely review CCTV footage to check that persons in custody are treated with dignity and respect and in accordance with regulations and policy; and
- Ensure that CCTV signage is prominently displayed in all areas where CCTV systems are installed.

Recommendation 20

The Inspectorate recommends that the Department of Justice consider introducing legislation that provides every person who is in custody for a lengthy time with a reasonable period of rest that is free from questioning or other interruptions and that does not depend on the consent of the person.

The legislation should include:

- A description of what is a reasonable period of rest;
- That the period of rest should be excluded in reckoning the period of time in custody that is permitted in law; and
- The circumstances in which the period of rest may be interrupted.

Recommendation 21

The Inspectorate recommends that the Garda Síochána improve the standard of care and treatment provided to persons in custody in garda stations by taking the following actions:

- Replacement clothing, including anti-rip clothing, should be stocked in each custody facility and provided in all circumstances where it is required;
- The removal of items of clothing for safety reasons should only be in response to an identified risk;
- Washing kits and towels should be available in all custody areas and offered to persons in custody, along with access to washing and shower facilities;
- Females should be asked, in private, about their need for sanitary products and offered items free of charge;
- All persons in custody should have the opportunity to speak in private with a person of the same sex about health, hygiene or welfare matters;
- Members should identify and record a person's religious or cultural needs, including dietary requirements, and endeavour to facilitate reasonable requests; and
- Each custody facility should stock a variety of suitable reading materials that can be offered to persons in custody.

Recommendation 22

The Inspectorate recommends that the Department of Justice consider incorporating all the aspects of care and treatment listed in Recommendation 21 into the proposed statutory code of practice.

Recommendation 23

The Inspectorate recommends that the Garda Síochána immediately close cells that do not fully meet the standard of the safety specifications of the Cell Refurbishment Programme.

Recommendation 24

The Inspectorate recommends that the Garda Síochána take the following urgent actions to improve the safety and security of custody areas:

- Ensure that cell inspections are completed daily and that any defect or damage is repaired without delay;
- Ensure that there is an evacuation plan for each custody facility, that it is tested biannually and that a record is kept of all tests; and
- Develop and implement a policy on the carriage of firearms in custody areas.

Chapter 5**Recommendation 25**

The Inspectorate recommends that the Garda Síochána appoint sergeants as members in charge in all custody facilities and assign the roles of member in charge and gaoler on a permanent basis.

To support this model the following actions need to be taken:

- The role and responsibilities of gaoler should be defined;
- Only those trained and operationally competent should be authorised to undertake custody duties; and
- Consideration should be given to recruiting detention officers to assist members in charge in locations where demand justifies it.

Recommendation 26

The Inspectorate recommends that the Garda Síochána's strategic owner for custody ensure that lessons learned and good practice are captured, reviewed and disseminated.

Recommendation 27

The Inspectorate recommends that the Garda Síochána develop a mandatory training and development programme for all those who undertake member in charge and gaoler roles.

The training and development programme should:

- Incorporate all aspects of custody including law and policy, human rights, risk management, vulnerability, diversity and mental health awareness, first aid, use of force in custody and de-escalation techniques;
- Be informed by lessons learned and good practice;
- Involve key stakeholders in its design and delivery; and
- Be accompanied by regular refresher training and information-sharing events.

Chapter 6**Recommendation 28**

The Inspectorate recommends that pending the implementation of Recommendation 25, the Garda Síochána improve the supervision of garda members who perform the role of member in charge by ensuring sergeants comply with their responsibilities under the Garda Code.

Recommendation 29

The Inspectorate recommends that the Garda Síochána require that when an authorisation is given by a member of a specified rank, the custody record contains either an entry signed by the person granting it or a copy of that person's written authorisation.

Recommendation 30

The Inspectorate recommends that the Department of Justice consider amending legislation to ensure that where an authorisation is given by a member of the Garda Síochána of a specified rank, the custody record contains either an entry signed by the person granting it or a copy of that person's written authorisation.

Recommendation 31

The Inspectorate recommends that the Garda Síochána assign to divisional inspectors, operating the shift pattern envisaged by the Garda Operating Model, a stated role in the delivery of efficient and effective custody services during their shift.

Recommendation 32

The Inspectorate recommends that the Department of Justice consider amending the legislation that applies to garda authorised extensions of detention, in order to better safeguard the rights of persons in custody.

The following matters should be included:

- The periods of time for which detention can be extended by members of the Garda Síochána should be standardised;
- Extensions of detention within the first 24 hours in custody should be a matter for members of the rank of inspector or above;
- Where extensions of detention beyond 24 hours are permitted in law, these should be a matter for members of superintendent rank or above;
- Each period of garda authorised extension should be for a maximum of six hours;
- The ability to authorise more than one period of extension within a six-hour period;
- The member considering an application for an extension must be independent of the investigation;
- The arrested person and/or their legal representative should be given the opportunity to make representations to the decision-maker about the decision to extend the period of detention. Where the arrested person is a child or is vulnerable, an appropriate adult should have this opportunity;
- A formal record should be made of the invitation to make representations, as well as the details of any representations provided;
- The test to be satisfied before authorising an extension should consist of two parts. These are to assess whether the investigation so far has been conducted without undue delay and whether there are reasonable grounds to believe that further detention is necessary for the proper investigation of the offence; and
- The concerns and proposals regarding extensions of detention should be brought to the attention of the Independent Review Group recently established to examine all aspects of the Offences against the State Acts 1939 to 1998.

Chapter 7

Recommendation 33

The Inspectorate recommends that the Garda Síochána immediately cease the practice of having a person remove all items of outer clothing simultaneously during a search and introduce a new policy that is aligned with the position of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Recommendation 34

The Inspectorate recommends that the Garda Síochána review and update its policies, procedures and practices and develop a single source of information for searching persons in custody.

The information should:

- Emphasise the need for the human rights considerations of legality, necessity, proportionality and non-discrimination to be central to the decision to search;
- Include instructions for the searching of children, vulnerable adults and those identifying as transgender;
- Specify the details that must be recorded when a search is conducted including the name of the person conducting it, type of search, power under which it is conducted, grounds for the search, authorisation if required, and outcome of the search; and
- Be incorporated in the single document referred to in Recommendation 1.

Recommendation 35

The Inspectorate recommends that the Department of Justice consider enacting new legislation relating to the searching of persons in custody.

The following matters should be addressed:

- Separate powers to search upon arrest and on arrival at the station should be defined;
- A search that involves removal of underclothing should be defined in law and subject to a specific power which requires the authorisation of a member of the rank of inspector or above;
- A search that involves searching of body orifices (apart from the mouth) should be defined in law, subject to a specific power which requires the person's consent, authorised by a member of superintendent rank or above, carried out by a medical professional and, if the search is for drugs, it should be conducted at a medical facility;
- Additional legal safeguards to protect the rights of a child or vulnerable adult who is subject to a search that involves the removal of underclothing or examination of a body orifice should be defined;
- Information about how to establish the gender of a person for the purpose of searching should be provided; and
- There should be a legal requirement to record in the custody record the type of search conducted, the power under which it is conducted, the grounds for it, the authorisation if required and the outcome of the search.

Recommendation 36

The Inspectorate recommends that the Garda Síochána improve the processes for recording, managing and returning property in the possession of persons in custody.

To achieve this, the following actions are required:

- At the start of the custody process, all items in the possession of the person in custody should be listed on the custody record;
- For each item listed there should be an indication as to whether it is retained by the person while they are in custody or by the member in charge and the person should be asked to sign the custody record to confirm that the information is correct;
- Upon release or transfer, the custody record should be completed to show which items are returned to the person and which are retained by the Garda Síochána, and this should be signed by the person in custody;
- Any refusal to sign should be recorded;
- Adequate secure lockers should be available in every custody facility to ensure that all items are safely and respectfully stored;
- Storage lockers must remain locked at all times with keys only available to the member in charge and gaoler, if appointed;
- The design of the custody record should be amended to allow for the detailed recording of property at the start of the custody process and at release or transfer. It should include space for the person in custody to confirm that the list is correct or for a refusal to sign to be recorded; and
- The Garda Síochána should consider adopting the New Zealand policy of photographing property belonging to persons in custody and uploading the images onto its property management system.

Recommendation 37

The Inspectorate recommends that the Garda Síochána improve the monitoring of use of force in custody to ensure that it is fully compliant with legal, human rights and policy obligations.

To achieve this, the following actions are required:

- Ensure that all use of force incidents in custody, including prior to arrival at a garda station, are reported and recorded;
- Ensure that force used in custody is lawful, necessary, proportionate and non-discriminatory;
- Thoroughly review all incidents of use of force in custody involving children; and
- Collect and publish comprehensive data on the use of force associated with custody.

Recommendation 38

The Inspectorate recommends that the Garda Síochána ensure that all persons in custody are informed that they have the right to make a complaint at any time and have written information about how to do so.

To achieve this the Garda Síochána should:

- Include information about making a complaint in the Notice of Rights form;
- Raise awareness of the complaints process by providing leaflets and displaying posters in the custody area; and
- Ensure that the process for dealing with complaints made by persons in custody is clearly defined and included in the single document referred to in Recommendation 1 of this report.

Recommendation 39

The Inspectorate recommends that the Garda Síochána monitor complaints made by persons in custody and use the information to improve custody policy, procedures and practices.

Recommendation 40

The Inspectorate recommends that the Garda Síochána develop and implement a structured process for the release or transfer of persons in custody.

The process should include:

- Reviewing and updating the risk assessment prior to release and where there is a risk of self-harm, ensuring that appropriate support is in place;
- Where a person is transferred into the custody of others, sharing with them a reviewed risk assessment and management plan;
- Updating PULSE with any identified risks or vulnerability factors;
- Ensuring the person understands what will happen to them next;
- Returning items of property taken from the person that are not retained for investigative purposes; and
- Informing the person that they have the right to make a complaint and ensuring they have written information about how to do so.

Recommendation 41

The Inspectorate recommends that the Garda Síochána review and redesign the paper custody record to include the proposed changes outlined in this report and listed at Figure 7.4.

Introduction

Background to the Inspection

The Garda Síochána Inspectorate is an independent statutory body established under the Garda Síochána Act, 2005 with the objective of ensuring that:

‘the resources available to the Garda Síochána are used to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards of comparable police services’.

An inspection can commence under any of the following circumstances:

- > If the Inspectorate considers it appropriate to do so;
- > At the request of the Policing Authority in respect of a matter relating to policing services; or
- > If requested by the Minister for Justice and Equality.

In consultation with key stakeholders, the Inspectorate developed a Work Plan for 2019–2021. Based on an assessment of the level of risk to human rights, public safety, public confidence, reputation and garda financial management, a number of distinct areas of the operation and administration of the Garda Síochána were prioritised for self-initiated inspections. This examination of the treatment of persons in custody in Garda Síochána stations is the second such inspection.

Terms of Reference

The main aim of the inspection was to examine the standard of treatment, safety and

wellbeing provided to persons in custody. It adopted a rights-based approach, focussing on how the rights of people in custody were protected and upheld with particular consideration given to the arrangements for children and adults who are vulnerable. Specifically, the inspection examined:

- > The organisational strategy of the Garda Síochána for the safe, effective and efficient provision of the custody process and the governance and accountability procedures in place to ensure compliance with the strategy and relevant legislation.
- > The roles and responsibilities of gardaí involved in the management and delivery of custody services including the appointment, selection and training of members in charge, sergeants and other members of the Garda Síochána who are charged with the treatment, safety and wellbeing of persons in garda custody.
- > How the rights of persons in garda custody are protected during the custody process, including the arrangements for the provision of healthcare, legal advice, interpreters, the use of appropriate adults and the notification of arrest and detention to a third party.
- > The dignity and respect shown to persons in garda custody and how their diverse needs are met, including the care and treatment provided to meet basic requirements such as food, clothing, hygiene and sanitary requirements, rest periods and the attention to their general safety and wellbeing.
- > The use of garda powers during the custody process including the power to take fingerprints, photographs and samples such as DNA, search a person,

seize property, use force and authorise extension of periods of detention.

- > The suitability and condition of custody facilities, including cells, toilet and washing facilities, facilities for medical examinations and legal consultations, as well as the availability of suitable interview rooms.
- > The safety of all those in the custody area, including the identification and management of risk, both generic and individual.

Although custody is an important aspect of a criminal investigation, this inspection did not examine investigative actions such as interviewing, holding identification parades or processing biometric data. However, some of these issues are mentioned insofar as they affect the treatment of a person in custody. The inspection was confined to the time a person spent in custody at a garda station.

Operational Policing Context

The Garda Síochána operates a geographical model of policing with the main unit of delivery being a division. Divisions are supported by strategic headquarters departments and specialist operational units based at national and regional levels. At the time of this inspection, the Garda Síochána had 28 divisions each led by a chief superintendent. The divisions were organised into four geographical regions led by assistant commissioners. Twenty-four of the divisions were sub-divided into districts; these are smaller geographical units, each of which is led by a superintendent. A new Local Policing Model (LPM) was being piloted in the other four divisions. In this model, superintendents were assigned functional roles at divisional level, rather than having responsibility for a geographical district. One of these functions was community

engagement. Each division in the pilot locations comprised a number of community engagement areas, with responsibility for each area allocated to a superintendent.

In March 2020, the Garda Síochána published details of its new organisation-wide Garda Operating Model. Notable aspects of the new model were the reduction in the number of garda divisions from 28 to 19 and the restructuring of all divisions through adoption of the LPM. The five design principles that underpin the model are:

- > Divisions will be more autonomous, operating within a corporate framework;
- > Divisional policing must be supported and enabled by regional- and national-level services;
- > Processes should be standardised and efficient;
- > There should be a single, clear point of accountability for actions or activity; and
- > Roles and responsibilities should be clearly articulated, and resources allocated based on demand.

On a day-to-day basis, the delivery of custody services is an operational matter that takes place in local garda stations and responsibility for its management currently sits with district or community engagement superintendents.

Methodology

The inspection had a number of key phases including planning and information requests, examination of domestic legislation and literature review, engagement with people in custody and other stakeholders, field work, data analysis and international visits. For the first time, unannounced visits to garda stations were conducted. Some of the key steps in the methodology are now described in more detail.

Planning and Information Requests

As part of the planning process, a familiarisation visit was made to a garda station to obtain an understanding of the practical operation of custody and a number of requests for relevant documents, data and information were made to the Garda Síochána.

Domestic Legislation and Literature Review

As custody policy and practice stems from legislation and case law, the Inspectorate examined domestic legislation and court rulings. It also read relevant human rights case law and reports from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Other custody-related literature was appraised, including academic publications, reports by human rights organisations and other policing inspectorates, as well as other relevant publicly available information.

Stakeholder Engagement

The Inspectorate engaged with key garda personnel from the executive and senior leadership teams, estate management, legal services, internal audit and the Garda College. It also met with or received submissions from a wide range of external stakeholders, including human rights experts, mental health organisations, other state agencies, and advocacy and support groups. Garda staff associations also contributed to this inspection.

Field Work

To ascertain how custody is delivered at the operational level, the Inspectorate selected five divisions for examination, representing urban and rural areas. The divisions were

Cork City, Cork North, Mayo, Meath and the Western Division of the Dublin Metropolitan Region. Within each division a number of stations with custody facilities were visited based on the number of cells, overall number of persons in custody and whether the cells had been refurbished or not. To provide background information on how custody operated in their area and assist with the field visits, the Inspectorate asked the divisions to complete a pre-visit self-assessment questionnaire. During these visits, the Inspectorate conducted rank-specific interviews and focus groups and was provided with a tour of the custody facilities. It examined a randomly selected sample of custody records and collected data from them.

Unannounced Visits to Custody Facilities

For the first time, this inspection included unannounced visits to garda stations. A protocol was agreed with the Garda Síochána and as a result, 12 unannounced visits took place in a variety of locations, during which the inspection team examined the facilities and spoke with gardaí on custody duty and persons in custody.

Engagement with People in Custody

In order to hear the views of people who were or had been in garda custody, the inspection team engaged with people who were in custody at the time of its visits, subject to their consent. The team also met with children and young people who had been in custody when they were under 18 years of age. The meetings with the children and young people were arranged and facilitated by Foróige and the Irish Association for Social Inclusion Opportunities.

Information and Data Analysis

The Inspectorate requested and received a large quantity of data from PULSE¹ prisoner logs and information about the number and locations of garda custody facilities. Analysis of this information identified peak occupancy levels of cells in the five divisions visited and informed the Inspectorate’s conclusions on the size of the garda custody estate.

Information was also collected from 318 custody records examined during visits to divisions and entered into a matrix created by the Inspectorate. This database was comprehensively analysed to understand how the rights of persons in custody are protected and the standard of care and treatment provided. The results of this analysis are found throughout the report.

Comparing Data on Numbers of Persons in Custody

There is no definitive figure for the number of persons in custody in garda stations during any given period. The primary source of this information is the number of custody records, but this is not centrally compiled to give an overall figure.

In the absence of such information, the Inspectorate examined data from PULSE prisoner logs. This examination showed that from 1 July 2018 to 30 June 2019 there were 82,013 people in garda custody. The following figure shows some examples of the results of further analysis of the PULSE prisoner logs for that 12-month period.

Analysis of PULSE Prisoner Logs from July 2018 to June 2019



As a PULSE prisoner log does not need to be completed for every person in custody, the Inspectorate considered it important to establish if there was a difference between the number of custody records and the number of PULSE prisoner logs. Each of the five divisions visited was asked to provide the total number of custody records for

the period 1 July 2018 to 30 June 2019 and this was compared with the number of PULSE prisoner logs for the same period. On average, there were 12% more custody records than prisoner logs. This was taken into account when analysing data from the PULSE prisoner logs.

1 PULSE stands for *Police Using Leading Systems Effectively*. It is the Garda Síochána’s electronic incident recording system.

International Research

Section 117 (1) of the Garda Síochána Act, 2005 requires the Inspectorate to measure the efficiency and effectiveness of the Garda Síochána by reference to the best standards of comparable police services. To achieve this, the Inspectorate conducted research to identify comparable police services and relevant good practices. It was important to select jurisdictions that are signatories to international conventions on human rights and on preventing torture and inhuman or degrading treatment. Reports from the following organisations were examined to aid with this identification:

- > European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- > United Nations Sub-Committee on Prevention of Torture and National Preventive Mechanisms established under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);
- > New Zealand Independent Police Conduct Authority;
- > Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS) and Criminal Justice Inspection Northern Ireland (CJINI)
- > United States Department of State, Bureau of Democracy, Human Rights and Labour; and
- > Amnesty International.

Following extensive research, the Inspectorate concluded that there was no police service that was without at least some criticism of its overall operation of custody and could be considered as providing a “gold standard”. However, the research

identified potential good practice in different aspects of custody operating in different places. As a result, the Inspectorate selected New Zealand Police, the Norwegian Police Service, Merseyside Police and Cheshire Constabulary for detailed examination. The police services in New Zealand and Norway are comparable in terms of their structure and the geographical challenges they face. Custody services in Merseyside Police and Cheshire Constabulary had been inspected by HMICFRS in 2018 and their overall performance assessed as “good”. The Inspectorate visited these UK police services in late 2019 to learn about how they delivered custody services and understand the measures they were taking to address the areas for improvement identified during their recent inspections.

In addition, the Inspectorate had valuable discussions with the Police Service of Northern Ireland, the National Police Chiefs’ Council and the Independent Custody Visiting Association as part of the international practice review into the treatment of persons in custody.

Comparable International Legislation

As the delivery of custody services by the Garda Síochána is a heavily regulated area, it was important for the Inspectorate to consider the legislative framework in which the selected police services operated.

In England and Wales, the Police and Criminal Evidence Act, 1984 (hereafter referred to as the PACE Act 1984) sets out, among other things, the powers to arrest, detain, search, question and take samples from an arrested person. The PACE Act 1984 is a more detailed piece of legislation than that in place in Ireland or in other comparable jurisdictions. It reflects a legal framework whereby all relevant powers

are consolidated in one Act. The Act is accompanied by several statutory codes of practice that provide additional guidance on the detention and treatment of persons by police officers, searching them and seizing property. These are referred to as the PACE Codes of Practice.

The Police and Criminal Evidence (Northern Ireland) Order, 1989 is the primary legislation for custody in Northern Ireland. It is the PACE Act 1984 transposed into law for that jurisdiction and for this reason there is no need for this legislation to be specifically referenced in the report. The PACE Codes of Practice also apply in Northern Ireland.

In Scotland, the Carloway Review, which was aimed at modernising and enhancing the efficiency of the Scottish criminal justice system, resulted in the enactment of the Criminal Justice (Scotland) Act, 2016. This legislation contains powers relating to arrest, detention and search and requires statutory codes of practice to be issued in relation to a number of matters including searching people, questioning them and conducting identification procedures.

The main custody-related legislation in New Zealand is the Crimes Act, 1961 which contains powers to arrest and detain and the Search and Surveillance Act, 2012 which enables police officers to search those in custody and seize their property. Aspects of the Bill of Rights Act, 1990 specifically relate to arrest and detention.

In Norway, the Criminal Procedures Act, 2006 contains the regulations relating to police custody, although the Inspectorate was told that the regulations were in the process of being reviewed and updated.

This report references legislation from comparable jurisdictions for two purposes:

- > To illustrate how CPT standards have been translated into domestic legislation; or
- > To describe additional safeguards for the protection of statutory and human rights that the Inspectorate considers to be good practice.

Structure of the Report

This report contains seven chapters dealing with all aspects of the treatment of persons in custody in garda stations. Each chapter contains a number of sections which set out the relevant legal and policy requirements, present the Inspectorate's findings, its assessment of those findings and, where appropriate, make recommendations for change. Where relevant, legislation and practices from other jurisdictions, including those visited, are reported. In particular, reference is made to the standards for police custody set out in the CPT's reports.

The recommendations are aimed at strengthening the safeguards that protect the rights of persons in custody, ensuring the consistent operation of custody services and, where necessary, raising the standards of safety, treatment and wellbeing. They are informed by the findings identified during the course of the inspection, an assessment of policies and practices in other jurisdictions and the independent professional policing expertise of the Inspectorate. Of the 41 recommendations contained in the report, 27 are directed at the Garda Síochána and 14 are aimed at the Department of Justice. These 14 recommendations relate to developing partnership approaches to some of the issues identified and to suggested legislative changes which the Inspectorate considers could contribute to better custody services.

A number of key terms that are important to understanding the custody process are used in this report. The main terminologies, with a brief description of their meanings, are listed below.

Arrested person: An arrested person is a person who is taken on arrest to, or arrested in, a garda station.

Person in custody: Persons in custody include arrested persons and other persons who are taken into garda custody, such as those awaiting removal to prison or those brought there under Section 12 of the Mental Health Act, 2001. It does not include people who attend a station voluntarily to be interviewed or make a statement.

Member in charge: This is the member of the Garda Síochána who is assigned to look after a person in custody once they are brought to a garda station. The role is specified in the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 and 2006 (the Custody Regulations). The legislation is silent on the rank of the member in charge but the role is normally performed by a sergeant or a garda member.

Gaoler: In locations where the member in charge is a sergeant, there is often a member of garda rank appointed to assist them. The member who performs this role is known as a gaoler. Gaolers provide support to the member in charge, who retains overall responsibility for persons in custody.

Custody record: The Custody Regulations require a record to be kept in respect of each person in custody. This is known as a custody record and at present it is in paper format. A copy can be found at Appendix 3.

PULSE prisoner log: The PULSE prisoner log is one part of the PULSE incident record. A log contains significant amounts of information relating to the person in custody, including the reason for being in custody and the times of arrival at the station and release.

1

Chapter 1

The Legal, Ethical and Policy Framework for Custody

'...depriving people of their liberty creates or amplifies vulnerabilities and potentially engages the person's right to life.'



Chapter 1 – The Legal, Ethical and Policy Framework for Custody

This chapter summarises and considers the main aspects of the legal, ethical and policy framework within which members of the Garda Síochána are required to operate when a person is in custody.

International Legal Framework

European Convention on Human Rights

The European Convention on Human Rights (ECHR) is an international agreement to protect the human rights and fundamental freedoms of all persons in Europe.² The Convention was drafted by the Council of Europe in 1950 and entered into force in 1953. It was incorporated into Irish law by the European Convention on Human Rights Act, 2003.³ A number of the ECHR Articles have direct relevance to police custody and are summarised below.

Article 2 of the ECHR places a positive obligation on the state to protect life. That obligation is enhanced when a person is brought into custody, given that “*persons in custody are in a vulnerable position and the authorities are under a duty to protect them*” (Salman v. Turkey, 2000). Depriving people of their liberty creates or amplifies vulnerabilities and potentially engages the person’s right to life. For example, people brought into custody may have pre-existing physical or mental health conditions, frequently they are under the influence of alcohol or drugs, and some may have

substance or alcohol dependencies. There is also the potential for a person’s mental and physical health to deteriorate while in custody.

Article 3 of the ECHR is an absolute right not to be subjected to torture or inhuman or degrading treatment or punishment and is directly relevant to the treatment of persons in custody and the conditions in which they are kept. It has been held that depriving a person of sleep, food or privacy, or denying access to solicitors or family members may constitute inhuman and degrading treatment.

Article 5 of the ECHR is the right to liberty and security of person. The detention of a person will always engage this right but is justified only when at least one of the criteria set out in Article 5 has been met.⁴ Other rights engaged during the custody process include the right to a fair trial (Article 6) and the right to privacy (Article 8).

In a report on human rights-based policing in Ireland, commissioned by the Irish Council for Civil Liberties, it was highlighted that, “*When the police deprive a person of his or her liberty they assume responsibility for the protection of that person’s ECHR rights*”⁵ (Kilpatrick, 2018).

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides for the

2 Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf

3 Available at: <http://www.irishstatutebook.ie/eli/2003/act/20/enacted/en/print#sched1>

4 Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf

5 Available at: <https://www.iccl.ie/wp-content/uploads/2018/09/Human-Rights-Based-Policing-in-Ireland.pdf>

setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. The committee, known as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), is in addition to the system of protection already existing under the European Court of Human Rights.

The CPT organises visits to places of detention in order to assess how people deprived of their liberty are treated. It comprises independent experts who have unlimited access to places of detention, can interview persons deprived of their liberty in private and can communicate freely with anyone who can provide information. After each visit, the CPT sends a report of its findings and recommendations to the state concerned and requests a detailed response to the issues raised in its report. The CPT also publishes general reports on its activities on an annual basis.

The European Convention was ratified by Ireland in 1988 and the CPT has carried out a number of visits to Ireland, the most recent in September 2019. The report from that visit and Ireland's response were published in November 2020.⁶

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) entered into force in 1987.⁷ It is an international human rights treaty which mandates a global prohibition on torture and other acts of cruel, inhuman or degrading

treatment or punishment. It creates an instrument to monitor governments and hold them to account.

The Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) entered into force in 2006. It is a separate treaty designed to give states the practical assistance needed to effectively prevent torture and other forms of ill-treatment, and helps states to fulfil the obligations of the UNCAT. OPCAT requires the establishment of National Preventive Mechanisms to conduct regular monitoring visits to all types of places where persons are deprived of liberty, in order to identify gaps in laws and practice so that the rights and dignity of all persons deprived of their liberty can be protected. Ireland is a signatory to UNCAT; its position in relation to OPCAT is discussed in Chapter 2.

Domestic Legal Framework

Constitution of Ireland

Article 40.4 of the Constitution of Ireland preserves personal liberty as a fundamental right. However, it is not absolute and legislation may provide for a person's arrest and detention under certain circumstances. Article 40.4 states '*No citizen shall be deprived of his personal liberty save in accordance with law*'. It also guarantees the writ of *habeas corpus*, whereby if there are doubts about the legality of a detention an application can be made to the High Court to determine if the detention is lawful. If the detention cannot be justified the Court will order the immediate release of the person.

6 Available at: <https://rm.coe.int/1680a078cf>

7 Available at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

Irish Human Rights and Equality Commission Act, 2014

All public bodies in Ireland, including the Garda Síochána, have a responsibility to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans. This is a legal obligation under Section 42 of the Irish Human Rights and Equality Commission Act, 2014, with the obligation being known as the Public Sector Equality and Human Rights Duty.

Specific Acts Governing Custody

The legislation governing custody in Ireland is dispersed through a number of pieces of legislation. Powers of arrest and detention, as well as related matters such as search of arrested persons and the taking of DNA samples, photographs, fingerprints and palm prints, are contained in a number of Acts. These include the:

- > Offences Against the State Act, 1939;
- > Criminal Justice Act, 1984;
- > Criminal Justice Act, 2006;
- > Criminal Justice Act, 2007;
- > Criminal Procedures Act, 2010; and
- > Criminal Justice (Forensic Evidence and DNA Database System) Act, 2014.

In addition, the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006 (referred to as the Custody Regulations throughout the report) set out rules and procedures about how a person in custody at a garda station, including those arrested under the Offences against the State Act, 1939, must be treated. They include instructions

to be followed in relation to the rights of an arrested person. They set out how searches should be conducted, describe the condition of the facilities in which persons may be kept and stipulate that a record be kept in respect of each person in custody. There are also specific regulations regarding foreign nationals, children and people with a 'mental handicap'.⁸ A number of superior court judgements also frame the actions of the Garda Síochána in relation to custody. Part 6 of the Children Act 2001 deals with the treatment of child suspects in garda stations and requires garda members to act with due respect for the dignity and personal rights of children, their vulnerability and for the special needs of those with a physical or mental disability.

The 2018 report of the Commission on the Future of Policing in Ireland recommended that the law regarding search, arrest and detention be brought together in a single piece of legislation and that statutory codes of practice be developed.⁹ It echoed a previous recommendation made by the Inspectorate.¹⁰

Garda Síochána Code of Ethics

The Code of Ethics for the Garda Síochána is a set of principles to inform and guide the actions of every member of the Garda Síochána workforce in every situation they encounter. It contains nine ethical standards, each with a number of commitments. The standards are:

- > *Duty to Uphold the Law;*
- > *Honesty and Integrity;*
- > *Respect and Equality;*
- > *Authority and Responsibility;*
- > *Police Powers;*

⁸ The term 'mental handicap' is used in the Custody Regulations.

⁹ Available at: <http://www.policereform.ie/en/POLREF/Pages/PB18000006>

¹⁰ *Crime Investigation (2014)*, Recommendation 9.17.

- > *Information and Privacy;*
- > *Transparency and Communication;*
- > *Speaking Up and Reporting Wrongdoing; and*
- > *Leadership.*

The need to recognise and respect the dignity and equal human rights of all people, in accordance with the Constitution and the ECHR, and to treat them fairly and be sensitive to an individual's vulnerabilities, is reinforced in the Code of Ethics. It also expresses the standards that should inform the decisions made by members when using powers to arrest, search, take samples or use force.

Internal Garda Policies

Supplementary to the legislation and the Code of Ethics are directives, policies and codes issued by Garda Headquarters. At the time of this inspection, there were over 30 different internal guidance documents governing custody arrangements, including:

- > HQ Directive 58/08, which provides guidance notes on the implementation of the Custody Regulations;
- > HQ Directive 48/18, which deals with custody risk assessments;
- > HQ Directive 59/08, on the provision of interpretation services;
- > The Garda Code, in particular Chapter 26 of Volume 1, which contains information on several aspects of dealing with persons in custody such as search and supervision; and
- > A code of practice on access to a solicitor by persons in garda custody.

The majority of these documents are stored on the garda intranet system and members of

the Garda Síochána can search for them when required. However, this inspection found that there was no single coherent document that contained all the essential information about the rights, care and treatment of persons in custody. The inspection also identified that although these documents included a general instruction that members '*shall at all times respect a person's personal rights and his/her dignity as a human being and shall not subject any person to ill-treatment of any kind*', they did not provide any further explanation of how this should be achieved. With the exception of the code of practice on access to a solicitor, these documents were not available to the public.

A good example of an up-to-date practical document for police officers was found on the website of the UK's College of Policing. The College has produced an Authorised Professional Practice (APP) on the subject of custody and detention.¹¹ This was developed through the consolidation of current legislation, expert opinion and pre-existing guidance, as well as learning materials relevant to the custody environment such as first aid, mental health and personal safety. In Scotland, the Criminal Justice (Scotland) Act, 2016 and its codes of practice are supplemented by a set of standard operating procedures (SOPs) created by Police Scotland. These are publicly available internal instructions in respect of the arrest process¹² and the care and treatment of persons in police custody.¹³

Assessment

Although the purpose of this inspection was not to specifically review or analyse the suitability of custody-related legislation, the Inspectorate examined the legal position in the context of the treatment of people in

11 Available at: <https://www.app.college.police.uk/app-content/detention-and-custody-2/>

12 Available at: <https://www.scotland.police.uk/spa-media/dvlnu5og/criminal-justice-scotland-act-2016-arrest-process-sop.pdf>

13 Available at: <https://www.scotland.police.uk/spa-media/0mfjn3pa/care-and-welfare-of-persons-in-police-custody-sop.pdf>

custody in garda stations. The Inspectorate welcomes the work being done by the Department of Justice to develop a single piece of legislation that includes police powers to search, arrest and detain as well as statutory codes of practice. This presents an opportunity to modernise and streamline the relevant legislation and following an invitation from the department, the Inspectorate made a detailed submission on changes to the law in this regard. The Custody Regulations aim to define the standards that are required to ensure consistent, rights-based, dignified and respectful treatment of people in custody. They are largely unchanged since 1987 and some parts lack sufficient detail to provide clarity to those who operate them. The Inspectorate sees the statutory codes of practice that are envisaged as part of the codification of police powers replacing the Custody Regulations rather than creating an additional layer of requirements. As such, this report refers to the statutory codes of practice, rather than to the need to update the Custody Regulations. Where this inspection found that changes in the law would contribute to improved custody services, recommendations have been made to address these findings. These are included throughout the report.

The volume of internal custody-related documents in use at the time of this inspection created a cluttered and potentially confusing environment within which garda members had to operate. While the proposed statutory codes of practice may incorporate many of these topics, there will still be matters that need to be addressed in internal policies. Rather than the existing multiple directives and guides, and for ease of reference, the Garda Síochána should consolidate its policies, practices and procedures into one document. The document should include practical guidance to support members to take a human rights-based

approach. Subsequent changes to legislation, regulations or internal policy should result in this document being updated, rather than additional documents being created. The College of Policing's APP or Police Scotland's SOPs are useful examples of what a publicly available internal document could look like.

In the interests of openness and transparency, the Garda Síochána should publish the single document on its external website, with only operationally sensitive material excluded from publication. In addition, a copy of the publicly available document should be readily available in custody facilities for consultation upon request. The fact that this document is available for consultation should be made known to persons in custody, for example by including this information in the notice of rights, which is discussed in Chapter 3.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 1

The Inspectorate recommends that the Garda Síochána consolidate its internal policies, procedures and practices relating to custody into a single document.

A version of the single document, from which operationally sensitive material is excluded, should be:

- Published on its external website; and
- Available in every custody facility for consultation upon request and its availability made known to persons in custody.

2

Chapter 2

Strategy, Governance and Accountability

'Custody... requires a strategic focus to ensure that every person in custody is safe, can avail of their statutory rights and is treated with dignity and respect.'



Chapter 2 – Strategy, Governance and Accountability

Introduction

Custody is a challenging and high-risk area of policing and one which requires a strategic focus to ensure that every person in custody is safe, can avail of their statutory rights and is treated with dignity and respect.

This chapter considers:

- > The Garda Síochána's strategic approach to achieving safe and effective custody arrangements;
- > Strategic partnership working in the context of custody, including the extent to which the Garda Síochána collaborates with relevant strategic partners; and
- > The arrangements for governance of and accountability for custody, including external scrutiny.

Strategic Approach to Custody

Organisational Leadership and Strategy

Although the Garda Síochána's policies and procedures for custody are based on legislation, statutory regulations and case law, in isolation these do not ensure that custody arrangements are effective, efficient and consistently delivered. In addition, they do not guarantee the safety, proper treatment and wellbeing of persons who are brought into garda custody.

Strategic leadership is needed to direct the Garda Síochána in a way that ensures that day-to-day custody activity aligns to the statutory requirements and sets the tone

for how custody should be delivered. That direction and tone should be captured in a vision for custody that articulates to members, external stakeholders and, importantly, to people who are taken into custody the Garda Síochána's commitment to safe, effective and efficient arrangements. It should also be supported by a custody strategy that describes its overarching aim and contains objectives to achieve it.

Despite the challenges associated with providing custody services and the associated risks to persons in custody, garda members and the organisation as a whole, there was no single strategic owner for custody in the Garda Síochána at the time of this inspection. Although several assistant commissioners owned policies that directly related to custody, there was no individual at the organisational level who was proactively directing and overseeing the arrangements for custody and its integration with other parts of the criminal justice system. This inspection found that in the context of custody, the primary objective of most of the garda workforce was to avoid jeopardising any subsequent prosecution of the arrested person. In that regard, the Inspectorate was told that experienced members in charge would be appointed when arrests related to serious, complex or high profile cases and that it would be unusual for custody procedures to be challenged in court. However, the inspection also found that other custody-related risks were not proactively assessed and managed at organisational level, creating risks to the safety of people in the custody area and leaving the organisation open to litigation and reputational damage.

The culture of the Garda Síochána and the

behaviours of the workforce also determine how people in custody are treated. This inspection found that many members of the workforce treated people in custody with dignity and respect and some recognised it as an opportunity to intervene and divert people from offending behaviour. However, others regarded it as something deserved as a consequence of suspected offending behaviour or as an alternative to formal justice outcomes. Several of the children who met with the Inspectorate to discuss their experience of being in garda custody recounted small gestures of kindness shown by garda members, while others reported being treated in a disrespectful manner. They explained that this started during the interaction on the street but continued in the custody area and only changed when a parent or other adult arrived to support them.

This inspection identified that there was no organisational vision beyond a general adherence to the legal requirements which are set out in the Custody Regulations, other associated Acts and internal policies. There was also an absence of defined strategic objectives and corresponding performance indicators relating to essential components of custody such as:

- > Meeting human rights and equality requirements;
- > Appointment and training of custody staff;
- > Care and treatment of persons in custody;
- > The custody estate; and
- > Development of strategic partnerships that could contribute to enhancing the safety, wellbeing and treatment of persons in custody.

The Inspectorate noted the objective in the Garda Síochána's 2020 Policing Plan to

embed human rights and ethical behaviour into policing and welcomes its decision to prioritise custody as one of five areas for a human rights review. However, there was an absence of organisational-level objectives and plans in relation to the other components of custody. These areas are explored in more detail throughout this report.

International Practice

The Inspectorate spoke to a deputy chief constable appointed by the National Police Chiefs' Council as national lead for custody.¹⁴ This chief officer identified that the police services in England and Wales that perform best in relation to their custody arrangements are those which recognise it not only as a pivotal part of the criminal justice system but also as a high-risk environment in terms of the safety, care and treatment of people in custody that has the potential for catastrophic consequences if it goes wrong. He explained that these police services have a strategic focus on custody and assign clear ownership to one of their senior officers. The deputy chief constable also emphasised the importance of this officer setting a clear direction and the correct tone for the service.

An example of this type of approach was seen in Cheshire Constabulary where one assistant chief constable had overall responsibility for custody services. This approach was also taken by New Zealand Police where there is an assistant commissioner in charge of custody policy.

Assessment

The Garda Síochána's organisational approach to custody at the time of this inspection had resulted in a significant gap in strategic leadership, which meant that corporate responsibility was diffused

14 The National Police Chiefs Council brings police forces in the UK together to help policing co-ordinate operations, reform, improve and provide value for money.

and accountability was weakened. The absence of a strategic owner has since been addressed by the assignment of a single assistant commissioner with responsibility for custody. This is a welcome step. The assistant commissioner should develop the organisational vision and strategy for the provision of custody services that are safe, consistently delivered, joined up with the wider criminal justice system and incorporate the outcomes from the human rights review. The Garda Síochána has statutory obligations under Section 42 of the Irish Human Rights and Equality Commission Act, 2014 to promote equality, prevent discrimination and protect human rights. Ensuring that these obligations are met in the context of custody should be the responsibility of the strategic owner. The assistant commissioner for custody also has a crucial role to play in setting the correct tone and reinforcing the need to consistently apply core policing values in custody.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 2

The Inspectorate recommends that the Garda Síochána's strategic owner for custody develop and oversee the implementation of an organisational strategy for custody that is based on human rights and promotes a culture of dignity and respect.

Custody Estate Plan

An important component of a custody strategy is a custody estate plan that ensures the availability of an optimum number of modern facilities of a defined specification so that the safety, rights and entitlements of persons in custody and those working there can be fully met.

The Garda Síochána created a long-term accommodation plan in 2010. This acknowledged that in relation to custody *'there is an undoubted need for geographically dispersed, modern facilities that are accessible from population centres'*. Although the plan advocated a long-term objective to *'develop a custody estate that is based on fewer purpose built or redeveloped facilities that comply with the specification required'*, this action was not followed through and, at the time of this inspection, the Inspectorate was informed that there was no explicit custody estate plan.

In the 28th General Report on the CPT's activities, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) expressed its position regarding custody facilities, stating that it had *'observed and encouraged a trend consisting of keeping persons in police custody in centralised police detention facilities rather than in police cells located in smaller establishments'*.¹⁵

Capital Works Programme

The current Capital Works Programme has delivered new garda stations in Wexford, Galway and Kevin Street, Dublin which have modern purpose-built custody facilities, also called custody suites. These are self-contained, secure areas consisting of cells that meet the defined specification outlined in the Cell Refurbishment Programme, described below, as well a range of additional features including:

15 Available at: <https://rm.coe.int/16809420e3>

- > Dedicated access/egress point for arrested persons;
- > Reception area;
- > Medical room;
- > Solicitor consultation room;
- > Interview rooms and interview monitoring room;
- > Rooms for conducting searches and breath tests and taking fingerprints;
- > Shower and washing facilities and exercise yard; and
- > CCTV.

The Inspectorate was informed that a new Capital Works Programme for the period 2022–2026 was being developed. This was required to take account of the new Garda Operating Model (GOM) and the Government’s plan to implement the recommendations made by the Commission on the Future of Policing in Ireland as set out in *A Policing Service for the Future*.¹⁶

Cell Refurbishment Programme

In addition to the capital programme, a national Cell Refurbishment Programme has been in place since 2011. Arising from a number of surveys and reports, the primary purpose of the programme is to improve the safety standards of cells across the garda estate. The cell requirements include a defined specification for anti-ligature doors and window vents, as well as for heating and lighting, sanitation, call bell signalling and fire detection.

The programme does not aim to upgrade existing custody facilities to meet the full specification of new-build custody suites. However, other improvements have been made to some facilities as part of the refurbishment programme. These are done in consultation with the divisional chief

superintendent. The Inspectorate saw some examples of these improvements, including the construction of a separate reception area and dedicated access point for the custody area. However, upgrading existing stations is often constrained by the layout of the buildings, some of which are protected structures, as well as by the amount of funding allocated for the refurbishment programme.

From commencement of the programme in 2011 until July 2020, €19.4m had been spent refurbishing cells in 88 stations. A further 15 locations were earmarked for work in 2020, 32 stations have been identified by regional assistant commissioners for upgrade in 2021 and 34 stations have been removed from the Cell Refurbishment Programme.

This inspection found that there was no co-ordination between the capital build and cell refurbishment programmes and confirmed that there was no organisational-level decision-making about the overall custody requirements that informs them.

Current Custody Capacity

Information provided to the Inspectorate showed that in a 12-month period, there were approximately 82,000 people in custody for whom a PULSE prisoner log was created. In September 2019, there were 564 operational garda stations in Ireland, 120 of which had custody facilities. These were mainly in district headquarters or other medium- to large-sized stations which were open 24 hours a day. By comparison, in 2011, 167 stations had custody facilities. As well as a reduction in the number of custody facilities, the total number of cells in these facilities had also decreased from 573 in 2011 to 492 in 2019. At the time of this inspection, some of the 492 cells were temporarily unavailable due to refurbishment or general repairs, or

16 Available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/4940/181218143710-463c924cbcb4da4a548515866185cde.pdf#page=here>

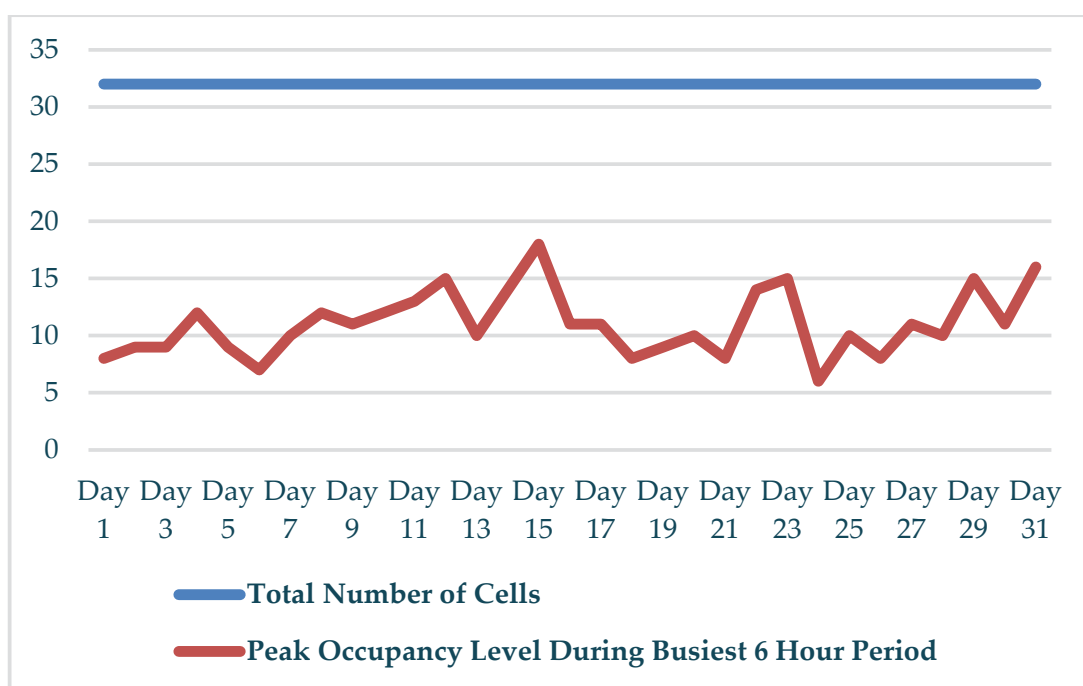
because they were unusable for health and safety reasons. It would be expected that at any given time, some custody facilities or individual cells would be unavailable for these reasons.

Although the number of stations with custody facilities and the overall number of cells has reduced, the Inspectorate found that frequently there were very few people in custody and on many occasions there were none. To assess whether fewer custody facilities could cope with demand, the Inspectorate analysed information on the number of cells and the number of persons in custody during certain periods of time in

an urban and a rural division. The analysis assumed that each person was placed in a cell on their own.

The urban division had 32 cells across six stations and 5,584 PULSE prisoner logs were created for the 12 months from 1 July 2018 to 30 June 2019. The Inspectorate selected the month with the highest number of logs and analysed the number of people in custody based on six-hour periods. Figure 2.1 shows the highest number of persons in custody in the division during the busiest six-hour period of each day of the month, compared to the total number of cells.

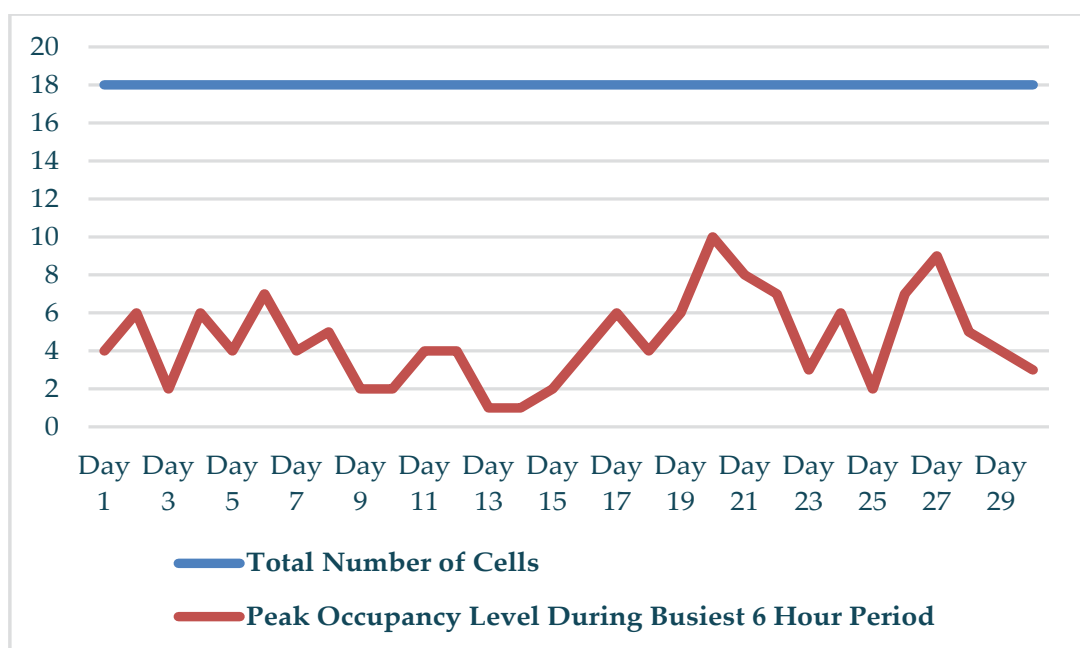
Figure 2.1 Peak Occupancy Level versus Total Number of Cells in an Urban Division



Source: Garda Síochána PULSE Prisoner Logs; analysis by the Garda Inspectorate

This analysis demonstrates that capacity greatly exceeded demand over the entire month and indicated that the maximum number of cells required during that period was 18.

Similar analysis was conducted in respect of a rural division, which had a total of 18 cells across five stations. This division had 2,013 PULSE prisoner logs for the same 12-month period. Figure 2.2 shows the highest number of persons in custody in the division during the busiest six-hour period of each day of the month compared to the total number of cells.

Figure 2.2 Peak Occupancy Level versus Total Number of Cells in a Rural Division

Source: Garda Síochána PULSE Prisoner Logs; analysis by the Garda Inspectorate

Analysis for this division also shows that capacity exceeded demand every day of the month and indicated that the highest number cells required during that period was 10.

The Inspectorate repeated this analysis for the other three divisions it visited to establish the extent of the trend. In two of the divisions, capacity far exceeded demand on every day of the month examined. In the third, the analysis showed that there were three occasions during the month examined where cell occupancy reached capacity.

International Practice

The UK Home Office has produced a detailed design guide which sets out the criteria and standards for custody suites, including building construction, mechanical and electrical services, technology, health and safety, maintenance and security. The guide was revised and updated in 2019 and while the new version retains the emphasis on safety and security, it also takes account of the importance of staff welfare and of treating persons in custody with dignity and respect. Drawing on academic research, it identifies

the importance of light and daylight, making clocks available and having better staff facilities. These features were incorporated into the design of the Oslo custody suite visited by the Inspectorate.

International research also identified that police services in comparable jurisdictions operate with far fewer custody facilities. With a geographical area of 79,000km², a population of 5.4m and a single police service, Scotland provides a useful comparator. Police Scotland operates 79 custody centres, a number of which open only during the weekend. In total, there were 130,000 detainees during the period April 2017 to March 2018. Police Scotland has invested in its custody estate and closed a number of centres although it is noted that additional capital investment is required to address ongoing challenges (Her Majesty's Inspectorate of Constabulary in Scotland, 2018). Covering a geographical area of over 14,000km², the Police Service of Northern Ireland (PSNI) has nine custody facilities in its estate, comprising a 50-cell purpose-built suite in Belfast and eight other suites dispersed throughout the rest of the country.

During the period April 2019 to March 2020, there were 22,600 arrests under the PACE (NI) Order 1987 (Police Service of Northern Ireland, 2020). The number of custody facilities has reduced over recent years and in the long term, the PSNI envisages having three purpose-built suites. Similar to Belfast, the Oslo police district has one purpose-built custody suite to which all persons arrested in the city are brought, irrespective of the geographical command unit in which the arrest occurs. New Zealand Police has reduced its overall number of custody facilities and developed large custody facilities in areas of higher population. For example, in Auckland, Wellington and Christchurch, custody facilities have approximately 40 cells.

Assessment

The Inspectorate welcomes the reduction in the number of custody facilities since 2011 and acknowledges the financial investment already made to upgrade the custody estate. However, analysis of demand based on the number of PULSE prisoner logs in the busiest month in each of the five divisions visited indicates that the Garda Síochána still has too many custody facilities. This is an inefficient use of resources as it results in many members in charge looking after small numbers of persons in custody and creates an unachievable and unaffordable training requirement. In addition, it could result in unnecessary expenditure on refurbishment of facilities, additional costs arising from future improvements and increased costs of routine maintenance.

The Garda Síochána needs to develop a cohesive custody estate plan that supports its overarching vision and strategy for custody. The plan should take account of the requirements of its new operating model, the recommendations made by the Commission

on the Future of Policing in Ireland and the CPT's position regarding centralised police detention facilities. The strategic owner should lead on the development of the custody estate plan and any proposed changes to it.

The plan should identify the optimum number and location of custody facilities necessary to support the predicted levels of demand, with consideration being given to constructing larger standalone facilities in strategic locations. This approach is especially suitable in bigger urban areas and would enable smaller, less suitable facilities in the vicinity to be closed. The custody suites in Belfast and Oslo are good examples of this approach, in that they are large purpose-built suites which have resulted in the closure of other facilities in these cities and a more efficient use of resources.

The Inspectorate recognises that factors, such as travel time from the place of arrest to the custody facility and proximity of investigative resources, must be considered in determining the location and number of cells needed. Particularly in rural areas, the risks associated with long journey times and the operational impact of garda members being unavailable to respond to calls for service must be assessed and balanced against keeping people in safer, more secure and better equipped custody facilities. The location of facilities should not be constrained by geographical policing boundaries. For example, the Inspectorate does not consider that each district or community engagement area needs its own custody facility if others are within a reasonable travelling distance.

As part of the process to develop a custody estate plan, the list of stations awaiting work under the Cell Refurbishment Programme should be re-examined to ensure that cells in these locations are required as part of the overall operational custody capacity. This

would limit the risk of expenditure on cells that may be permanently closed following the approval of the custody estate plan. Going forward, the custody estate plan should inform the 2022–2026 and subsequent Capital Works Plans. Coherence will be required between these plans and the Cell Refurbishment Programme.

The Garda Síochána also needs to determine a minimum specification and standard for all custody facilities. This should be developed having regard to the most recent international designs and standards such as those in the UK and in Norway and take account of the wellbeing, safety and security of every person who has reason to be in the custody area. It should include the specification for cells as defined in the Cell Refurbishment Programme. The Garda Síochána should aim for all custody facilities in the estate plan to meet this specification. The Inspectorate recognises that further capital investment will be required to achieve the improved standards of wellbeing, safety and security proposed in this report.

In Chapter 4, the Inspectorate reports on the condition of the facilities visited during this inspection and makes a further recommendation regarding the use of cells that have not been refurbished.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 3

The Inspectorate recommends that the Garda Síochána develop a custody estate plan that supports the overarching vision and strategy for custody.

The plan should:

- Include a defined specification and standard for all custody facilities that as a minimum is the specification for new custody suites;
- Comprise fewer custody facilities, all of which should meet the defined specification and standard;
- Where feasible, include larger capacity standalone facilities;
- Inform future Capital Works Plans and the Cell Refurbishment Programme; and
- Be developed by the strategic owner for custody.

Strategic Partnerships in the Custody Context

Strategic partnership working is important for two reasons. The first is to improve the efficiency and effectiveness of the custody process. The second is to make the most of the opportunities presented during custody to facilitate multi-agency interventions with the aim of preventing reoffending and by doing so to contribute to the Garda Síochána's commitment to keeping people safe.

Partnerships within the Criminal Justice System

Policing is one element of a complex and interdependent criminal justice system, where decisions and actions by one organisation can affect the other parts. In particular, garda custody links directly with the Courts Service, the Irish Prison Service and the Office of the Director of Public Prosecutions, as well as with defence lawyers.

Many of the criminal justice partners spoken to during this inspection identified the Smyth Committee as a good example of strategic collaboration. The committee was established in 2010 by the then Minister for Justice and Law Reform following recommendations of the Morris Tribunal.¹⁷ Its objective was to keep under review the adequacy of the law, practice and procedure relating to the interviewing of suspects detained in garda custody, taking into account evolving best international practice. The committee included representatives from the then Department of Justice and Law Reform, Garda Síochána, Office of the Department of Public Prosecutions, Law Society and Bar Council. It submitted a number of reports on a range of custody-related matters, but to date these have not been published and the group has not met since the retirement of Judge Smyth in 2018. However, the Inspectorate was advised by the Department of Justice that an implementation plan is being prepared to address the recommendations in the committee's reports and it is proposed to re-establish the group.

One example of inefficiency found during this and previous inspections was the duplication of effort in relation to prisoner transportation, with both the Garda Síochána and the Irish Prison Service often making the same journey at the same time with different categories of prisoners. Efforts to develop a more efficient system have been ongoing for a considerable period of time. However, the Inspectorate was advised that during the COVID-19 pandemic this situation had improved temporarily with the introduction of shared transportation, only to later revert to separate arrangements.

Other issues affecting people in garda custody that could be resolved through collaborative work by criminal justice partners include the

length of time people in custody may have to wait to appear before a court, particularly at weekends, and the current requirement for contemporaneous handwritten notes to be made during interviews that are being digitally recorded. These are matters that can result in people being kept in garda custody for longer periods than might otherwise be necessary.

Assessment

It is critically important that key partners in the criminal justice system collaborate to improve the efficiency and effectiveness of custody-related processes and better safeguard the rights of persons in custody. The proposed re-establishment of a group similar to the Smyth Committee may provide such a forum, in addition to its proposed function of overseeing the implementation of the recommendations made by the committee. It could also monitor the implementation of the recommendations in this and other custody-related reports. Alternatively, this collaborative work could be undertaken by a thematic sub-group of the Criminal Justice Strategic Committee. An example of a comparable structure is the Criminal Justice Board in England and Wales, which brings together senior leaders from across the criminal justice system. It promotes a joined-up collaborative approach to addressing challenges facing the system and has sub-groups to undertake work on agreed priorities.

During this inspection, several matters that could be improved through collaborative working were brought to the Inspectorate's attention. These included having one organisation responsible for transportation between courts, prisons and garda stations; the current requirement for members in charge to make written statements to prove

17 Available at: <http://www.morristribunal.ie/>

the custody process in court proceedings; and the need for handwritten records of interviews despite the fact that they are electronically recorded.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 4

The Inspectorate recommends that the Department of Justice establish a multi-agency working group on custody, comprising key partners in the wider criminal justice system.

The remit of the group should include:

- Examining and driving improvements in operational custody-related issues; and
- Overseeing the implementation of all recommendations in this and other custody-related reports.

The Case for Cross-Sectoral Partnerships

During visits to five garda divisions, the Inspectorate examined 318 custody records, 308 of which contained information about the person's consumption of or dependency on alcohol or drugs and their mental health. Over 48% of these records showed that the person in custody had recently consumed or had a dependency on alcohol, drugs or both.

Additionally, 25% of the records showed that the person had poor mental health or had engaged in self-harm and almost 14% showed that the person had drug or alcohol issues as well as poor mental health.

There are well-established connections between mental health, drug/alcohol dependency and offending. In its 2010 report, *Shifting Focus: From Criminal Justice to Social Justice*, the Irish Penal Reform Trust reported that many offenders present with factors such as low levels of educational attainment, poor mental health or substance misuse.¹⁸ The report went on to say that a one-dimensional intervention that focuses on a single aspect is unlikely to produce positive, long-lasting results, or halt an offending cycle. However, in practice, a policing response may be the only one that is available and accessible at the time.

A Vision for Change, the 2006 report of the Expert Group on Mental Health Policy, recognised that many people with poor mental health who encounter gardaí are needlessly processed by the criminal law, when the better option would be to divert them immediately to their local mental health services.¹⁹ It recommended that Forensic Mental Health Services (FMHS) be expanded to incorporate diversion schemes at pre-charge and pre-court stages and to provide support for gardaí to deal with such situations. *Sharing the Vision*, the 2020 review of *A Vision for Change*, proposes alternative access routes to emergency care for people in mental health crisis and again identifies the concerns of the FMHS regarding the treatment of people with mental health difficulties who come into contact with law enforcement agencies.²⁰ The 2009 *Report of the Joint Working Group on Mental Health Services and the Police* contains recommendations for

18 Available at: <https://www.iprt.ie/position-papers/shifting-focus-from-criminal-justice-to-social-justice/>

19 Available at: <https://www.hse.ie/eng/services/publications/mentalhealth/mental-health---a-vision-for-change.pdf>

20 Available at: <https://www.gov.ie/en/publication/2e46f-sharing-the-vision-a-mental-health-policy-for-everyone/>

changes to mental health services based on a multifaceted and collaborative approach by agencies including the Garda Síochána, the Health Service Executive (HSE) and service user organisations.

Despite the various reports and recommendations aimed at changing how people with poor mental health or substance dependency are treated, this inspection found that the identified gaps still exist. The recommended expansion of FMHS and development of pre-charge diversion schemes were not evident, nor was there a consistent approach to signposting people with poor mental health to other organisations upon their release from custody.

The need for more collaborative working and improved service provision was highlighted in a submission to this inspection from Mental Health Reform (MHR). It recommended that the Department of Justice, the Department of Health and HSE Mental Health ‘*develop a national protocol on inter-agency collaboration to ensure effective liaison and engagement between the courts, Gardaí, mental health services and other relevant agencies*’. MHR also made a recommendation, similar to one in the report of the Commission on the Future of Policing in Ireland, that Crisis Intervention Teams be established. They cited the English Street Triage schemes as a good example of effective diversion services for people with mental health difficulties who first come into contact with the police. MHR reported that an evaluation of the schemes concluded that they had brought about a reduction in the number of people detained under the Mental Health Act, 1983 (the English equivalent of the Mental Health Act, 2001).

While not all alcohol-related crime is due to alcohol dependency, a report for the HSE estimated that the annual cost of alcohol-related crime in Ireland in 2007

was approximately €1.2 billion. This figure included direct costs to the criminal justice system as well as indirect costs such as lost productivity and costs specific to the victim (Byrne, 2010). In Ireland, there are a range of national drug and alcohol treatment services such as those provided through the Drug and Alcohol Task Forces and the Drug Treatment Court in Dublin. At inter-agency level, the Department of Justice, Garda Síochána, Irish Prison Service and Probation Service have developed an action plan for the joint management of offenders aimed at enhancing community safety through the collaborative management of priority offenders. The Probation and Prison Services also have programmes to prevent recidivism. However, not all arrested persons end up in court or being managed by one of these organisations.

International Practice on Diversion

Police services in England and Wales can refer persons in custody to the Liaison and Diversion service. The Liaison and Diversion service is provided by the National Health Service (NHS) and is a process whereby people of all ages with poor mental health, an intellectual disability, substance misuse problems or other vulnerabilities are identified and assessed as early as possible as they pass through the criminal justice system. The service is intended to improve the health and justice outcomes for children and adults who come into contact with either the youth or adult criminal justice system. It focuses on those people who have a range of complex needs that are identified as factors in their offending behaviour and aims to break the cycle of crime and addiction through diversion programmes.

Senior police officers in Cheshire Constabulary highlighted the importance of the Liaison and Diversion service in

achieving their overarching objective to look after everyone in custody, rather than simply processing them through custody. They also reported that its mental health triage service, comprising a police officer and mental health professional in a patrol car, can provide advice and assistance to officers and attend incidents, enabling the most appropriate action to be taken in respect of a person with poor mental health. These partnerships enable vulnerable people suspected of minor offences to be diverted to more appropriate health-based solutions and, on occasions, avoided the need to detain a person under the Mental Health Act, 1983.

Operation of Section 12 of the Mental Health Act, 2001

Section 12 of the Mental Health Act, 2001 gives a member of the Garda Síochána the power to take a person into custody if the member *'has reasonable grounds for believing that the person is suffering from a mental disorder and that because of the mental disorder there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons'*. An application must then be made immediately by a member of the Garda Síochána to a registered medical practitioner for a recommendation that the person be involuntarily admitted to a suitable hospital or in-patient facility. If a recommendation for involuntary admission is made, the Garda Síochána is responsible for taking the person to the hospital or other facility. However, if the application is refused the person must be released from custody immediately. This process is contained in a 2010 memorandum of understanding between the HSE and the Garda Síochána.

In total, 2,152 people were in garda custody under this legislation during the 12-month period from 1 July 2018 to 30 June 2019. Of

those, 3% were under 18 years of age. An examination of 42 custody records where the person was in custody under the Mental Health Act, 2001 found that the average length of time in custody was 3 hours and 23 minutes, with the longest period being 25 hours and 45 minutes.

Many gardaí told the Inspectorate of their frustration with this way of dealing with people with poor mental health. In particular, they highlighted delays in securing the attendance of doctors and questioned the suitability of garda stations as a place to bring people to.

Gardaí highlighted the lack of options available to them if the application to admit a person to a suitable hospital is refused. While they all acknowledged the person's right to be released from custody once grounds cease to exist, they also identified that the risk of harm to the person or to others may remain. One member described how a person who was released from custody following examination by a doctor subsequently jumped off a bridge. Garda members told the Inspectorate that they try to manage these risks, but often do so without the support of other more appropriate services.

During this inspection, some gardaí expressed concerns about being called to deal with children who have poor mental health and said there was uncertainty about whether Section 12 of the Mental Health Act, 2001 applied to children. In 2015, the Expert Group on the Mental Health Act recommended that gardaí should be given a specific power to remove a child believed to be suffering from a mental disorder to a place where an age-appropriate assessment can be performed.²¹ At the time of this inspection, this recommendation had not been implemented.

21 Available at: <https://www.gov.ie/en/publication/637ccf-report-of-the-expert-group-review-of-the-mental-health-act-2001/>

Comparable Legislation and Practice

In England and Wales, Section 136 of the Mental Health Act, 1983 gives a police officer the power to remove a person to a 'place of safety', if it appears that the person is suffering from a mental disorder and is in immediate need of care or control in the interests of that person or for the protection of others. The purpose of being taken to the place of safety is to enable the person to be seen by medical professionals and for any necessary arrangements for treatment or care to be made. While police stations are included in the legal definition of a place of safety, the UK College of Policing has signed a concordat with the NHS agreeing that persons to whom Section 136 applies will be brought to a medical facility, with police stations used only as a last resort.

Based on the concordat, each police service in England and Wales has negotiated an agreement with their local NHS trust to bring people to a medical or care facility rather than a police station. Published data shows that in the 12-month period to 31 March 2019, 0.5% of the 33,238 people detained by police in England and Wales under Section 136 of the Mental Health Act, 1983 were taken to a police station (UK Home Office, 2019).

Both Merseyside Police and Cheshire Constabulary have effective arrangements with their local NHS trusts which mean that police officers no longer bring anyone detained under mental health legislation to a police station. In Oslo, people detained for mental health reasons are automatically brought to a medical centre for assessment rather than a custody facility and responsibility for them transfers from the police to the medical professionals.

Legislation in New Zealand and in Victoria, Australia, provides police officers with the power to apprehend a person in circumstances similar to Section 12 of the Mental Health Act, 2001. Both stipulate the places to which the person may be taken for medical examination; these include a police station, hospital surgery, or some other appropriate place. The Independent Police Conduct Authority (IPCA) in New Zealand described police cells as '*an entirely inappropriate environment in which to hold a person in mental distress*'²² (Independent Police Conduct Authority, 2015). The IPCA has facilitated workshops between police and mental health services throughout New Zealand with a view to improving interagency practice in this area. This resulted in a decline in the numbers of such people being detained in police cells.²³ New Zealand Police policy states that the custody area should only be used for carrying out mental health assessments after all other options have been explored.

Assessment

Much has been written about the links between mental health, drug/alcohol misuse and offending and there are a number of successful programmes in place in Ireland to manage priority or persistent offenders and support those convicted of offences who suffer from addictions. However, there are few interventions available at the pre-charge or pre-court stages of the criminal justice process. Custody provides an opportunity to initiate multi-agency support to divert those under arrest from further offending through interventions aimed at addressing substance misuse, addiction or welfare issues. For those being released from garda custody, it is important that gardaí can liaise with other relevant agencies and organisations

22 Available at <https://www.ipca.govt.nz/includes/download.ashx?ID=138679>

23 Available at https://www.hrc.co.nz/files/5015/6392/0537/Monitoring_Places_of_Detention_2018_Online.pdf

to source appropriate care and treatment to mitigate the risks that resulted in them being brought into custody in the first place. This is an under-developed area that requires a joined-up approach between the Department of Justice, Garda Síochána, Department of Health, HSE Mental Health and other relevant organisations.

Unlike the mental health legislation in other jurisdictions, in Ireland persons taken into custody under Section 12 of the Mental Health Act, 2001 must be brought to a garda station. No alternative locations, such as a medical facility, are provided for by this Act. The Inspectorate heard how gardaí endeavoured to treat people sensitively, for example, by not placing them in a cell. However, the question still arises about the suitability of a garda station as a place to bring someone who poses an immediate risk of causing serious harm to themselves or others, and who may not have committed a criminal offence. This practice may exacerbate their condition and could stigmatise the person and their family. For this reason, the Inspectorate considers that arrangements should be developed to enable gardaí to bring a person directly to a suitable medical facility as an alternative to a garda station. This will require legislative change.

Finally, the Inspectorate agrees with the recommendation of the Expert Group on the Mental Health Act that gardaí should be given a specific power to remove a child believed to be suffering from a mental disorder to a place where an age-appropriate assessment can be performed.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 5

The Inspectorate recommends that the Department of Justice establish a cross-sectoral group on custody in garda stations with the Department of Health and other relevant government departments, agencies and organisations.

The remit of this group should include:

- Development of a range of diversion and intervention services for persons in custody;
- Enactment of legislation and development of arrangements whereby people to whom Section 12 of the Mental Health Act, 2001 applies can be brought directly to a suitable medical facility rather than only to a garda station; and
- Enactment of legislation and development of arrangements whereby children believed to be suffering from a mental disorder can be brought to a place where an age-appropriate assessment can be performed.

Governance of and Accountability for Custody

Good governance is essential for an organisation to achieve its objectives, drive service improvement and manage risk. It requires a structure in which roles and responsibilities are clearly stated and lines of accountability are well-defined.

Internal Accountability and Governance

Noting the absence of a single strategic owner and the lack of an organisational strategy for custody, the Inspectorate examined the nature and extent of accountability for and governance of custody services at organisational, regional and local levels. This identified that none of the assistant commissioners who had been assigned ownership of the main custody policies had established governance or accountability structures or overseen performance at an organisational level.

Regional assistant commissioners who have supervisory responsibilities for a number of garda divisions in their regions reported having no formal governance role in relation to custody and regarded it as the responsibility of divisional chief superintendents and district or community engagement superintendents. For example, they did not set any strategy or objectives for custody management, nor did they routinely examine custody-related performance. Custody was not a regular agenda item at regional Performance and Accountability Framework (PAF) meetings.

Despite the regional assistant commissioners' expectations of divisional chief superintendents, the Inspectorate found that chief superintendents had little involvement in the governance and strategic management of custody in their divisions. For example, they did not routinely hold superintendents to account nor were they themselves held accountable for custody-related compliance or performance. Custody management was not a standing agenda item at their regular PAF meetings, although all those spoken to indicated that custody-related matters may be discussed at these meetings if required.

Three of the five chief superintendents who met with the Inspectorate had assigned portfolio responsibility for custody in their division to a single inspector. On speaking with these inspectors, most had been given this responsibility relatively recently and, of necessity, the role was in addition to their other duties. It was apparent from speaking to these inspectors that the role and responsibilities of the portfolio was developing differently across the divisions.

At the time of this inspection, custody was the responsibility of district or community engagement superintendents, with members in charge and gaolers drawn from the regular units in those stations which have custody facilities. The Inspectorate found that the extent of scrutiny within the district or community engagement hub often depended on the individual superintendent's interest in this area of policing. All those spoken to by the Inspectorate confirmed that custody was discussed at their daily PAF meetings, although in general, the discussion related to what was happening on that day, such as the details of those currently in custody or arrangements for transportation to court. It was not routinely on the agenda of their weekly management meetings. However, several superintendents told the Inspectorate about commissioning regular checks of custody records and highlighting shortcomings to members via verbal or written briefings. These actions were not undertaken by all superintendents and did not form part of any organisational performance monitoring. The checks were in addition to quarterly audits required under the Garda Code and reported to the Garda Professional Standards Unit (GPSU).²⁴

This inspection also established that in the new operating model, chief superintendents will have overall responsibility for custody

24 The Garda Professional Standards Unit examines and reviews the operational, administrative and management performance of the Garda Síochána.

services in their division, although it is noted that custody is not included in the minimum capabilities of the 'model division/region'. In this model, community engagement superintendents will be responsible for the day-to-day running of custody facilities in their geographical area and the performance assurance superintendent will have a role in identifying areas for inspections and reviews in relation to custody.

Management and Performance Information

The production and examination of management information reports is an important part of the governance and accountability arrangements for custody. Information about custody is available from a number of internal sources, including custody records, PULSE prisoner logs, and internal inspections and reviews such as those conducted by the GPSU. Valuable information is also available from external sources such as the Garda Síochána Ombudsman Commission (GSOC) and the State Claims Agency (SCA). These sources are described in more detail in Figure 2.3.

Figure 2.3 Sources of Custody Information

Custody Records

The custody record is the definitive record of a person's time in garda custody. As they are paper based, any analysis of the information contained in them must be undertaken manually. Examination of 318 custody records from the five divisions visited during this inspection revealed an overall poor standard of completion. Problems identified included illegible handwriting, sections not fully completed, entries that lacked adequate detail and perfunctory recording of important information such as in-cell checks. This issue was previously identified by the Inspectorate and by the GPSU. During its 2019 visit to Ireland, the CPT also found that custody registers were not always maintained in a comprehensive and accurate manner.²⁵

During the inspection, it was widely acknowledged by members of the Garda Síochána that an electronic custody record would assist in improving the standard of completion. Its absence is also a barrier to developing effective performance management and accountability processes. Despite the Garda Síochána accepting a previous recommendation from the Inspectorate to introduce an electronic custody system, there has been little progress to date.²⁶

PULSE Prisoner Logs

The PULSE prisoner log is part of the PULSE incident record. It contains significant amounts of information relating to the person in custody including the reason for their arrest and the times of arrest, arrival at the station and release. However, the Inspectorate was advised that PULSE prisoner logs do not provide an accurate record of all instances of persons taken in custody. The Inspectorate also identified a lack of clarity and consistency in relation to who was responsible for opening and closing the logs. All gardaí spoken to knew that the logs needed to be completed, but few understood their purpose and even fewer used the data to elicit management information. Most regarded it as a bureaucratic administrative task.

25 Available at: <https://rm.coe.int/1680a078cf>

26 *Crime Investigation (2014)*, Recommendation 9.8.

Internal Inspections and Reviews

The GPSU has previously examined custody as part of its divisional and district examinations. The Inspectorate reviewed the GPSU's reports on custody for divisions visited during this inspection and found that they had made a number of recommendations for improvement that still had not been addressed.

At the local level, chief superintendents and superintendents are obliged to conduct audits during the course of a year and report to the GPSU. At the time of this inspection, an electronic Inspection and Review system was being piloted which enabled divisions to select thematic areas for inspection from a menu of options, including custody. Reports on the outcome of these inspections are forwarded to the GPSU and Internal Audit, used to review the performance of divisions and to identify thematic issues for further examination. The roll-out of the new system was interrupted by the COVID-19 pandemic and is currently being reviewed by the GPSU in light of the new operating model.

Garda Síochána Ombudsman Commission

GSOC investigates public complaints, incidents where death or serious harm has occurred and matters in the public interest. Following its investigations, it can make recommendations to the Garda Síochána. For example, GSOC has recommended the introduction of an electronic custody record. It also provides complaints data, broken down by location and category of complaint. During 2019, there were 167 complaints in the category 'During police custody'.

State Claims Agency

The SCA manages claims taken against the State and advises state authorities on the management of litigation risks. It provides a quarterly report to the Garda Síochána containing an overview of all active claims. The number relating to custody is small, with seven active claims at the time of this inspection. In the past, the SCA had a high-level Risk Management Liaison Group with the Garda Síochána to raise issues, examine trends and identify areas for improvement. However, the Inspectorate was informed that the group had not met in a number of years.

Source: Interviews with stakeholders

This inspection found that management information reports on custody were not compiled at local, regional or organisational level. Custody data was not used to inform decisions about the number of cells or the number and location of custody facilities that are needed to meet demand. Although the SCA and GSOC provide organisational-level reports to certain Garda Headquarters units, divisional officers told the Inspectorate that they did not receive them.

Superintendents and chief superintendents outlined how they conducted manual audits of custody records as part of their formal inspections and when errors were found, brought them to members' attention at briefings. Some superintendents reported having introduced more frequent checks of custody records. The main focus of these inspections and checks was to ensure that all parts of the records were completed fully. It was evident from those spoken to that the main reason for this focus was the

potential for a poor record to jeopardise a subsequent criminal trial. Outcomes from local examinations did not result in any evaluation of custody performance at an organisational level, nor did they lead to the identification or dissemination of good practice or lessons learned.

International Practice

Most other police services, including those visited by the Inspectorate, have electronic custody systems that produce management information, which is then used to monitor custody demand and identify areas for improvement. These systems can produce information on all aspects of custody and are used to examine high-risk areas such as children held overnight and use of force. For example, Cheshire Constabulary routinely analyses the profile of arrests, time spent in custody, detentions not authorised and mental health-related resolutions, as well as monitoring the equality impact of custody, with a focus on areas identified for improvement during unannounced custody inspections. Similarly, Merseyside Police extracts key data from its electronic custody management system and presents it in a dashboard for review by the management team. Its key indicators include occupancy rate, outcomes following custody, the number of children in custody and the time taken to contact an appropriate adult and for them to attend.

The Norwegian police service also uses an internal inspection process based on a checklist of outcomes to ensure that custody objectives are being met. Regular reports compiled from the checklists are sent to the Parliamentary Ombudsman, which is a designated National Preventive Mechanism (NPM) for the Optional Protocol to the UN Convention against Torture (OPCAT). The reports are also used to decide if a more

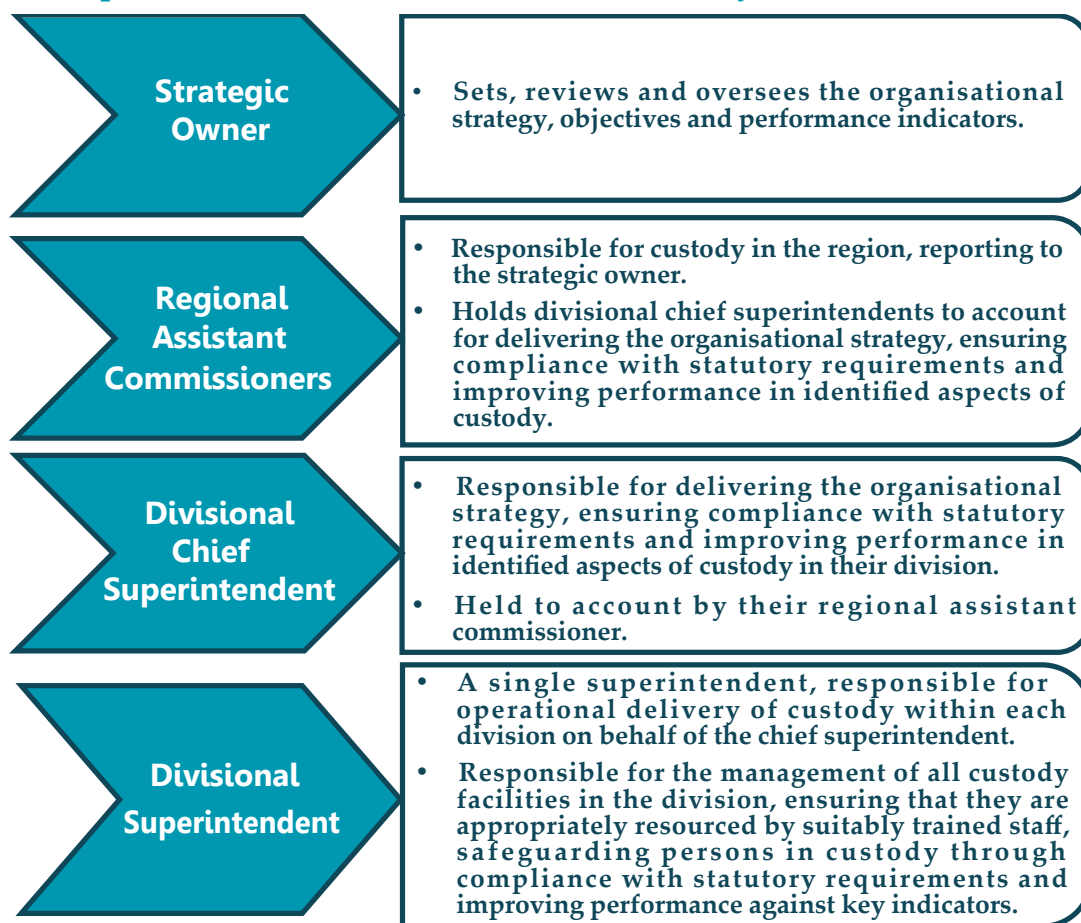
detailed inspection is required. New Zealand Police extracts management reports from its electronic custody system; these are also forwarded to the IPCA which is an NPM for OPCAT.

Assessment

Alongside the appointment of a strategic owner and the development of a custody strategy, as recommended earlier in this chapter, the new operating model provides the opportunity to create a structured governance and accountability framework for custody at the organisational, regional and divisional levels. However, the Inspectorate is concerned that the operating model envisaged by the Garda Síochána dissipates responsibility for custody too widely at the superintendent level and is therefore less likely to result in services that are consistently delivered to a corporate standard. The Inspectorate considers that a single superintendent should have full responsibility for the operational delivery of custody in the whole division and be accountable for custody performance and compliance to the divisional chief superintendent. This supports a model previously recommended by the Inspectorate.

Figure 2.4 illustrates the essential elements of an organisational governance model for custody proposed by the Inspectorate.

Figure 2.4 Proposed Governance Model for Garda Custody



A more robust internal governance and accountability framework would help to reduce risks that could arise from weak processes, systems' failures or poor performance. It would also provide a more efficient and effective means of implementing organisation-wide change following a serious incident or a legislative change.

Effective governance and accountability of custody requires data to be collected and analysed and reports produced to enable managers to understand demand, examine trends and patterns, assess the level of compliance with regulations and policy and improve performance. Although information was available to the Garda Síochána from a number of sources, there was a dearth of qualitative and quantitative analysis to support the governance and accountability of custody at organisational, regional and local levels.

The absence of an electronic custody

management system is a major barrier to conducting routine and reliable analysis; this is discussed in more detail in Chapter 7. However, PULSE prisoner logs provide an alternative source of information. Although the Inspectorate was told that they were not completely accurate, the logs provide a useful database that should be used to better understand custody demand and examine levels of performance and compliance. Data accuracy can be improved by providing instructions and an explanation about why the data is collected and how it will be used. Reports from the SCA and GSOC are underutilised and should be put to better use to identify and address performance issues and systemic weaknesses.

Regular internal examinations of custody are needed to ensure that it is operating correctly. These should include audits of the ability of persons in custody to avail of their rights; their care and treatment; the use of force in custody; the condition of facilities and the

quality of custody records. While the new Inspection and Review system may assist in this regard, reviews of custody or particular aspects of it need to be expressly directed by the policy owner or the GPSU. Outputs from these inspections and any subsequent analysis of them should be included in management information reports.

The Inspectorate was concerned to find that many of the weaknesses highlighted by the GPSU in its reports on custody, including poor completion of custody records, had not been addressed and were identified again during this inspection. This failure to act may adversely impact on the care and treatment of persons in custody and is a significant organisational risk. Although at the time of this inspection, there was no formal process in place to monitor the implementation of GPSU recommendations, the Inspectorate has been advised that a new monitoring system has now been introduced.

The lack of formal oversight of custody at local, regional and organisational levels is a significant weakness and a risk. To address this, the Inspectorate considers that the strategic owner should implement and oversee a performance management framework for custody that holds managers to account and drives improvements. This accountability process should be based on strategic objectives and performance indicators and informed by management information reports compiled from the various sources identified in this chapter. Custody management reports should include information on the age, gender, nationality and ethnicity of persons in custody, as well as the proportion with poor physical or mental health. This would help the Garda Síochána to ensure that it fulfils its obligations under the Public Sector Equality and Human Rights Duty in respect of custody and to demonstrate how it does so. Another key aspect of the accountability process

should be to ensure that all custody-related recommendations, from both internal and external sources, are actioned expeditiously.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 6

The Inspectorate recommends that the Garda Síochána implement a formal governance, accountability and performance management framework for custody at organisational, regional and local levels.

The framework should:

- Be overseen by the strategic owner for custody;
- Monitor compliance with the Custody Regulations, Section 42 of the Irish Human Rights and Equality Commission Act, 2014 and internal policy;
- Examine local, regional and organisational performance against key objectives and performance indicators;
- Be informed by regular management information reports on custody;
- Examine outputs from Inspection and Review reports and any subsequent analysis of them;
- Establish and oversee a process to quality assure custody records and provide feedback where appropriate; and
- Ensure that all custody-related recommendations, including from internal and external sources, are actioned expeditiously.

External Accountability

As discussed in Chapter 1, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visits police custody facilities every five years to assess how persons deprived of their liberty are treated. In addition, the Department of Justice is developing plans to enable Ireland to ratify OPCAT and establish an independent NPM to undertake regular unannounced visits to places of detention. Internationally, bodies designated as NPMs to inspect police custody facilities within their jurisdictions include the Independent Police Conduct Authority in New Zealand, Parliamentary Ombudsman in Norway, and in the UK, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, Her Majesty's Inspectorate of Constabulary in Scotland and Criminal Justice Inspection Northern Ireland.

In neighbouring jurisdictions, external scrutiny of police custody is also provided by Independent Custody Visiting Schemes. In Northern Ireland, the scheme is run by the Northern Ireland Policing Board, in Scotland by the Scottish Police Authority, and in England and Wales by the Police and Crime Commissioner for each police service. These schemes, which are also part of the UK's NPM, provide independent assessments of custody suites and the treatment of persons held there and enable the police to address any matters identified during a visit. In addition, strategic reports on the operation of the scheme, including trends, patterns and other data, are completed. The schemes deploy trained volunteers to visit custody suites and observe the condition of the facilities. Unless there is an identified risk of violence and provided that detainees consent, custody visitors speak in private with individual detainees about their treatment. Importantly, they usually

conduct unannounced visits and for reasons of openness they expect to be provided with immediate access to the suites.

The Inspectorate spoke with a representative from the Independent Custody Visiting Association, the umbrella organisation for the schemes in England and Wales. During this meeting, an example was provided of how custody visitors had identified the issue of women in custody not getting access to menstrual products and how a subsequent campaign had resulted in changes to the PACE Codes of Practice. These types of schemes can also perform an important function following a serious incident in custody. For example, in addition to carrying out unannounced visits, Cheshire Constabulary invite custody visitors to attend in the event of such an incident in custody.

Assessment

In comparison with other similar jurisdictions, there is limited external scrutiny of garda custody. Many human rights organisations have highlighted Ireland's delay in ratifying OPCAT and see the continued absence of NPMs as a significant gap in the external oversight framework. Unlike neighbouring jurisdictions, and despite a previous recommendation made by the Inspectorate, Ireland does not have an independent custody visiting scheme.²⁷ Increased levels of independent scrutiny, such as that provided by custody visiting schemes, can bring about improvements in custody and also demonstrate transparency and accountability in relation to an area of policing that impacts significantly on human and statutory rights. For this reason, the Inspectorate restates its previous recommendation.

²⁷ *Crime Investigation (2014)*, Recommendation 9.17.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 7

The Inspectorate recommends that the Department of Justice establish an independent custody visiting scheme to monitor and report on the welfare and treatment of persons in custody and the conditions in which they are held.

3

Chapter 3

Protecting the Rights of Persons in Custody

'Identifying whether a person is vulnerable is an important responsibility of the member in charge and it is the first step in ensuring that the person in custody is able to understand what is happening and the implications for them.'



Chapter 3 – Protecting the Rights of Persons in Custody

Introduction

The European Convention on Human Rights (ECHR), as enacted by the European Convention on Human Rights Act, 2003, sets out the fundamental rights of every person. Separately, the Custody Regulations set out the specific rights of persons in custody. These regulations include the right to consult a solicitor, to have someone notified that they are in custody and, in the case of a person under the age of 18 years, to have a parent or guardian notified and attend the garda station without delay. The Custody Regulations also require that a doctor be called in particular circumstances, as well as when the person asks to be examined by their own doctor. Additional safeguards and entitlements are in place for children, people with poor mental health, those with an intellectual disability and foreign nationals. The regulations explicitly state that persons in custody must not be ill-treated.

In the 1992 2nd *General Report on the CPT's activities*, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) described the rights of access to a lawyer, to a doctor of the person's choice (in addition to any medical examination carried out by a doctor called by the police), and to have the fact of their detention notified to a relative or another third party as fundamental safeguards against the ill-treatment of persons in police custody.²⁸ It further stated that these rights apply from the outset of

deprivation of liberty and reaffirmed the importance of this 'trinity of rights' in the 2002 12th *General Report on the CPT's activities*.²⁹

This chapter examines how the rights of persons in the custody of the Garda Síochána, including children and adults who are vulnerable, are protected.

The Right to Liberty – Authorising the Detention of Arrested Persons

The decision to deprive a person of their liberty is a significant interference with their rights under the Constitution of Ireland and the ECHR. The circumstances in which a person may be deprived of their liberty are described in Article 5 of the ECHR. This section considers the authorising of detention in respect of persons arrested at a garda station or is taken there following their arrest elsewhere.

Authorising Detention

Every person in custody at a garda station has been deprived of their liberty and can be described as being 'detained' in the ordinary meaning of the word, since they are not free to leave should they choose to do so. However, only those arrested by virtue of a small number of specific powers are considered under Irish law to be 'in detention'.³⁰ With the exception of a person arrested under Section 30 of the Offences

28 Available at: <https://rm.coe.int/1680696a3f>

29 Available at: <https://rm.coe.int/1680696a76>

30 These are: Section 30 of the Offences Against the State Act, 1939; Section 4 of the Criminal Justice Act, 1984; Section 2 of the Criminal Justice (Drug Trafficking) Act, 1996; Section 42 of the Criminal Justice Act, 1999; Section 50 of the Criminal Justice Act, 2007; and Sections 16 & 17 of the Criminal Procedures Act, 2010.

against the State Act, 1939,³¹ the member in charge is required to consider whether there are reasonable grounds for believing that detention is necessary for the proper investigation of the offence for which they have been arrested and, if so, to authorise the person's detention. Regulation 7 of the Custody Regulations requires the member in charge to make a signed entry to this effect in the custody record.

If a person is arrested using any other power and brought to a garda station, there is no legal requirement to authorise their detention. In these cases, it is the arresting member's decision to arrest the person and keep them in custody. This is in contrast to the situation for those arrested, for example, under Section 4 of the Criminal Justice Act, 1984 where the arresting member is responsible for the decision to arrest and the member in charge is responsible for the decision to detain the person by keeping them in custody. This means that no independent assessment is made of the necessity to keep that person in custody, notwithstanding the lawfulness and necessity of the arrest. Examples of the types of offences for which no authorisation is required include public order offences and driving under the influence of alcohol or drugs.

In order to assess what proportion of arrests required an authorisation, the Inspectorate analysed the PULSE prisoner logs for the period 1 July 2018 to 30 June 2019. This showed that just under 20% of the logs related to people who had been arrested using a power that required their detention to be authorised by the member in charge.

Current Safeguards for Arrested Persons

Both the Constitution and the ECHR specify a person's right to bring judicial proceedings to determine the lawfulness of their detention. An additional safeguard is provided to those arrested under Section 4 of the Criminal Justice Act, 1984; Section 2 of the Criminal Justice (Drug Trafficking) Act, 1996; Section 42 of the Criminal Justice Act, 1999; Section 50 of the Criminal Justice Act, 2007; and Sections 16 & 17 of the Criminal Procedures Act, 2010. That safeguard is the requirement for the member in charge to consider if detention is necessary for the proper investigation of the offence for which they have been arrested. No such safeguard is provided for those arrested for any other offence.

International Practice

The places visited by the Inspectorate operate different legal frameworks but are bound by the ECHR. In these jurisdictions, the Inspectorate found that additional legal safeguards were in place regarding detention.

In all parts of the UK, the duties of the custody officer³² in respect of a person arrested at a police station or brought there following their arrest elsewhere are defined in law. Specifically, the custody officer is required to consider whether there are grounds to authorise the person's detention and to make a decision to authorise or refuse it. Thereafter, their role is to ensure that the statutory rights and legal obligations are upheld in respect of each person.

In England and Wales, the custody officer must determine whether there is sufficient evidence to charge the person with the

31 The position in relation to the Offences against the State Act, 1939 was affirmed in the recent ruling of the Supreme Court in the case of *Braney v Special Criminal Court and others*. Available at: [https://www.courts.ie/acc/alfresco/4419e626-2c78-49ac-98a0-502f2c89fa1c/2021_IESC_7%20\(Unapproved\).pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/4419e626-2c78-49ac-98a0-502f2c89fa1c/2021_IESC_7%20(Unapproved).pdf/pdf#view=fitH)

32 A custody officer is the legal term for the UK equivalent of the member in charge.

offence for which they were arrested and if so, to detain the person in order to make the charge. If the person is not to be charged, they must be released unless the custody officer has reasonable grounds for believing that their detention without being charged is necessary to secure or preserve evidence relating to an offence for which the person is under arrest, or to obtain such evidence by questioning the person. If that is the case, the custody officer may authorise the person's detention. The custody officer must tell the person the grounds for detention and make a written record of those grounds.

Scottish legislation also requires authorisation for keeping in custody a person who has been arrested but not charged. The test to be satisfied before authorisation is given is that there are reasonable grounds for suspecting that the person has committed an offence and that keeping the person in custody is necessary and proportionate for the purposes of bringing the person before a court or otherwise dealing with the person in accordance with the law. The legislation goes on to set out what is meant by necessary and proportionate.

In Norway, decisions to arrest are made by the prosecuting authority in accordance with the Criminal Procedure Act, 1981, as amended. Urgent decisions may be made orally and followed up in writing and where delay may entail any risk, a police officer may make the arrest without a decision from the prosecuting authority, but this must be ratified by the prosecuting authority as soon as possible. Officials of the prosecuting authority include public prosecutors, chiefs of police, deputy chiefs of police, assistant chiefs of police and police prosecutors. The police duty officer in the custody facility is the decision maker regarding the person's detention.

The system in New Zealand is different in

so far as the purpose of arrest is to bring the arrested person to the next available court. The decision to arrest and detain is made by the investigating officer after their investigation is complete. It is police policy to apply scrutiny to the arrest at the custody stage to ensure that everything is in order. This is normally done by the duty custody officer.

Assessment

Continuing to deprive a person of their liberty by keeping them in custody at a garda station after their arrest is a significant interference with their human rights. The Inspectorate considers that the necessity to keep every arrested person in custody should be subject to rigorous and objective assessment by a person who is both independent of the arresting member and not involved in the investigation of the offence for which the person is arrested. With the exception of arrests under Section 30 of the Offences against the State Act, 1939, the member in charge should have to consider whether there are reasonable grounds for believing that it is necessary to detain the person, either to charge them and bring them to court or to carry out investigative actions. Only if the member in charge is satisfied that reasonable grounds exist, and authorises their detention on those grounds, should that person be kept in custody.

In addition, the decision to authorise detention and the specific reason for it (for example, for the purpose of charging or for investigation of the offence for which they were arrested) should be recorded in the custody record. In cases where detention is not authorised, an entry should be made in the custody record documenting the decision and the rationale for it.

This expansion of the need to justify detention and the resultant level of scrutiny would

provide a greater degree of protection of the right to liberty of those arrested persons for whom there is currently no requirement to have their detention authorised.

The Inspectorate has made this proposal in a submission to the Department of Justice on the consolidation of police powers to arrest and detain. That submission advocated the retention of the Offences against the State Act, 1939 as a separate piece of legislation because of the nature of the threats it is designed to tackle.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 8

The Inspectorate recommends that the Department of Justice consider enacting legislation that requires the member in charge to consider the necessity to detain every person who is arrested at a garda station or brought there following arrest elsewhere, with the exception of those arrested under the Offences against the State Act, 1939.

The legislation should include:

- Provision that detention should be authorised only if there are reasonable grounds for believing that it is necessary for the proper investigation of the offence for which the person has been arrested, or to charge them and bring them to court;

- A requirement to tell the arrested person the reason for their detention; and
- A requirement to make a record of the decision, the notification to the arrested person and any response made.

Notification of Rights

When a person is arrested at a garda station or is brought to a station having been arrested elsewhere, Regulation 8 of the Custody Regulations requires that they be informed of the offence or other matter for which they have been arrested. In addition, they must be informed they are entitled to consult a solicitor and that they are entitled to have a third party notified of their being in custody. The information is to be given orally and the person must also be provided with a notice containing this information, known as Form C.72(S) – Information to Persons in Custody. The time at which this information and the notice is given must be recorded and the arrested person asked to sign the custody record to acknowledge receipt of the notice. A refusal to sign must also be recorded.

Although this regulation explicitly applies to arrested persons, garda practice to notify every person in custody of these rights and to give them a notice.

To check how often the notification of rights contained in Regulation 8 was given to persons in custody, the Inspectorate examined a sample of 318 custody records from the five divisions visited. This found that 97% of the records showed that the person in custody had been given a notice of their rights. In the remaining 3%, a notice was either not provided or the custody record had not been fully completed.

Of the records that indicated that the notice had been given, almost a quarter had no recorded acknowledgement and no reason was given for this in over one-third of these cases. Where a reason was recorded, these included that the person refused to sign or was intoxicated. All of the persons in custody who engaged with the Inspectorate indicated that they had been informed of their rights and offered the notice, although not all had taken it.

Form C.72(S) had been translated into a number of languages; these versions were available on the garda portal. Printed copies of the translated versions were readily available in some stations visited, while in others, members would print them when needed. Members informed the Inspectorate that if the notice was not available in the person's language, they would ask an interpreter to translate the rights.

During visits to custody areas, the Inspectorate observed that few displayed notices, in English, Irish or any other language, containing information about rights, although there is a version of the notice called Form C.72(L) for this purpose. The Inspectorate was told by the Law Society that it was developing posters for use in custody areas.

HQ Directive 58/08 states that a copy of the Custody Regulations should be readily available for consultation by persons in custody; however, a copy was found in only 2 of the 23 custody facilities visited.

Assessment

Every person in custody should understand what their rights are and how to avail of them. The Garda Síochána's practice to notify everyone in custody, and not just those who are under arrest, of their rights and to provide them with a notice, is important in

this regard and demonstrates a recognition of the rights of all those in custody. The Inspectorate considers that, in addition to the statutory notification requirements, awareness of key rights could be enhanced by the prominent display of posters in a range of languages in custody areas. In addition, better record keeping is needed, particularly when a person is not given a notice or does not acknowledge receipt of it. This will enable a more accurate assessment of compliance to be made.

Right to Medical Attention

Regulation 21 of the Custody Regulations sets out the circumstances in which a doctor should be called. These are if the person in custody:

- (a) *Is injured,*
- (b) *Is under the influence of intoxicating liquor or drugs and cannot be roused,*
- (c) *Fails to respond normally to questions or conversation (otherwise than owing to the influence of intoxicating liquor alone),*
- (d) *Appears to the member in charge to be suffering from a mental illness, or*
- (e) *Otherwise appears to the member in charge to need medical attention.*

Medical advice must be sought if the person in custody claims to need medication relating to a serious condition and if the person requires urgent medical attention they should be taken immediately to hospital. The member in charge must ensure that instructions given by a doctor in relation to the medical care of a person in custody are complied with. These instructions and the steps taken to comply with them must be recorded.

To assess the level of compliance with this regulation, the Inspectorate examined the

sample of 318 custody records. It found that 29 had no information to indicate whether or not a doctor was required, while a doctor was required for 74 people because of physical illness or injury, poor mental health, drug or alcohol issues, or a combination of these factors. A further check of the 74 records found eight instances where the doctor's instructions were not recorded.

Many gardaí spoken to reported delays in doctors attending, particularly during the day when they may be carrying out general practice duties. However, members reported that there were alternative arrangements should the first doctor called be unable to attend within a reasonable time. They also reported that they could call for an ambulance or take the person to hospital if necessary.

Information provided by the Garda Síochána showed that on 18 November 2019, it had contracts in place for doctors' services in 17 of the 28 divisions.³³ These specified target times for attendance of 30 minutes in urban areas and 45 minutes in rural areas.

Of the 74 custody records where a doctor was required, 65 contained sufficient information to allow the Inspectorate to calculate the period of time from when the doctor was requested until the examination was carried out.³⁴ This analysis showed that 63% of the medical examinations occurred outside the target timeframes in both urban and rural areas. In 45% of cases, the time from request to examination exceeded one hour, with the longest period exceeding three hours.

Healthcare Provisions in Other Jurisdictions

Like most police services in England and Wales, Cheshire Constabulary has healthcare professionals (HCPs) embedded in its custody suites, providing a 24/7 service. HCPs are nurses or paramedics who monitor the holistic health and wellbeing of detainees. Their role extends beyond assessing physical and mental fitness for detention and/or interview into prescribing and administering medicines, as well as signposting to other social and health services, such as addiction services. HCPs also provide a summary health management plan for each detainee and this accompanies each person on transfer or release. This healthcare scheme aims to see 95% of all detainees, with detainees able to see a HCP of the gender of their choice. It is jointly funded by the Police and Crime Commissioner, the police service and the National Health Service. In its 2019 report of an unannounced inspection of custody in Cheshire Constabulary, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Service described the partnership working between the police and health providers as exemplary.

The Police Service of Northern Ireland (PSNI) has 24/7 nurse-led health care in its 50-cell custody suite in Belfast and is planning to roll out the service to all of its custody suites. The healthcare service aims to provide more sustainable health interventions by placing the detainee at its centre. The arrangement has been made possible by cross-sectoral support at government level and collaboration between the PSNI and the Public Health Agency. These two organisations co-chair a strategic group which has representatives from the Departments of Health and Justice,

33 Not all of the divisions visited had formal contracts in place between 1 July 2018 and 30 June 2019.

34 While the custody record requires that the time the doctor is requested and the time the medical examination is carried out are both recorded, it does not require the time of the doctor's arrival at the station to be recorded, and this may be different from the time the medical examination takes place.

the Northern Ireland Health and Social Care Board and the five regional health trusts. An operational implementation group comprising practitioners from the PSNI and the Belfast Health Trust, which provides the healthcare service, meets weekly. Some of the benefits of this arrangement were described as immediate access to health care for detainees, more robust clinical governance and less police time spent with detainees in hospital emergency departments.

Healthcare arrangements for people in custody in New Zealand contain elements of other systems viewed by the Inspectorate. If a medical assessment or treatment is required, police can call on the services of a duly authorised officer (DAO), a member of the community assessment team (CAT) or a police medical officer (PMO). DAOs are usually registered nurses and are often the first person called in relation to mental health concerns, CATs may also be called in relation to mental health and PMOs are police contracted health practitioners, usually doctors, that police can call to the custody area to assess and treat injuries or take evidential samples. New Zealand Police ran a successful pilot scheme in which nurses from the local health board were embedded in several large custody facilities. Their role was to assist police officers to better manage the risks of those in custody who have mental health, alcohol or drug problems and, where appropriate, to make referrals for treatment. Although staffing issues delayed a full rollout of the scheme, the Inspectorate was told that New Zealand Police is considering employing nurses directly and basing them in the larger facilities from where they could also provide advice to other custody areas.

Assessment

The absence of information about whether a doctor was required, delays in their attendance and failures to record their instructions may create avoidable risks to the health, safety and wellbeing of persons in custody. Delays may also potentially extend the length of time that the person is kept in custody. To assure itself that the requirements of the contract for medical services are being consistently met, the Garda Síochána should routinely monitor the time taken for doctors to attend custody and promptly address any shortcomings with the service provider.

The practice in other jurisdictions of having professional healthcare available in custody suites on a 24/7 basis means that the physical and mental health needs of persons in custody can be identified and appropriately responded to without delay. The Inspectorate acknowledges that the healthcare system in Ireland is different from that in other jurisdictions and also that such a model may only be feasible in busier custody facilities. This type of model could be explored by the cross-sectoral group referred to in Recommendation 5 as a means of improving custody health care and form part of the review of healthcare provision recommended by the CPT following its 2019 visit to Ireland.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 9

The Inspectorate recommends that the Garda Síochána improve its arrangements for the provision of medical services to persons in custody.

To achieve this it should:

- Improve the standard of recording of medical information in custody records;
- Proactively monitor the time between when a doctor is called and when a medical examination is carried out and address any shortcomings with the service provider; and
- As part of its custody strategy, consider embedding healthcare professionals in custody facilities.

Right to Consult a Solicitor

The right to consult with a solicitor is an established right in domestic legislation. It has also been the subject of related case law, including the case of *DPP v Gormley and White*³⁵ regarding an entitlement to have a solicitor present during interview if requested. The right to legal advice is emphasised in the *2nd General Report on the CPT's activities* which states that access to a lawyer should include the right to contact and to be visited by the lawyer under conditions that guarantee the confidentiality of discussions.³⁶ Several of the Custody Regulations deal with access to a solicitor,

while HQ Directive 58/08 provides guidance notes on the regulations. In addition, the Garda Síochána has a *Code of Practice on Access to a Solicitor by Persons in Garda Custody*, which was developed with the Law Society. The Law Society also has its own code of practice on this subject. The following section considers the different aspects of this right.

Right to Communicate with a Solicitor in Private

Regulation 11 of the Custody Regulations states that an arrested person must be able to communicate with their solicitor privately, and that a consultation with a solicitor may take place in the sight of but out of hearing of a member of the Garda Síochána.

On visits to garda stations with custody facilities, the Inspectorate found that while newly built custody suites had adequate arrangements to enable private legal consultations to take place, either in person or by telephone, other facilities were less satisfactory. Although none of the persons in custody spoken with during this inspection reported issues regarding communicating with solicitors, representatives of the Law Society told the Inspectorate that they were not confident that telephone calls with their clients were private. In some stations, the guarantee of privacy was further compromised when gardaí decided to observe the consultation. During interviews with gardaí, it was apparent that many believed that every consultation must be within their sight, rather than this being a risk-based decision for each person.

The design of custody suites in other jurisdictions included soundproofed rooms and the ability to relay telephone calls to cells, enabling solicitors and their clients to consult

35 Available at: https://www.courts.ie/view/judgments/659774bd-17e1-4d92-99ee-1d498addc03c/cdb965ef-1b3e-468d-8055-ddd1193d6df8/2014_IESC_17_2.pdf/pdf

36 Available at: <https://rm.coe.int/1680696a3f>

in private. Observation of these consultations was either based on a risk assessment or did not occur at all.

Choosing a Solicitor

Regulation 11 of the Custody Regulations also states that an arrested person should have reasonable access to a solicitor of their choice. If the person seeking legal advice does not nominate a solicitor, the Garda Síochána's *Code of Practice on Access to a Solicitor by Persons in Garda Custody* says that 'it will contact a solicitor on the person's behalf and that it is prudent to provide the person with a list of local solicitors'.

During visits to garda stations, the Inspectorate explored how a person could choose a solicitor if they were unable to name one. Most custody areas held lists of local solicitors in hard copy, which members said they would give to the person to choose from. When the Inspectorate probed how these lists had been compiled, it was found that some had been prepared in conjunction with solicitors or a local representative body, while the origin of others was unclear. In several stations, a number of solicitors' business cards were on view in the custody area and during some interviews with garda members it was apparent that certain solicitors were seen as the "go to" option, potentially creating an advantage to those concerned.

The Law Society has developed randomised lists of solicitors who are available to attend garda stations and it would like these to be used more widely. While this information is on its website and can be printed and given to a person in custody, there was no formal agreement in place with the Garda Síochána regarding the use of these lists and very few gardaí were aware of their existence. The CPT endorses the use of pre-established lists of solicitors that have been drawn up

in agreement with the relevant professional body.

Legal Aid

The Garda Station Revised Legal Advice Scheme pays solicitors' fees for consultations by telephone or at the station, attendance at interviews or identification parades in the following circumstances:

- > *Where a person is detained in a garda station for the purpose of the investigation of an offence under the provisions of:*
 - > *Section 30 of the Offences Against the State Act, 1939, as amended by the Act of 1998;*
 - > *Section 4 of the Criminal Justice Act, 1984;*
 - > *Section 2 of the Criminal Justice (Drug Trafficking) Act, 1996; or*
 - > *Section 50 of the Criminal Justice Act, 2007.*
- > *And the person is in receipt of social welfare/or earning less than €20,316.*

Although the Information for Persons in Custody form (C.72(S)) states that legal aid is dealt with on application to a court, it does not set out the circumstances in which it may be granted and there is no obligation to inform a person in custody of their potential entitlement to legal aid.

Timely Access to Legal Advice

Regulation 9 of the Custody Regulations requires that where an arrested person has asked for a solicitor, the solicitor must be notified as soon as practicable. If the solicitor cannot be contacted within a reasonable time or is unable or unwilling to attend the station, then the person must be given an opportunity to ask for another solicitor.

Garda members told the Inspectorate that there can be delays in solicitors attending the garda station and if the delay became protracted, they would ask the person in custody to nominate an alternative solicitor. Members in charge indicated that they would not permit an interview to be carried out without a solicitor if one had been requested unless the person signed a waiver agreeing to this course of action.

The Law Society reported that in rural areas in particular the length of time taken to travel to the garda station has been used to dissuade people from seeking legal advice. They also gave examples of gardaí ringing the telephone number of a solicitor's office outside normal business hours, rather than a mobile phone number. It was suggested that delays in getting a solicitor to the station or their perceived unavailability could be used to persuade a person to proceed without legal advice in order to expedite their release from custody.

Delaying Access to Legal Advice

Regulation 11 of the Custody Regulations states that an arrested person shall have reasonable access to a solicitor of their choice. The CPT recognises that *'in order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his choice'* and states that in such cases access to another independent lawyer should be arranged.³⁷ This reason for delay is separate and distinct from delays caused by the time taken for a solicitor to attend the garda station. For example, it could relate to circumstances where there are reasonable grounds for believing that consulting with the solicitor may result in physical harm to other people, interference with witnesses or evidence, or the alerting of other suspects.

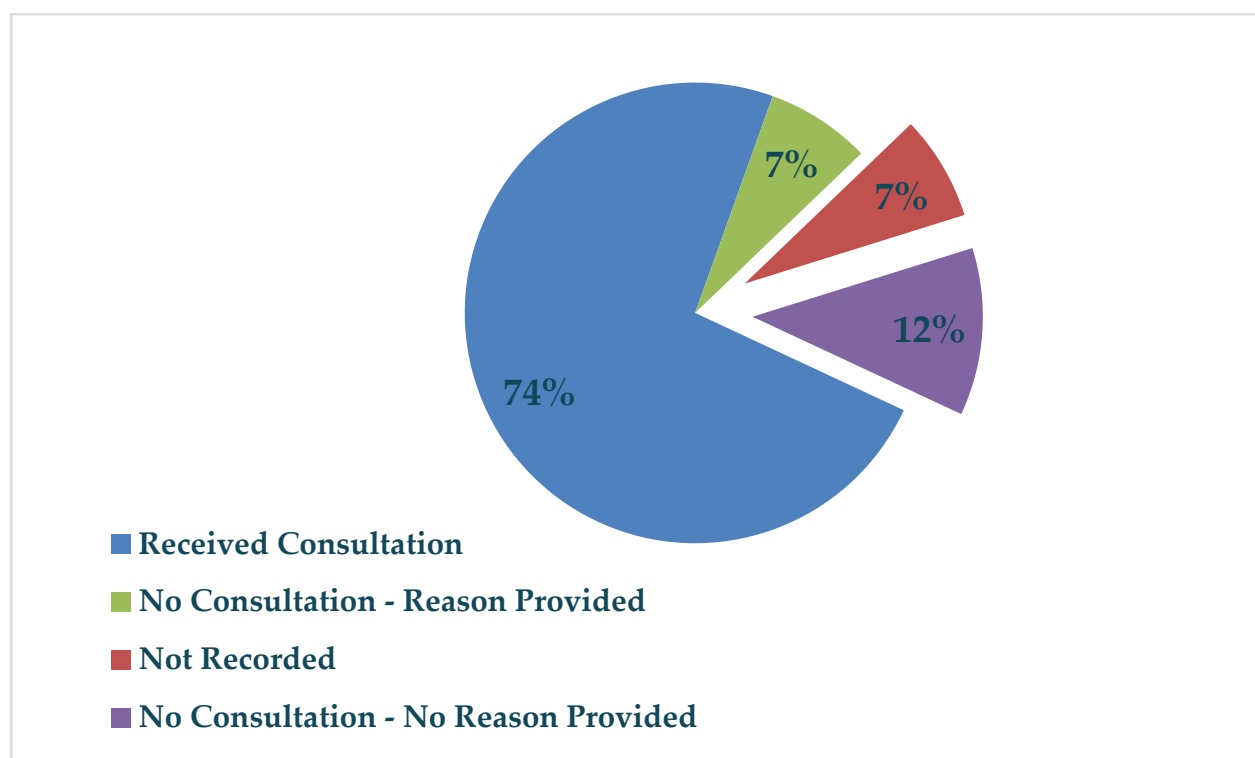
The Custody Regulations are silent on the permissibility of gardaí delaying the right of access to the chosen solicitor and amendments to the Criminal Justice Act, 1984 in relation to access to solicitors have not yet been enacted. HQ Directive 58/08 does not provide guidance as to the circumstances in which such access may be delayed and the Garda Síochána's *Code of Practice on Access to a Solicitor by Persons in Garda Custody* does not specifically address this issue. This Code does state that a suspect in custody should not be interviewed prior to obtaining legal advice except in wholly exceptional circumstances involving a pressing and compelling need to protect other major constitutional rights, such as the right to life, or where there is a clear waiver of the right by the suspect.

Completion of Custody Records Where a Solicitor Is Requested

When a person requests a solicitor certain information must be recorded, including the name and telephone number of the solicitor, the time the request is made, the time the solicitor is notified and the time of their arrival at the station (if applicable). A record must also be made of the fact that the nominated solicitor is unavailable, that the person has been informed accordingly and of efforts to contact another solicitor.

The Inspectorate examined the sample of 318 custody records to ascertain how many people had requested a solicitor and found that 68 had done so. It then analysed what happened following these requests. Figure 3.1 shows what occurred following each request to consult a solicitor.

37 Available at: <https://rm.coe.int/1680696a76>

Figure 3.1 Action Following Request to Consult a Solicitor

Source: Garda Síochána custody records; analysis by the Garda Inspectorate

Examination of the 68 custody records where a solicitor was requested showed that a consultation had taken place in 74% of cases and in 7% of cases no consultation had occurred but the reason for this was recorded. Reasons given included that the person had changed their mind, had been released from custody before the consultation could take place, or had been taken to court and the solicitor would be present there.

In 12% of the cases, no consultation occurred but the records contained no explanation, while 7% had no information about whether or not a consultation took place. In total, the Inspectorate was unable to determine if 19% of people who had requested a solicitor had been able to avail of this fundamental right.

It is important to point out that the relevant section of the custody record is only required to be completed if the person requests a solicitor. No written record is made if the person decides not to avail of this right when it is offered, nor is there a requirement for the

person to sign the custody record to confirm their decision. In addition, the layout of the custody record amalgamates the information about the right to a solicitor with information about third-party notifications in a single section, and by doing so limits the amount of information that can be recorded there.

Assessment

This inspection has identified some areas of legislation, policy and practice that should be strengthened in order to better protect an arrested person's right to consult a solicitor in private.

The lack of a suitable consultation room in many stations is a significant impediment to upholding this right. To address this, soundproofed rooms where telephone and face-to-face consultations can take place in private should be included in the specification and standard for all custody suites as referred to in Recommendation 3. In addition, interpreting Regulation

11(3) that ‘a consultation may take place in the sight ... of a member’ to mean that all legal consultations must be observed further limits this right. The Inspectorate considers that the decision to observe a consultation should be recorded and should be based on an assessment of risk rather than being a blanket approach.

The examination of custody records highlighted the need to improve the quality of record keeping. In many instances, this is poor practice by individual members in charge. However, the poor design of the custody record also hampers the detailed record keeping that is essential to demonstrate that a person has been given the opportunity to avail of their rights. For example, while the absence of information about a solicitor may imply that a person did not want representation, it does not provide clear evidence of the person’s decision.

The paucity of information made available to those who may be eligible for the Garda Station Revised Legal Advice Scheme may create a barrier to their availing of their right to consult a solicitor. Including more details of the scheme on the C.72(S), displaying the information on posters in the custody area and having members in charge explain it when appropriate would help people better understand how they can avail of legal aid.

The Inspectorate supports the use of randomly generated lists of solicitors developed by the Law Society as a transparent and fair way of ensuring that a person who does not name a solicitor can obtain independent legal advice.

Similar to a recommendation made by the CPT following its 2019 visit to Ireland, the Inspectorate considers that all aspects of legal advice should be placed on a statutory footing. This should include the circumstances in which a person may have access to their chosen solicitor delayed. This would ensure that the actions of all parties,

but particularly the Garda Síochána and defence solicitors, would be informed by a single legal document, rather than two separate non-statutory codes of practice.

Recommendations

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 10

The Inspectorate recommends that the Department of Justice consider incorporating in statute all aspects of a person in custody’s right to legal advice.

This should include:

- The circumstances in which a person’s access to their chosen solicitor can be delayed;
- The circumstances in which an interview may be conducted before legal advice has been obtained; and
- The requirement for such decisions and the rationale for them to be recorded.

Recommendation 11

The Inspectorate recommends that the Garda Síochána better safeguard the right to consult a solicitor in private.

To achieve this the following actions are required:

- Direct members in charge to record the decision of the person in custody regarding legal advice, ask the person to provide written confirmation of their decision and record any refusal to do so;
- Ensure that the design specification for all custody facilities includes soundproofed consultation rooms;
- Base the decision to observe a legal consultation on an individual risk assessment and record the decision and the rationale in the custody record;
- Ensure that the Garda Station Revised Legal Advice Scheme is brought to the attention of arrested persons, where applicable; and
- Use the lists of solicitors available on the Law Society website when persons in custody request a solicitor but are unable to name one.

Third-Party Notifications

Under Regulation 8 of the Custody Regulations, an arrested person must be told that they can have a person nominated by them informed that they are in custody. This is referred to as a third-party notification.

To assess compliance with this regulation the Inspectorate examined the sample of 318 custody records and found that 20% of persons in custody wanted a third party informed. No information was recorded in 6% of the cases. Where the person had requested a third-party notification, there was a record of this being given in 94% of these cases. None of the persons in custody who engaged with the Inspectorate raised an issue with the operation of this right.

The CPT recognises that the exercise of this right may be subject to exceptions '*in order to protect the legitimate interests of the police investigation*'. It states that such exceptions should be '*clearly defined and strictly limited in time*' and accompanied by safeguards such as '*the approval of a senior police officer unconnected with the case*'³⁸ (CPT, 2002). The Custody Regulations are silent on the circumstances in which it may be appropriate to delay giving this notification. The PACE Act 1984 provides an example of how this CPT standard could be incorporated into domestic legislation. It states that the notification may be delayed by a police officer of the rank of inspector or above in particular circumstances, such as where there are reasonable grounds for believing that the notification may lead to physical harm to other people, interference with witnesses or evidence, or the alerting of other suspects.

Assessment

As already described, the design of the custody record means that information about a third-party notification is contained in the same section as a request for a solicitor. This is illustrated in Figure 3.2.

38 Available at <https://rm.coe.int/1680696a76>

Figure 3.2 Section G of the Custody Record

G. NOTIFICATION TO SOLICITOR OR OTHER PERSON Regulation 9	
To be completed where notification to solicitor or other person is requested by person in custody (or in the case of a juvenile a request by the juvenile / parent / guardian / spouse or other person)	
Name of person requesting solicitor / other person _____	
Time of request _____	
Name of solicitor / other person to be notified _____ Phone no. _____	
Time solicitor / other person notified _____ Notified by _____	
Remarks _____	

Time of arrival at station (if applicable) _____	
Signature of Member _____	
G1. To be completed where the solicitor or other person cannot be contacted within a reasonable time or where the solicitor is unable or unwilling to attend.	
Person in custody informed Yes <input type="checkbox"/> No <input type="checkbox"/>	
Time informed _____ Informed by _____	
Person in custody given an opportunity to ask for another solicitor or that another person reasonably named by him / her be notified Yes <input type="checkbox"/> No <input type="checkbox"/>	
Name of other solicitor or other person requested by the person in custody _____ Time of request _____	
Time solicitor or other person notified _____ Notified by _____	
Remarks: _____	

Time of arrival at station (if applicable) _____	
Signature of Member _____	

Source: Garda Síochána custody records; analysis by the Garda Inspectorate

It was not possible to determine if the poor design of the custody record had affected the recording of requests for a third party to be notified. However, to facilitate better recording and analysis, this right and the right to consult a solicitor need to be dealt with separately, in distinct sections of the custody record. This is included in a list of proposed changes to the custody record in Chapter 7. While a better-designed

custody record would facilitate the more detailed record keeping which is essential to demonstrate that rights have been given, the poor design should not delay better recording of a person’s decision regarding a third-party notification.

Although the Inspectorate did not identify any cases where the third-party notification was delayed, there is no legislation or policy to define the circumstances in which it could be. The Inspectorate considers that the decision to delay notification should be taken by a member of the rank of inspector or above who is independent of the investigation; the decision and rationale should be recorded; and the delay should be time limited in accordance with the position of the CPT.

This should include:

- The circumstances in which a notification may be delayed;
- The applicable time limits; and
- The requirement for such decision to be authorised by a member of the rank of inspector or above who is independent of the investigation.

Recommendations

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 12

The Inspectorate recommends that the Garda Síochána direct members in charge to record the decision of the person in custody regarding a third-party notification, ask the person to provide written confirmation of their decision and record any refusal to do so.

Recommendation 13

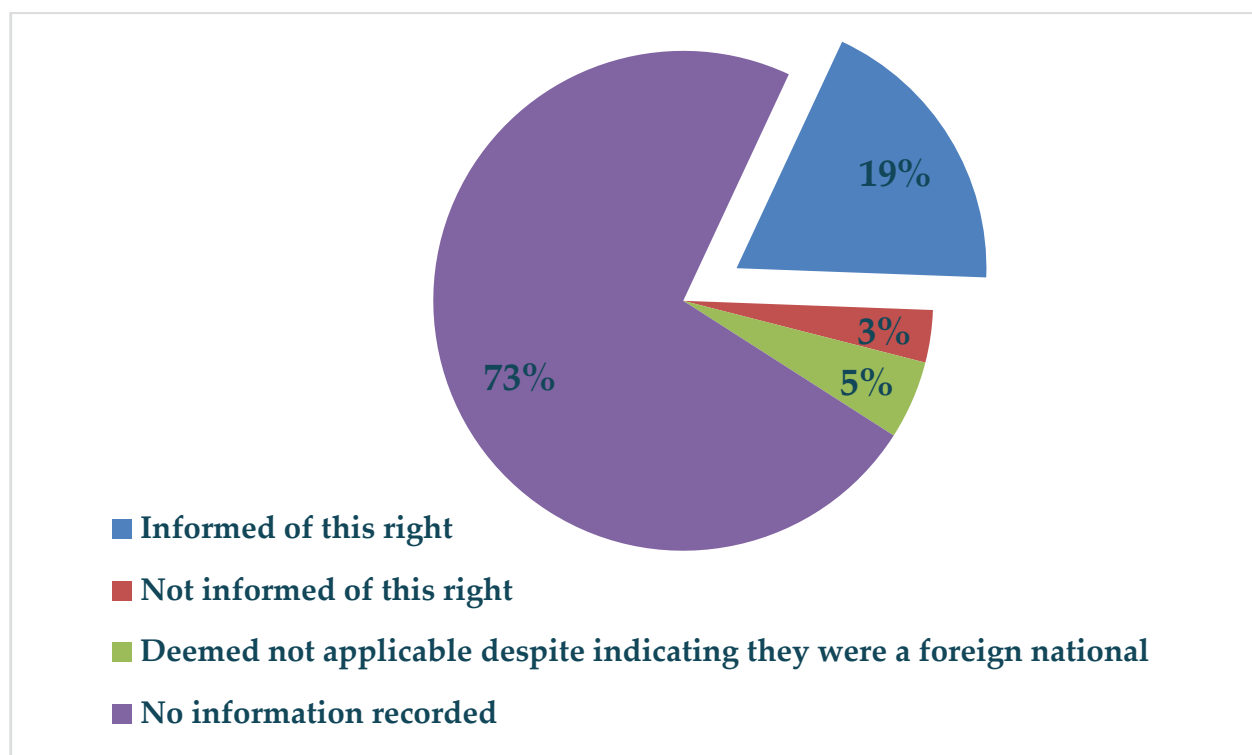
The Inspectorate recommends that the Department of Justice consider incorporating in statute all aspects of a person in custody's right to a third-party notification.

Additional Rights of Foreign Nationals

Where an arrested person is a foreign national, the Custody Regulations require that they be informed without delay that they may communicate with their consul and that, if they so wish, the consul will be notified of their arrest. A record must be made of the time when the foreign national was informed, when any request was made, when the request was complied with and when any communication was forwarded to a consul.

To test compliance with this regulation, the Inspectorate analysed the sample of custody records and found that 59 of the 318 people in custody were identified as foreign nationals, while in seven cases, nationality was not recorded. The Inspectorate then examined the 59 records to assess if these people were informed of their right to communicate with their consul. Figure 3.3 illustrates the result of this analysis.

Figure 3.3 Proportion of Foreign Nationals Informed of the Right to Communicate with their Consul



Source: Garda Síochána custody records; analysis by the Garda Inspectorate

The results show that 73% of custody records had no information to indicate if the person was notified of this right, while 3% showed that the person was not notified. In 5% of the records, the member considered that this right did not apply, even though the recorded nationality was not Irish. Only 19% of the 59 records contained clear evidence that this notification had been given.

Assessment

The right of an arrested person to communicate with their consul is enshrined in legislation; however, this examination revealed poor levels of compliance, in that either people are not being informed of this right or record keeping is poor. It is vital that where appropriate this right is brought to the attention of the person by the member in charge and that better records are made.

Right to Assistance from an Interpreter

Under the European Communities Act, 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013, an arrested person, other than one being dealt with in Irish, who does not speak or understand English has the right to the assistance of an interpreter while in custody. The legislation requires the member in charge to take reasonable steps to verify if the person needs an interpreter and sets out the considerations that the member in charge must take in reaching this decision. Where the member in charge decides that an interpreter is not required, they must inform the arrested person of this decision and the reasons for it. This information and any response made by the arrested person must be recorded in the custody record. Face-to-face and telephone interpretation in

87 languages on a 24/7/365 basis is available through a national contract.

One migrants' rights group that met with the Inspectorate emphasised the importance of involving an interpreter at the earliest opportunity in the custody process. It also identified the potential for conflicts of interest to arise, particularly outside Dublin, as the interpreter may be known to the person in custody. Despite several organisations highlighting the absence of regulation or quality control, members of the Garda Síochána reported that the arrangements for interpretation services generally worked well.

The custody record has a section entitled 'Foreign nationals', which requires a Yes/No answer to the question '*is an interpreter required*'. Of the 318 records examined, 12 showed that an interpreter was required, while 25 records indicated that an interpreter was not required. The section was not completed on 17 of the records and 264 were completed with the response "Not Applicable". Further examination of the records showed that decisions taken by members in charge about using interpreters were not clearly recorded, as is required by the legislation.

The European Communities Act, 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013 also require the member in charge to make appropriate arrangements for an arrested person who has a hearing or speech impediment that significantly affects their ability to be understood. The Garda Síochána was piloting a remote sign language interpretation service and, subject to evaluation, the Inspectorate would encourage the roll-out of the service across the organisation.

Assessment

As with the assessment made in this chapter of other statutory rights, poor record keeping, as well as the fact that none of the people in custody spoken to by the Inspectorate required an interpreter made it difficult for the Inspectorate to be assured of compliance with this regulation.

Safeguarding the Rights of Vulnerable Persons

It can be said that everyone in custody is vulnerable because arrest and detention disempowers the person concerned. However, particular vulnerabilities such as age, poor mental health, or an intellectual disability could mean that a person is unable to fully understand and participate in the custody process. As such, it is important that vulnerabilities are identified and that suitable measures are put in place to safeguard the rights of vulnerable people.

Definition of Vulnerability

This inspection identified that there was no legal definition of the terms "vulnerable" or "vulnerability" in the context of custody. The Custody Regulations do not use these terms, although they require members to have regard for '*the special needs of a person with a physical or mental disability*'. They describe two groups of people— children, and those who are '*known or suspected to be mentally handicapped*' – and require certain actions to be taken in respect of people who fall into either of these groups. Garda policy states that the special provisions within the Custody Regulations that apply to children should also apply to people '*suffering from a mental disorder*'.

Relevant definitions were found in other jurisdictions. In New South Wales, a

vulnerable person is defined as ‘a child or a cognitively impaired person’, where cognitive impairment includes ‘an intellectual disability, a developmental disorder (including an autistic spectrum disorder), a neurological disorder, dementia, a severe mental illness, and a brain injury’.³⁹

In New Zealand, a vulnerable person is defined as ‘a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person’.⁴⁰

The legislation in England and Wales provides detailed information on identifying and dealing with vulnerability to ensure that suitable safeguards are provided. It states that the term “vulnerable” applies to any person who, because of a mental health condition or mental disorder:

(i) *May have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with their arrest and detention and the exercise of their rights and entitlements.*

(ii) *Does not appear to understand the significance of what they are told, of questions they are asked or of their replies.*

(iii) *Appears to be particularly prone to becoming confused and unclear about their position; providing unreliable, misleading or incriminating information without knowing or wishing to do so; or accepting or acting on suggestions from suggestions or proposals without any protest or question.*

The legislation also explains the meaning of the terms “mental health condition” and “mental disorder”.⁴¹

Identifying Vulnerability

Identifying whether a person is vulnerable is an important responsibility of the member in charge and it is the first step in ensuring that the person in custody is able to understand what is happening and the implications for them. The primary tool for identifying and recording vulnerabilities is the custody record risk assessment form. The form in use at the time of this inspection included questions that were aimed at helping the member to identify if a person is vulnerable. A copy of the form can be found at Appendix 1 and the overall process for identifying and managing risks associated with people in custody is contained in Chapter 4.

The Inspectorate’s examination of the risk assessments in the sample of 318 custody records found that 24% showed that the person was suffering from poor mental health or had engaged in self-harm, while 5% identified a learning disability. Both vulnerabilities were identified in a small number of records, while others contained no information or stated that the person had refused to provide this information. In addition, 20% of the people in custody spoken to by the Inspectorate disclosed that they had poor mental health or a learning difficulty.

Many members who spoke to the Inspectorate said that they relied on their personal judgement to determine if a person was vulnerable and then recorded their assessment accordingly. However, some custody records contained no observations from the member in charge about the vulnerability of the person or no assessment based on their observations and engagement with them. This inspection found some examples of good practice by

39 Section 306M of the Criminal Procedure Act, 1986

40 Section 2 of the Crimes Act, 1961

41 Code C of the PACE Codes of Practice

individual members who recognised the importance of identifying vulnerability. They described how they would conduct a general conversation to put the person at ease and then ask indirect questions, the answers to which enabled them to make an assessment. Disappointingly, this was not common practice.

Many of those spoken to said that they would welcome training or guidance to increase their awareness of learning difficulties and mental health issues. The Inspectorate was told about a pilot training programme aimed at helping members to recognise people’s hidden disabilities and to communicate more effectively with them. The programme was run in partnership with the Irish Criminal Justice Disability Network and was targeted at members of community policing teams. Subject to evaluation, a programme like this could also help those who perform the member in charge role. The Garda Síochána also reported working with the National Office of Suicide Prevention with a view to developing a virtual training package in the area of identifying potential vulnerabilities. In New Zealand, all police employees, including those working in custody areas, undergo mandatory suicide awareness training with refresher courses every two years.

Assessment

The absence of a legal definition of vulnerability and the existing provisions in the Custody Regulations potentially limit the availability of additional safeguards only to children and those with a “mental handicap”. In the Inspectorate’s view a broader and more contemporary definition of vulnerability is needed to ensure that adequate safeguards are put in place to protect the rights of all vulnerable people

and to enable them to understand and fully participate in the custody process.

However, a new definition alone will not ensure that vulnerabilities are identified. Those performing member in charge duties require a level of awareness of mental health conditions and intellectual disabilities. They must also adopt an inquisitive approach to their assessment of vulnerability of persons in their care, because if vulnerability is not recognised, there is a risk that appropriate safeguards will not be put in place to protect the rights and wellbeing of some people in custody. While some work has been done with relevant experts, it is important that this results in guidance and training being provided to all members in charge.

As proposed in Recommendation 9, the introduction of a custody healthcare service, staffed by healthcare professionals, would also contribute to better recognition of vulnerability and support for those concerned.

Recommendations

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 14

The Inspectorate recommends that the Department of Justice establish a broader and more contemporary statutory definition of vulnerability.

Recommendation 15

The Inspectorate recommends that the Garda Síochána continue to work in partnership with relevant experts to further develop guidance documents and provide training to help members to identify persons in custody who are vulnerable and to safeguard their rights.

Supporting Vulnerable People

The Custody Regulations legislate for support for people who are vulnerable because they are under 18 years of age or over 18 years of age and *'are or are suspected to be mentally handicapped'*. This support comes from another person who is variously referred to in the Custody Regulations as an *'adult'*, a *'responsible adult'* and an *'appropriate adult'*.

The term *'responsible adult'* is not defined in the regulations; an *'adult'* is defined as *'a person not below the age of 18 years'*; and an *'appropriate adult'* is defined as follows:

- (a) *In the case of a person who is married and his spouse is an adult and is readily available, the spouse; and*
- (b) *In any other case, the parent or guardian, or where the parent or guardian is not readily available, an adult relative or some other responsible adult, as may be appropriate ...*

The term *'appropriate adult'* is used in two of the Custody Regulations. Firstly, Regulation 12(8) states that the written consent of an appropriate adult is required before a person under the age of 18 and who is deaf can be interviewed without an interpreter. Secondly, Regulation 18(1) requires that

when fingerprints are being taken from a child, the consent of an appropriate adult is required.

Regulation 13 of the Custody Regulations also makes provision for a responsible adult to be present during an interview with a child if a parent, guardian, adult spouse (if the child is married) or adult relative is not readily available or suitable. The application of all other regulations relating to children also requires a parent, guardian or adult spouse (if the child is married).

Children who met with the Inspectorate to discuss their experience of being in garda custody said that either their parent or another adult was called and attended custody. Several of the children reported that they were treated better by gardaí after the adult arrived and some complained that they were not told when their parent or other adult would arrive.

Regulation 22 of the Custody Regulations requires that the provisions of the regulations that apply to children also apply to a person of any age who is or is suspected to be *'mentally handicapped'*. This regulation goes on to specify that the responsible adult referred to in Regulation 13 should *'where practicable be a person who has experience in dealing with the mentally handicapped'*.

During the examination of custody records, the Inspectorate found that support from an adult was rarely obtained for people over the age of 18 who the custody record showed to have a learning difficulty or poor mental health or to have engaged in self-harm. Although a number of those with identified vulnerabilities requested that a third party be notified of their being in custody, few records showed that an appropriate adult had been called. While the third party may be a suitable person to act as an appropriate adult, the records did not indicate that they undertook this role.

During inspection visits, the Inspectorate found that gardaí were well aware of the requirement to have an adult present when a child is in custody. There was, however, a lesser degree of awareness or consideration of the need to provide support to a person who has an intellectual disability or learning difficulty. Some gardaí who had undertaken the Level 3 investigative interviewing course described how they used questions to check the person's understanding and assess their need for the support of an adult. However, these gardaí were usually detectives involved in interviewing the person as part of a criminal investigation, rather than members in charge.

Some gardaí had a better understanding than others of the role and purpose of the adult. There was a mixed response from gardaí when asked if they would explain the role to the person in custody and to the adult, with many assuming that those concerned understood the role. There is no document explaining the role of the adult that could be given to the person in custody and to the adult to ensure that they understand what they should or should not do.

When asked who they would contact if a parent or guardian were unavailable or unsuitable, some gardaí said that they would try to contact another relative, some said they would call a local Peace Commissioner, while others gave examples of contacting a priest, a local business person or a social worker to fulfil this role. During one visit, the Inspectorate spoke to a security guard from a local shopping centre who was present to undertake the adult's role, but they had not been told this and had no understanding of what this entailed.

The Children's Ombudsman has highlighted the absence of a national advocacy service for children in custody and the lack of people trained to undertake this role. The

Irish Criminal Justice Disability Network also identified that some people in custody may have disabilities which are not visible, or undiagnosed learning difficulties, or may be unable to read or write. They stressed the need for people to be able to access independent support through structured arrangements such as the appropriate adult schemes in the UK.

International Practice

In legislation governing custody in Northern Ireland, England and Wales, the term 'appropriate adult' is used when referring to the adult whose role is to support and safeguard the rights of the person in custody. There is a specific definition of appropriate adult for both children and vulnerable persons. This approach ensures consistency of language and clarity about who may perform the role.

Code C of the PACE Codes of Practice explains that the role of the appropriate adult is to safeguard the rights, entitlements and welfare of children and vulnerable persons in custody (and in certain other scenarios). The appropriate adult is expected to:

- > *Support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure;*
- > *Observe whether the police are acting properly and fairly to respect their rights and entitlements, and inform an officer of the rank of inspector or above if they consider that they are not;*
- > *Assist them to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution; and*
- > *Help them to understand their rights and ensure that those rights are protected and respected.*

In England and Wales, local authorities have a legal duty to ensure provision of an appropriate adult for children in custody and formal schemes exist for this purpose. Although there is no legal obligation in respect of vulnerable adults, organised services exist in many areas. For example, in Cheshire Constabulary, the local Police and Crime Commissioner funds the appropriate adult scheme for vulnerable adults. In Northern Ireland, a mental health charity is funded by the Department of Justice to provide a scheme for both children and vulnerable adults.

There is a set of national standards for appropriate adult schemes in Northern Ireland, England and Wales. These were developed by the National Appropriate Adult Network in consultation with the UK Home Office. They draw together various sources of information, including legislation, case law, codes of practice, research, inspectorate reports and operational guidance. The aim of the standards is to ensure the effective and organised provision of appropriate adult services.

Norway also has a structured arrangement in relation to supporting children in custody. Throughout the country, there are 23 Emergency Child Care Units (ECCU) staffed by trained social workers. These social workers undertake a wide range of child-centred responsibilities including providing support for children and their families in crisis or emergency situations and searching for missing children. Four of the units are staffed on a 24/7 basis, while the remainder operate an out-of-hours call-out rota. When a child is arrested and brought to a police station, both the parents and the ECCU are notified by custody staff. A social worker from the unit may act as the appropriate adult if a parent is unable or unwilling to attend. In Oslo, an ECCU is co-located in the

police station that adjoins the city's single custody suite.

In New Zealand, legislation provides for an adult to support a child or young person who is in police custody. The child or young person can nominate the adult and if they refuse or fail to do so, one will be nominated for them from a list of adults who are vetted and trained. The legislation also describes the responsibilities of the adult who is nominated to support the child or young person in custody.

Assessment

While there was a good level of understanding about the need for adult support for a child in custody, there was poor recognition of the importance of providing support to a vulnerable adult. Furthermore, the variation in levels of understanding and communication of the role of the adult raises concerns about the extent to which the rights of children and other vulnerable people are properly protected. If the safeguards are inadequate, then their ability to participate in the process in an informed way may be undermined.

The Inspectorate was concerned to find that individuals, other than parents or legal guardians, who were asked to perform this role were not trained or garda vetted to do so. A formal scheme, comprising trained and vetted people who are available during and outside office hours, would provide a more robust and defensible way of safeguarding the rights, entitlements and welfare of children and vulnerable adults in custody. The scheme could also support children and vulnerable adults who attend voluntarily for interview.

Finally, the use of different terms to describe the adult whose role is to support a child or vulnerable adult is confusing and the

absence of a definition or formal explanation of the role weakens this important safeguard.

Recommendations

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 16

The Inspectorate recommends that the Department of Justice consider updating the legislation relating to the arrangements for providing support to children and vulnerable adults in custody.

The updated legislation should:

- Standardise the definition of the adult whose role is to assist or support children or vulnerable adults in custody;
- Define the adult's role and describe who can perform it; and
- Set out the circumstances in which this adult is required.

Recommendation 17

The Inspectorate recommends that the Department of Justice introduce a formal scheme consisting of suitably trained and vetted individuals who are available to support children and vulnerable adults in garda custody.

4

Chapter 4

Care and Treatment of Persons in Custody

'It is widely accepted that custody is a challenging and high-risk aspect of policing...identifying, assessing, managing and reviewing risks associated with each person is a vital part of the custody process.'



Chapter 4 – Care and Treatment of Persons in Custody

Introduction

In addition to having access to their statutory rights as set out in Chapter 3, persons in custody should be treated with dignity and respect. This requires the basic human need for rest, food and hygiene to be attended to, as well as identifying and appropriately responding to individual health and welfare needs. It is also important that people in custody are safe. This means that the risks posed by or to the person must be identified and assessed at the earliest opportunity and managed throughout the time they are in custody. As the state of the physical environment in which people are kept has a bearing on their welfare and safety, the condition of custody facilities is also important.

This chapter examines how the Garda Síochána cares for and treats people in custody and provides a safe custody environment. It sets out the relevant legislation and policy and goes on to examine risk management in the custody context, consider how people in custody are treated with regard to their needs and review the condition of custody facilities visited during this inspection.

Relevant Legislation and Policy

Regulation 3 (1) of the Custody Regulations requires members to

act with due respect for the personal rights of persons in custody and their dignity as human persons, and shall have regard for the special needs of any of them who may be under a physical or mental disability, while

complying with the obligation to prevent escapes from custody and continuing to act with diligence and determination in the investigation of crime and the protection and vindication of the personal rights of other persons.

In addition, Regulation 19 describes relevant aspects of custody such as providing rest, meals and toilet facilities, as well as placing and visiting people in cells.

HQ Directive 58/08 reinforces the obligations of members to promote respect for and observance of human rights and fundamental freedoms and not to subject any person to torture or to any cruel, inhumane or degrading treatment or punishment. More recently, the Code of Ethics for the Garda Síochána sets out the duty on its workforce to recognise and respect the dignity and equal human rights of all people, to act in a fair and impartial way, and not to abuse their power or position. The Code also requires the workforce to be sensitive to the vulnerabilities of individuals and make accommodation for an individual's particular needs where possible.

In the 2000 case of *Salman v. Turkey*, the European Court of Human Rights ruled that 'persons in custody are in a vulnerable position and the authorities are under a duty to protect them'. In addition, the 12th General Report on the CPT's activities, states that 'the duty of care which is owed by the police to persons in their custody includes the responsibility to ensure their safety and physical integrity'.⁴²

42 Available at: <https://rm.coe.int/1680696a76>

Risk Management

It is widely accepted that custody is a challenging and high-risk aspect of policing. People brought into custody may have alcohol or substance dependencies, have poor physical or mental health, be violent, or exhibit tendencies to self-harm. Therefore identifying, assessing, managing and reviewing risks associated with each person is a vital part of the custody process.

Risk Assessment Form

Garda policy requires a formal risk assessment to be completed for each person coming into custody when they first arrive at the custody area in a station. HQ Directive 48/18, issued in September 2018, changed the operational practice slightly with the introduction of a new risk assessment form to replace the previous risk assessment section contained in the custody record. This form is a separate loose-leaf sheet of paper which must be attached to the custody record. It contains additional questions to *'enhance the process of risk assessing and identifying vulnerable arrested/detained persons in garda custody'*. The form is completed during the booking-in process and requires the member completing it to gather information about the person's mental and physical health, use of alcohol and drugs, learning ability and dietary requirements. A copy of the form that was in use at the time of this inspection is attached at Appendix 1.

During the examination of custody records, the Inspectorate found that risk assessment forms were completed in almost every case. However, a number of gardaí told the Inspectorate that they found it difficult to ask some of the questions on the form, due to their sensitive nature. They also said

that some people decline to answer certain questions or may not answer them truthfully through embarrassment or concern about how certain responses may be treated. Although the risk assessment form prompts gardaí to record their observations, the Inspectorate noted gaps in the completion of some forms. For example, in several cases the member had recorded that the person in custody had refused to answer the question but had not included any observations, as required by the relevant HQ Directive.

At the time of the inspection, the Garda Síochána advised the Inspectorate that it had commissioned a review of the risk assessment form. It has since reported that following this review and work with relevant experts, a revised risk assessment form has been prepared, stating that *'this will incorporate additional safeguards for vulnerable persons with mental health illness and will enable the assessing Garda member to make an informed decision regarding the arrested and/or detained person in custody'*. The Garda Síochána explained that the revised form will be accompanied by comprehensive guidance notes, which provide *'additional supports for Garda members in completing the Risk Assessment Form and in dealing with persons with mental health illness'*. The findings from the review and the revised form had not been made available to the Inspectorate when this report was completed.

Assessing Risk

In order to effectively assess the risk that a person in custody may pose to themselves or others, the garda member completing the risk assessment should have access to other relevant information about the person, such as previous risk assessments, custody records and alerts or warnings on the PULSE system.⁴³ Considered along with members'

43 There is a facility on the PULSE system to enter information in the form of a warning or an alert about an individual. A request must be made to a Criminal Intelligence Officer for this to be updated to the system.

observations and disclosures from the person themselves, this type of information would enable garda members to make an informed assessment of risks and decide what measures are necessary and proportionate to mitigate them.

Members must be aware of the type of indicators, such as unemployment or social isolation, which may suggest that a person is at increased risk of self-harm. They also need to understand that certain behaviours may be a symptom of an underlying health condition. For example, medical conditions such as epilepsy or infections may cause aggressive behaviour or confusion.

This inspection identified a number of barriers that hampered the completion of a thorough assessment of risk, including:

- > Custody records and risk assessment forms were not easily searchable because they were in paper format and stored in the station at which the person was in custody. There was also a possibility that risk assessment forms could become detached from the custody record and lost or misplaced.
- > Not all members spoken to were aware of the requirement to record a warning on PULSE in respect of a person who has a propensity to self-harm or attempt suicide, nor did they routinely check PULSE for warnings in relation to persons brought into custody.
- > The categories of warning that were required to be recorded were limited to self-harm or suicide. The guidance notes that accompanied the risk assessment form did not require other types of vulnerability or risk, such as having an intellectual disability or a proclivity to use violence, to be added to PULSE.
- > There was little training or documented guidance available to assist members

to identify risk factors and understand alternative causes for disturbed behaviour.

Managing Risk

Once the risk assessment has been made, necessary and proportionate actions must be taken to mitigate any identified risks. The type of action that might be needed include calling a doctor, contacting an adult to support a vulnerable person, using restraint tactics, removing certain items of clothing or not placing the person in a cell. Although a record of such actions may be contained in different sections of the custody record, they were not recorded as a coherent risk management plan that was readily accessible for the purpose of reviewing risks or conducting handover briefings. Examination of custody records and completed risk assessment forms revealed that there was no overall assessment of the type and level of risk associated with a person, no recorded rationale for certain actions being taken and no documented risk management plan.

Reviewing Risk Assessments and Management Plans

Reviewing risk assessments and management plans is important in order to determine if the level of risk has changed and if the mitigating actions are still necessary and proportionate. This inspection found that risk assessments were not reviewed during the course of a person's time in custody. This was corroborated during focus groups with garda members, most of whom regarded risk assessment as a one-time only activity, rather than an ongoing and dynamic process. The Inspectorate also identified that risk assessments were not formally reviewed prior to a person's release from custody, although some members described how they might contact a relative of a vulnerable person to collect them upon their release. Further

examination of custody records identified that reviews were not carried out prior to the transfer of a person to another garda station or into the custody of another agency, such as the courts or prison service. Although the Custody Regulations require that a copy of the custody record accompanies a person in custody being transferred to another station this did not always happen, meaning that the risk assessment was not available to the member in charge at the new location.

International Practice

All other police services visited had a comprehensive risk management process that commenced on arrival at the custody facility and was reviewed to determine if the risk had changed.

In New Zealand, when the custody risk assessment identifies that a person is in need of care, and frequent or constant monitoring, police officers must complete a “Health and Safety Management Plan” form in relation to the detainee. The form:

- > Provides notice to the detainee that he or she has been found to be in need of care;
- > Prompts police officers to ensure that mandatory procedures are completed before placing the person in a cell and offers options for managing the person;
- > Lists a variety of contacts to assist with the provision of care to the person in custody; and
- > Records relevant information such as medication and approved changes to the plan for managing the detainee.

Officers are required to continually reassess the health and wellbeing of people in custody. Accordingly, the risk assessment process does not end once a detainee is processed and placed in a cell, but continues through the duration of custody.

In the UK, arresting members are expected to check any immediately available sources of information relevant to the welfare of the arrested person and to bring that information to the attention of custody staff. Sources could include their legal representative and other relevant organisations such as prisons. In addition, a Person Escort Record form is completed for every person being transferred from a police station to another location, such as a different custody suite, hospital, court or prison. The form contains details of any risks or vulnerabilities associated with that person and provides staff transporting and receiving detainees with all necessary information. The UK’s College of Policing Authorised Professional Practice (APP) on detention and custody highlights the importance of information-sharing between police, prison and health services in a way that enables the person’s care to be managed in accordance with the positive obligations under the ECHR, while being cognisant of the right to respect for private life. The APP also provides information on all aspects of risk management, including information to help custody staff to identify risk and understand that there can be alternative explanations for violent or aggressive behaviour.

Assessment

Although initial risk assessments are carried out for almost every person in custody, there are significant weaknesses in the identification, assessment and management of risk, as well as in the recording of relevant information and decisions.

The inability to easily access other custody records and risk assessment forms, the *ad hoc* approach to updating and checking PULSE and the narrow scope of the categories of warnings that are required to be recorded on PULSE limits the amount of information available to the member conducting the

risk assessment. The lack of privacy in many custody areas may deter people from answering questions on the risk assessment form fully and honestly. Along with the lack of training on identifying risk indicators and causes of disturbed behaviour, these factors are likely to result in assessments that are flawed and risks that are not managed appropriately.

The lack of documented risk management plans containing the actions put in place to mitigate identified risks is a weakness, as is the absence of periodic reviews of the level of risk and the suitability and necessity of the mitigating actions. The transfer of responsibility for persons in custody from one member in charge to the next should be accompanied by a formal handover briefing that includes the current level of risk and how it is being managed.

Members in charge should complete a risk assessment prior to release or transfer. The updated risk assessment and management plan should accompany a person being transferred from a garda station into the custody of other garda members or another agency. Where other organisations are involved in the transfer of persons in custody, this may require a formal arrangement for the transfer of their personal data to ensure compliance with data protection legislation. The failure to consistently adhere to the policy of sending the custody record with the person being transferred creates potential risks to the safety and wellbeing of the person and those responsible for them.

When a vulnerable person is being released from custody, the member in charge should consider what action, if any, is needed to support them. For example, it may be appropriate to offer advice or options such as details of hostels or charities, or make referrals to other relevant support agencies.

If there is a credible risk that the person is likely to harm themselves or others on release, then the member in charge should decide on a course of action that protects life in accordance with the statutory function of the Garda Síochána.

Although other garda members may complete the risk assessment form or take actions to manage identified risks, the Inspectorate's view is that the member in charge must have overall responsibility for assessing and managing risk in respect of each person in custody.

The weaknesses identified in the risk management process may result in persons in custody not being adequately protected in accordance with their rights under the ECHR Act. They may also result in corporate and legal risks, as well as reputational harm to the organisation. Therefore, the Inspectorate considers that urgent improvements need to be made to the management of risk in custody.

Any changes to the risk assessment form or risk management process following the Garda Síochána's internal review should also have regard to these issues.

Recommendation

In light of these findings, assessments and international practice the Inspectorate makes the following recommendation.

Recommendation 18

The Inspectorate recommends that the Garda Síochána take action to improve the identification, assessment and management of risk in respect of every person in custody.

This should include:

- Assigning overall responsibility for the risk management of each person in custody to the member in charge and ensuring they are suitably trained to do so;
- Ensuring that all available sources of information, including PULSE, are checked as part of the initial risk assessment;
- Developing a risk management plan for each person in custody;
- Conducting periodic reviews of the risk assessment and management plan during the time in custody;
- Conducting a risk assessment prior to release and putting in place any appropriate safeguards;
- Ensuring that a copy of the risk assessment and management plan accompanies every person being transferred from a garda station into the custody of other garda members or another agency;
- Ensuring that all aspects of the identification, assessment and management of risk are recorded in the custody record; and
- Ensuring that all identified risks and vulnerabilities associated with a person are flagged on PULSE.

Checking the Health, Safety and Wellbeing of Persons in Custody

There are many ways, both physical and technological, to check the health, safety and wellbeing of persons in custody. These include the use of CCTV systems in the custody area and regular visits to the person by the member in charge or gaoler. Although not every person in custody will be placed in a cell, those who are can use call bells that are installed in the cell to contact the member in charge or gaoler.

In-Cell Visits

Regulation 19(6) of the Custody Regulations stipulates that where a person in custody is kept in a cell, they should be visited by a member every half hour and if the person is under the influence of drink or drugs, they must be visited, spoken to and if necessary roused every 15 minutes for a period of two hours or longer if warranted. HQ Directive 58/08 defines rousing as *'wakening the person or bringing them out of inactivity'* and requires a detailed entry to be made in the custody record describing the person's position when checked. It specifically states that entries such as *'visit to prisoner – all ok'* or *'prisoner asleep – all ok'* are not acceptable. To check compliance with this instruction, the Inspectorate examined the sample of custody records and found that adherence was inconsistent. For example, some well-completed custody records demonstrated a high degree of compliance and reflected an understanding of the purpose of the checks and the need for good record keeping. However, the examination also found that these unacceptable phrases were in common use and identified some examples where the timing of the checks and nature of the overall

record of observations suggested at best a perfunctory completion of this vital activity.

This inspection also noted that members in charge continued to conduct these periodic checks even when the person was not in a cell, for example, while the person was being interviewed.

The Use of Call Bells

Each cell is fitted with a call bell to enable the occupant to contact the member in charge, or gaoler if appointed, by triggering a visible and audible alert on a master panel. Once a call bell has been activated in a cell, it must be physically reset on the master panel. The master panel also has a mute facility for each cell that can be used if someone persistently presses the call button without good reason. The Inspectorate was advised that this is regarded as an exceptional step, taken only after an assessment of the risks associated with doing so and the employment of alternative mitigating actions that are documented in the custody record.

This inspection found that in most stations visited, the master panel was located in the public office. This arrangement and the fact that members in charge often have additional responsibilities may delay their response to a call bell activation. However, in new stations, the master panel was sited within the purpose-built custody area and during visits to this type of station, the Inspectorate found that the members in charge were located here and able to respond without delay.

In each station visited, the Inspectorate requested a test of the call bell system. While the majority functioned correctly, it found that call bells in several locations had not been reset, meaning that further activations from the cell would not trigger the alert. No reasons were given for this.

Eight out of 20 people in custody who met with the Inspectorate during these visits said that the call bell system was not explained to them and four reported that it was not responded to when they used it. In one case, the Inspectorate checked the bell following a complaint and found that several of the bells in the custody area were not working. Some of the children who met with the Inspectorate said that the call bell in their cell was not always responded to, while another reported an immediate response when they accidentally activated a panic alarm.

CCTV Systems

The Garda Síochána recognises the benefits of having video and audio recording in custody areas. As an example, the Inspectorate was told about one garda station where 33 complaints against garda members had been recorded in the year prior to the opening of a new custody facility that had a CCTV system. In the year following its opening, there were no recorded complaints. At the time of the inspection there was no programme in place to install CCTV in all custody facilities.

Some of the custody areas visited during the inspection had CCTV systems, others did not, and not all of the systems that were in place were capable of audio recording. Some of these systems had blind spots and others lacked cameras in all of the areas where persons in custody would be, such as in corridors between the cells and interview rooms. CCTV cameras were not installed in cells and concerns were voiced by garda members about their impact on the privacy of the occupant. The Inspectorate found cameras that were out of order and in one instance, a dispute over which department was responsible for repairs meant that the CCTV system had not been working for several years. Stations with CCTV or audio recording had appropriate signage in place

to alert people to its use. However, in some places, this was not displayed prominently in all of the areas covered.

Although the CCTV cameras in custody areas could be monitored, this did not happen as a matter of course. The Inspectorate was told that footage may be reviewed as part of an investigation into a complaint against or an assault on a member. However, it is not used proactively, either to monitor or supervise real-time activity in the custody area or to routinely review incidents such as the use of force.

Best practice is to have video and audio recording in all parts of a custody suite, including at the point of arrival at the police building and the route from there to the custody suite. This is the arrangement in new, purpose-built garda custody facilities, as well as in other jurisdictions visited.

In England, New Zealand and Norway, CCTV is fitted in cells, with pixilation of the toilet area to ensure privacy. It was explained that this enables better monitoring of the safety and wellbeing of persons in custody and may reduce the number of physical checks that have to be made. In addition to in-cell CCTV, other jurisdictions have installed other in-cell technology that can remotely monitor the occupant's breathing. It was explained that this is not a replacement for physical checks; rather it provides an additional safety measure which can help custody staff to balance the need to allow a person who is in custody for a lengthy period to have uninterrupted rest with the need to be satisfied about their physical wellbeing.

Assessment

Cell visits, the use of call bells and CCTV can all help to keep people safe and well in custody. However, failures to comply with instructions about conducting cell visits

may result in the identification of problems being delayed with potentially catastrophic consequences. Similarly, inactive call bell systems or delays in responding to an activation mean that cell occupants may be unable to communicate in a timely manner with the member in charge or gaoler, potentially creating avoidable health and safety risks. The presence of CCTV in custody facilities offers protection for persons in custody and garda members. However, the lack of CCTV systems with video and audio recording in some custody areas, as well as blind spots and defective equipment in others, means that safeguards for everyone present in these custody area are sub-optimal.

In Chapter 2, the Inspectorate recommended that all custody facilities in the estate plan should be brought up to a minimum standard, which includes the installation of CCTV systems. In addition, the Inspectorate considers that in-cell technology that assists with the effective monitoring of persons in custody needs to be introduced. This type of technology, including in-cell CCTV and other vital signs monitoring systems, is already standard in other jurisdictions.

Although many garda members and their managers recognised the benefits of CCTV as a deterrent against inappropriate behaviour, more use could be made of it to routinely review custody activity to ensure that rights are protected and people are treated with dignity and respect.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 19

The Inspectorate recommends that the Garda Síochána improve the monitoring of the health, safety and wellbeing of persons in custody.

To achieve this, the following actions should be taken:

- Ensure better recording and supervision of in-cell observations;
- Include the installation of in-cell technology in the specification for custody suites in the custody estate plan;
- Routinely review CCTV footage to check that persons in custody are treated with dignity and respect and in accordance with regulations and policy; and
- Ensure that CCTV signage is prominently displayed in all areas where CCTV systems are installed.

Meeting the Needs of Persons in Custody

Providing Rest Periods

Regulation 19 of the Custody Regulations states that a person in custody must be allowed reasonable time for rest as is necessary, but does not define what is reasonable. In addition, Regulation 12 prohibits the questioning of an arrested person between midnight and 8am, except in specific circumstances and when authorised by the member in charge. These circumstances are:

- > If the person was taken to the station during that period;
- > If the member in charge has reasonable grounds to believe that delaying questioning would involve a risk of injury to persons, serious loss of or damage to property, destruction of or interference with evidence, or escape of accomplices; or
- > Where the person is detained under Section 4 of the Criminal Justice Act, 1984 and the member in charge is of the opinion that questioning should be suspended to enable the person to rest and the person consents to the questioning being suspended.

Examination of custody records during this inspection showed that these regulations were complied with. In relation to the suspension of questioning for rest, the Inspectorate identified several cases where the person agreed to the suspension and no cases where consent was sought but not given.

In England and Wales, there are broadly similar arrangements for rest. Code C of the PACE Codes of Practice contains a more detailed description of the rest period, stating '*in any period of 24 hours, a detainee must be allowed a continuous period of at least 8 hours rest, free from questioning, travel, or any interruption in connection with the investigation concerned*'. It explains that '*the rest period should normally be at night or other appropriate time which takes account of when the detainee last slept or rested*'.

Like the Custody Regulations, the PACE Codes of Practice enable the rest period to be interrupted for the purpose of an urgent interview, for example, where a delay would result in harm to another. However, under the PACE Codes of Practice, it is for a detainee to request to be interviewed during what would be a rest period, rather

than having to consent to suspending the interview process.

Assessment

While the Inspectorate acknowledges that there must always be provision for interviews to be conducted in the first two sets of circumstances, it considers that the last of the three listed circumstances warrants further consideration. Given that the detained person must consent in writing to the suspension of questioning in order to allow them to rest, it follows that in the absence of written consent, questioning should or could continue. This situation may have implications for the rights of the detained person in terms of fair process and humane treatment.

In the Inspectorate's view, the agreement of the detained person should not be required to enable a rest period to be provided. The default position should be to provide a continuous period of rest, not just free from questioning but free from any interruptions except for the circumstances described in the first two points above, or where medical advice stipulates otherwise or to perform the welfare checks required by the Custody Regulations. In addition, a more detailed explanation of rest is needed, and the PACE Codes of Practice provide a useful benchmark. The Inspectorate has already made this recommendation for legislative change to the Department of Justice.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 20

The Inspectorate recommends that the Department of Justice consider introducing legislation that provides every person who is in custody for a lengthy time with a reasonable period of rest that is free from questioning or other interruptions and that does not depend on the consent of the person.

The legislation should include:

- A description of what is a reasonable period of rest;
- That the period of rest should be excluded in reckoning the period of time in custody that is permitted in law; and
- The circumstances in which the period of rest may be interrupted.

Hygiene Arrangements

Regulation 19 states that access to toilet facilities should be provided for a person in custody. With the exception of juvenile cells, most cells contained a toilet, with the flush mechanism located outside the cell. The Inspectorate was told that children and people who were unable to use the in-cell toilet would be brought to a suitable bathroom, although in some stations this was away from the main custody area.

This inspection ascertained that toilet paper was not provided in cells in order to avoid occupants misusing it, for example, to block the toilet or to harm themselves. It also found that toilet paper was not offered to cell occupants nor were they told that they could

request it. Members spoken to said that they would provide toilet paper if it was asked for.

The Custody Regulations and guidance notes are silent on the need to provide washing facilities. In most of the locations visited during this inspection, a sink for handwashing was located in the corridor just outside the cells. None of the cells visited had integral sinks with running water, although such systems are in place in other jurisdictions. This inspection found that opportunities for washing were not routinely offered, for example, after the person had used the toilet or before providing food, and usually depended on the person requesting to use this facility. Hand soap and towels (either paper or fabric) were not readily available in many of the locations visited.

Most of the custody areas visited by the Inspectorate had a shower facility; however, some of these lacked privacy, some were out of order and others were used as store rooms. The Inspectorate was told that if a lengthy period of custody was anticipated, the person may be brought to a location with shower facilities or transferred to another station during the period in custody to enable them to have a shower. Some garda members informed the Inspectorate that they had brought persons in custody to the staff changing room for a shower, while another member said that they had provided their own toiletries to a person in custody.

Attending to the Needs of Females in Custody

When identifying the needs and vulnerabilities of persons in custody, it is important to consider the different needs of females that are associated with pregnancy, menopause, menstruation and the provision

of sanitary products, including access to toilets and washing facilities. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders states that *'the accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge'*.⁴⁴

This inspection found that there was no instruction or guidance in place about the specific needs of females and none of the places visited had a stock of sanitary products. Generally, the onus was on the person in custody to make a request, with many of the members spoken to saying that they had never been asked for sanitary products. Some members indicated that if they were needed, they would either purchase them locally, ask a female colleague if they could help, or get a relative of the person in custody to bring a sanitary product to the station. A female in custody told the Inspectorate that despite her request for sanitary products, they had not been provided.

In the Oslo custody suite, sanitary products were stocked and provided free of charge to female detainees, while guidelines on custody published by the UK's College of Policing state that *'hygiene packs should be routinely offered to women on arrival and a variety of menstrual products must be available on request (detainees must be advised they are free)'*.⁴⁵ A 2019 amendment to the PACE Codes of Practice requires that each detainee be given an opportunity to speak privately to a member of the custody staff of the same sex about any aspect of their health and welfare that might affect them while in custody. It also requires that each female detainee be asked in private and at the earliest

44 Available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

45 Available at: <https://www.app.college.police.uk/app-content/detention-and-custody-2/detainee-care/#toilet-and-sanitary-facilities->

opportunity if they require or are likely to require menstrual products.

Access to Outdoor Exercise

In the 12th *General Report on the CPT's activities*,⁴⁶ it is recommended that persons held in custody for longer than 24 hours should be offered outdoor exercise every day. Although this is not specified in the Custody Regulations or garda policy, members explained that they would facilitate exercise for those who were in custody for a lengthy period. Of the stations visited by the Inspectorate, only the newly built stations had secure purpose-built exercise areas. In others, use was made of the station yard or other courtyard-type areas within the station. The Inspectorate identified numerous risks associated with these types of spaces, including an absence of CCTV or alarms, the presence of trip hazards and potential opportunities for escape. It was also told about several occasions when persons in custody had attempted to escape when taken outside to exercise or smoke.

Removing Clothing and Providing Replacements

There are a number of reasons why gardaí may remove and retain items of clothing or footwear from a person in custody. For example, they may suspect that the item is of evidential value, or they may have reason to believe that the person will use the clothing to harm themselves or others. This inspection found that it was common practice to remove certain types of clothing from every person in custody on the basis that it could be used to cause harm. This approach did not take account of individual risk assessments, which may have indicated that removal was not necessary.

If a person's footwear or clothing is retained, Regulation 17 of the Custody Regulations states that replacements of a reasonable standard must be provided. A detailed specification for replacement clothing is set out in HQ Directive 58/08. This requires clothing to be new and comfortable, not made from transparent fabric and not capable of being used to cause harm.

During visits to stations with custody facilities, the Inspectorate found that very few had suitable stocks of replacement clothing. Where no clothing was held, members said that they would purchase the necessary items from a local shop. Members also reported that when replacement clothing was needed but not available, they would provide the person with a PVC boiler suit of the type used by crime scene examiners.

The lack of replacement clothing was a common complaint from the children and young people who met with the Inspectorate. They reported that garda members either required them to take off items of clothing with cords and laces and leave them outside the cell, or allowed them to keep the items but with the cord removed or cut out. To avoid permanent damage, most took off the items, such as their hoodies and tracksuit bottoms. However, none of them said that they had received any replacement clothing and in some cases, they reported being in the cell wearing only their underwear.

There may be occasions when the risk of a person self-harming is so high that removal of most or all of their own clothing may be necessary. Despite the acknowledged need for safe replacement clothing, the Inspectorate found that none was available in any of the garda stations visited. This is in contrast to custody suites in other jurisdictions visited, which had anti-rip clothing that could be provided in these

46 Available at: <https://rm.coe.int/1680696a76>

circumstances. Although the Garda Síochána had designed and piloted anti-rip clothing, this had not yet been supplied to its custody facilities.

Supplying Food and Drink

The Custody Regulations state that a person in custody shall be provided with such meals as are necessary, with at least two light meals and one main meal in any 24-hour period. The regulations require that details of meals supplied be recorded. The CPT has stated that persons in police custody should be given food at appropriate times, including at least one full, hot meal, defined as something more substantial than a sandwich every day.

All stations visited had local arrangements in place for obtaining food for persons in custody. In most cases, this involved dispatching a garda member to a local supermarket or takeaway restaurant to obtain a meal. An exception to this was a station that held a stock of frozen pre-cooked meals, supplied by a local restaurant, which could be heated and provided to the person in custody.

The risk assessment form has a question about dietary requirements, although in a small number of cases, there was no answer recorded or the person refused to provide an answer. An example was provided of obtaining a kosher meal for an arrested person. Most of the people spoken to by the Inspectorate indicated that they had been offered and/or provided with something to eat and drink while in custody. Those who had not been offered food or drink had been in custody for a very short period of time and the Inspectorate would not have expected food to be routinely provided.

Attending to Religious and Cultural Needs

This inspection found an uncoordinated and inconsistent approach to the facilitation of the religious and cultural needs of persons in custody. There were some examples of good practice such as the superintendent who had briefed members to afford persons of the Muslim faith opportunity to pray and an interview that had been delayed to allow a person to pray. When asked, members said they could use their phone to identify the direction of Mecca to enable a person to practice their faith. There were very few examples of religious texts or other artefacts being available, although some members indicated that a family member could bring items to the station which would then be given to the person in custody, subject to a risk assessment.

Visitors to Persons in Custody

Regulation 11 of the Custody Regulations allows a person in custody to receive a visit from a relative, friend or other person with an interest in their welfare. A visit may take place if the member in charge is satisfied that it can be adequately supervised and it will not hinder or delay the investigation. While the Inspectorate did not observe any visits taking place, supervisors reported that visits do occur, subject to risk assessment. The Inspectorate was also told by garda members and by persons in custody that relatives or friends had been facilitated to bring items, such as clothing and toiletries, into the station for the person in custody.

Heat and Lighting in Cells

The construction of most cells visited by the Inspectorate included a section of glass blocks which afforded a degree of natural light and those cells that had been refurbished had

different light settings. These consisted of a white light for day time and a blue light for night time that enabled welfare checks to be carried out with less disruption. The lighting was controlled from outside the cell, as was the heating and ventilation system. Some of the children who met with the Inspectorate to discuss their custody experience reported that cells were cold, while several persons in custody complained about the noise of this system, something that was verified by the Inspectorate. As a result, persons in custody may end up choosing between quietness and a suitable temperature, either of which could disrupt their rest period.

Cleanliness of Cells

All stations reported that they had contract arrangements in place for routine and deep cleaning of cells. The cleanliness of most of the cells visited was satisfactory, although the Inspectorate found a small number of instances of blocked toilets and dirty blankets, which were brought to the attention of the garda member showing them the facilities. It also noted graffiti in several cells, some of which appeared to have been there for a considerable time. When asked about the condition of the cell in which they had been placed, most of those spoken with felt that they were acceptable.

Availability of Reading Materials

Several of the stations visited had a small stock of books or magazines that could be provided to persons in custody, subject to risk assessment. This was not common practice but it is good practice, particularly as regards persons in custody for lengthy periods such as those being held overnight for court.

Assessment

The Inspectorate found several examples of good practice such as the immediate availability of suitable replacement clothing and the provision of reading materials. It also met individual members who demonstrated high standards of care for and treatment of those in custody, sometimes despite the poor facilities in which they worked and the limited equipment available to them. However, good practice and high standards were not consistently adopted throughout all of the places visited.

The practice of always removing certain types of clothing from every person in custody is disproportionate to identified risks, while the inability to immediately provide suitable replacements is unacceptable. Having to shop for clothing on a needs basis creates an unjustifiable delay in providing replacement items and the boiler suits that are sometimes supplied are not considered by the Inspectorate to be suitable for this purpose. It is also intolerable that despite successful piloting of alternative clothing for persons who are at high risk of self-harming, this has not been provided to all custody facilities.

The prevailing culture that people have to ask for toilet paper or sanitary products, or to use washing facilities, not only has an adverse effect on personal hygiene but also has a negative bearing on an individual's dignity. People in custody should be offered essential hygiene items and access to washing and shower facilities in a way that protects their dignity. The Inspectorate considers that it is good practice to offer people the opportunity at an early stage to speak in private about their health, welfare and hygiene needs, including asking females about their need for sanitary products.

In an increasingly diverse society, the Garda Síochána should also ensure that a person's religious or cultural needs are identified and

recorded so that reasonable requests can be facilitated as far as practicable.

Overall, the Inspectorate considers that the treatment of persons in custody would be improved by the consistent implementation of existing requirements and the expansion of identified local and international good practice to all custody areas. Making these improvements will demonstrate the Garda Síochána's commitment to the requirement in the Code of Ethics to respect the dignity of each individual. Although many of these matters are included in the Custody Regulations, the development of the proposed statutory codes of practice provides an opportunity to update and codify the required standards of care and treatment. Citing the PACE Codes of Practice as an example, the CPT considers that *'clear and consistent custody guidelines, which exist in a number of countries, are an important tool for professionalising the implementation of custody'*⁴⁷ (CPT, 2019). In New Zealand, the minimum requirements for exercise, food and drink, special dietary requirements and bedding for persons in custody are set in legislation. Further provision is also made for meeting religious needs in so far as it is practicable.

Recommendations

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 21

The Inspectorate recommends that the Garda Síochána improve the standard of care and treatment provided to persons in custody in garda stations by taking the following actions:

- Replacement clothing, including anti-rip clothing, should be stocked in each custody facility and provided in all circumstances where it is required;
- The removal of items of clothing for safety reasons should only be in response to an identified risk;
- Washing kits and towels should be available in all custody areas and offered to persons in custody, along with access to washing and shower facilities;
- Females should be asked, in private, about their need for sanitary products and offered items free of charge;
- All persons in custody should have the opportunity to speak in private with a person of the same sex about health, hygiene or welfare matters;
- Members should identify and record a person's religious or cultural needs, including dietary requirements, and endeavour to facilitate reasonable requests; and
- Each custody facility should stock a variety of suitable reading materials that can be offered to persons in custody.

47 Available at: <https://rm.coe.int/16809420e3>

Recommendation 22

The Inspectorate recommends that the Department of Justice consider incorporating all the aspects of care and treatment listed in Recommendation 21 into the proposed statutory code of practice.

Suitability of Custody Facilities

An important element of the care and treatment provided to persons in custody is the physical environment in which they are held. During this inspection, the Inspectorate visited the custody facilities in 23 garda stations. These stations varied in terms of age, overall size, cell capacity and total number of persons in custody. Several were new stations with purpose-built custody suites; some had been upgraded under the Cell Refurbishment Programme, while others were awaiting refurbishment. This section looks at the standard and condition of the facilities to assess how they affect the safety, security and wellbeing of everyone there.

Safety and Security of Custody Facilities

To avoid contact with members of the public or members of the garda workforce not directly involved in custody, best practice is that persons should be brought into the custody area through a secure entrance that is separate from the public entrance. In some places visited during this inspection, arresting members brought the person into the station through the public office. In others, there was a separate entrance from the station yard into the custody area, while

one of the new stations had a fully secure vehicle dock that would prevent a person escaping after they exited the vehicle and before they entered the custody area.

There should also be a safe and secure route from the point of entry to the custody reception area and between the various rooms that are used during the custody process, such as interview and medical rooms. This inspection found that in some stations, arrested persons had to be brought through corridors and past offices in which there were other members of the workforce not involved in the custody process. Some of these routes required flights of stairs to be negotiated, making the journey challenging for people who have a mobility difficulty and unsafe if they are uncooperative or aggressive. The inspection also found that some entrances and corridors were not covered by CCTV and did not have alarms fitted to summon immediate assistance if required.

The alarms fitted in some custody facilities were wall-mounted strips, while older facilities had panic buttons that are less easy to use. These alarm systems need to be reset after activation. The Inspectorate tested a number of alarms and found that most worked and resulted in an immediate response from gardaí. However, the alarm in one station did not work when tested because it had not been reset. The Inspectorate noted an alternative option in the Oslo custody suite whereby custody staff carry a personal attack alarm at all times.

Access to the Custody Area

The custody area should be secure to prevent persons in custody from leaving that part of the building and to ensure that only those members of the workforce with a legitimate reason can enter.

Custody suites in the new-build stations visited were self-contained with access controlled by swipe card or keypad entry. However, the layout of older stations, including some of those which have been refurbished, means that this type of access control cannot be achieved. The Inspectorate encountered some examples of poor practice in areas where there was an opportunity to restrict access, yet doors leading to other parts of the station were left open. It also observed several situations where there was potential for a person in custody to access other parts of stations and was told about an arrested person who was able to escape from a station unnoticed.

Custody Reception Areas

Each custody facility should have a reception area to receive and book in persons taken into custody. This area should afford the person privacy and be constructed so as to minimise the risk of harm should the person become agitated or violent.

The reception areas in the purpose-built custody suites visited fulfilled these requirements. In addition, some stations had their reception areas upgraded under the Cell Refurbishment Programme. However, this inspection identified a number of unsuitable reception areas. These included the counter in the public office, a desk inside the public office and a desk in the corridor leading from the public office to the private part of the station. Using these locations to receive persons into custody limited the privacy of those persons and that of other callers to the station. It also put persons in custody within earshot of other official business being conducted in the public office, as well as creating potential risks to the safety of others in the station.

Some stations also lacked a suitable waiting area that could be used if more than one

person were brought into custody at the same time or while another person was being booked in. Options available to members included keeping the person in the garda vehicle, in the station yard or waiting in the public office.

Despite previous recommendations by the Garda Síochána Ombudsman Commission and the Inspectorate to install digital clocks in custody areas, this inspection found that only 9 of the 23 custody areas visited had this important piece of equipment. This is particularly relevant in the absence of an electronic custody record which would automatically record the time that entries are made. As a result, the Inspectorate found that members relied on their watch or mobile phone or noted the time from the computer when completing custody records. This practice can lead to inaccurate records and inconsistencies with times that are recorded elsewhere, such as interview start and finish times.

Availability of Equipment

The length of a person's stay in custody depends on a number of factors, including the availability of and access to equipment that forms part of the investigative process. Some custody facilities visited lacked important items such as those for obtaining evidence of intoxicated driving or for taking fingerprints electronically. The absence of such equipment may result in a person being taken to another custody facility or having to wait for another method to be employed, such as calling a doctor to attend to take a blood sample in a case of intoxicated driving. The Inspectorate also noted that a number of custody facilities did not have PULSE computer terminals, necessitating the member in charge to leave the custody area and go to another part of the station to access the system, for example, to check for

warnings or alerts in relation to the person in custody. These items are included in the specification for new-build custody suites.

Facilities for Medical Examinations

The *12th General Report on the CPT's activities* states that medical examinations must be conducted out of the hearing of police and out of sight unless the healthcare professional carrying out the examination expressly requests otherwise.⁴⁸

The Inspectorate found a variety of arrangements in the 23 stations it visited. Five of the stations had a single purpose medical room with an examination couch, sink and toilet, while three others had designated medical rooms but no examination couch. The absence of a couch for conducting examinations was highlighted by a doctor spoken to by the Inspectorate during a visit to a garda station. Other stations used multipurpose rooms for conducting medical examinations. These rooms were often cluttered and many housed other equipment, such as breath testing devices and fingerprint machines. The Inspectorate was told that even if there is a medical room, doctors may see the person in their cell.

Solicitors Consultation Room

Chapter 3 highlighted that not all custody facilities could guarantee private consultations between solicitors and arrested persons. Custody suites in new stations have soundproofed consultation rooms which can facilitate garda observation if required. However, in most facilities visited face-to-face consultations took place in interview rooms or other general-purpose rooms which did not always guarantee privacy.

The ability of an arrested person to have a confidential telephone conversation with

their solicitor is similarly compromised. The Inspectorate found telephone facilities located in corridors, rooms that were not soundproofed or public offices where the member in charge would have to leave in order to provide privacy. This contrasted with facilities viewed by the Inspectorate in the Oslo custody suite, where all face-to-face meetings with legal representatives are held in a private consultation room behind a closed door and telephone calls from legal representatives are diverted to the person's cell via an intercom system.

Standard and Condition of Cells

Cells in new-build custody suites and those that had been upgraded under the Cell Refurbishment Programme met the Garda Síochána's design standard, meaning that they were constructed to be ligature free. However, this inspection found that in a number of locations, cells that had not been refurbished were still being used. These cells had not been fitted with the specified anti-ligature door and most were in a poor condition generally. One location that had both refurbished and non-refurbished cells had permanently closed the non-refurbished ones as they were considered to be unsafe. When demand exceeded the number of refurbished cells in this station, members were diverted to another station with suitable cells. In contrast, the Inspectorate noted a reluctance in some places to close cells pending refurbishment in case the station was removed from the programme and the custody facility did not re-open.

The Inspectorate was advised that the Cell Refurbishment Programme was rolled out on the basis of a priority list which aimed to refurbish the cells in at least one station per division to ensure that each division had a stock of cells where persons in custody could

48 Available at: <https://rm.coe.int/1680696a76>

be managed in a safe environment. However, despite the availability of refurbished cells in nearby stations, unsuitable cells were still being routinely used.

Assessment

The shortcomings found in many of the custody facilities visited have a bearing on the security, safety and wellbeing of persons in custody, gardaí and others who have reason to be in the custody area. They may also mean that a person's rights cannot be safeguarded to the extent envisaged by domestic legislation and international standards. The same shortcomings are not evident in every facility and some were better than others. However, with the exception of the purpose-built custody suites, very few stations had all the components required in a modern, safe and secure custody facility such as those seen in other jurisdictions.

It was recommended in Chapter 2 of this report that the Garda Síochána develop a custody estate plan, determine a minimum specification and standard for its custody facilities and bring all facilities up to that standard. The findings from the examination of the facilities visited support that recommendation.

The Inspectorate was very concerned to find cells being used that did not meet the standard of safety set in the Cell Refurbishment Programme. This was despite refurbished cells being available nearby. The use of these cells creates a risk to the safety of occupants who are already vulnerable on account of being in police custody. The most appropriate action to mitigate this risk is to close any cell that does not meet the standard. This should be done without delay.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 23

The Inspectorate recommends that the Garda Síochána immediately close cells that do not fully meet the standard of the safety specifications of the Cell Refurbishment Programme.

Other Safety Issues Identified in Custody Facilities

Daily Checks of Custody Areas

Garda policy requires that custody areas be checked at the start of each day by the member in charge, who is required to complete a checklist which is sent to the superintendent's office. Cells are checked to ensure they are clean and free from damage, specifically that there is nothing in them that could be used as a ligature point, that suitable bedding is available, and that call bells, heating and lighting are working. A copy of the cell checklist is attached at Appendix 2.

In some stations visited, the Inspectorate found that the checklist was not completed on a daily basis. It also found that there was inconsistent recording and reporting of defects and delays in carrying out remedial work. For example, during one visit, the Inspectorate observed a defect in a cell that was not recorded on the most recent cell checklist. On examination of checklists from

preceding days, the Inspectorate found that the damage had been recorded on several other days, but had not been repaired. The Inspectorate brought this matter to the attention of the member in charge, who immediately took steps to remedy the problem.

The checklist also requires verification that certain pieces of equipment, such as spare cell keys, ligature knives and first aid kits, are available. Despite these items being included in the checklist, not all members in charge could immediately locate them, although they were eventually found in the custody area. Examination of the first aid kits revealed that in four facilities some of the contents had expired. The Inspectorate noted that one custody facility had a defibrillator but was told that no one had been trained to use it.

Emergency Evacuation Drills

It is imperative that there is a documented evacuation procedure for each custody facility that is clearly understood and regularly tested. HQ Directive 02/2011 contains a generic evacuation procedure. This states that two emergency drills should be carried out annually and recommends that garda personnel be utilised to role-play a person in custody. Some of the stations visited during this inspection had a notice in the custody area explaining the evacuation procedures. However, in several of the facilities, no one present was aware of the evacuation plans, nor had they participated in a drill. Where it was established that drills took place, there was no evidence that garda personnel were used to play the role of a person in custody.

Carriage of Firearms in the Custody Area

Some gardaí who are involved in bringing a person into custody or who attend a custody area for another reason are armed. Despite the risks associated with bringing a firearm into this environment, there was no policy regarding the carriage of firearms in the custody area. The Inspectorate identified a general view that firearms should not be brought into an interview; however, the risks associated with bringing a firearm into the custody area were not universally recognised. New Zealand Police policy states that staff must remove and secure firearms and TASERs before entering custody areas. In police stations in Northern Ireland, there are secure lockers at the entrance to each custody suite in which to temporarily store firearms and clear notices to remind officers of the organisation's policy that firearms are prohibited in the custody suite.

Assessment

This inspection identified a number of inadequacies that require urgent attention in order to improve the safety of custody areas. Shortcomings in the daily cell checking process mean that damage and defects are not always identified and risks that may arise from them are not appropriately mitigated. Poor levels of awareness among some members in charge of the location of safety equipment, such as ligature knives, mean that they may not be able to respond quickly and effectively to emergency situations in custody and resultant delays may prove critical. The lack of preparedness to deal with an emergency such as a fire in the custody area left the Inspectorate with serious concerns about the safety of people in custody should an evacuation be required. The absence of a clear policy and instructions in relation to the carriage of firearms in

custody areas is also a significant concern, given the potential risk to life. These are all matters that can and must be rectified as a matter of urgency.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 24

The Inspectorate recommends that the Garda Síochána take the following urgent actions to improve the safety and security of custody areas:

- Ensure that cell inspections are completed daily and that any defect or damage is repaired without delay;
- Ensure that there is an evacuation plan for each custody facility, that it is tested biannually and that a record is kept of all tests; and
- Develop and implement a policy on the carriage of firearms in custody areas.

5

Chapter 5

The Roles of Member in Charge and Gaoler

'Deploying custody staff who have received specialist training provides greater mitigation against the high risks associated with custody and better protection of human rights...'



Chapter 5 – The Roles of Member in Charge and Gaoler

Introduction

Although the term “member in charge” means the garda member who is in charge of a garda station at any particular point in time, it has a specific meaning in relation to the management, care and treatment of persons in custody at the station. On occasions, the member in charge may be assisted in this task by other garda members, known as gaolers. This chapter looks at the roles of the member in charge and the gaoler and their responsibilities in relation to persons in custody at a garda station. It also considers how they are selected, authorised and trained to carry out these roles and compares the current practice in the Garda Síochána with the corresponding arrangements in other jurisdictions.

What Is a Member in Charge

In the context of custody, the member in charge is the member of the Garda Síochána who is responsible for ensuring that the statutory duties imposed under the Criminal Justice Act, 1984 and the accompanying Custody Regulations are carried out in respect of every person in custody at the garda station at which they work. While the Garda Code assigns a number of other responsibilities to members in charge of a station, they take on this specific responsibility once a person comes into custody.

Custody Responsibilities of the Member in Charge

Statutory responsibilities of the member in charge include the requirement to ensure that the person is notified of their rights and that requests for solicitors and third-party notifications are acted upon. They must assess if a doctor is needed for the person and notify the parent or guardian if the person is under 18 years of age. The member in charge is responsible for the person’s safety and wellbeing, decides on requests for visits and controls access to persons in custody by other members of the Garda Síochána.

Members in charge must record, or have recorded, everything that happens to a person while they are in custody. This includes information about notifications and visits, as well as details of searches completed, property retained, interviews conducted, and biometric data taken. They are also responsible for ensuring that certain information is entered into the PULSE prisoner log.

Members in charge must ensure that the treatment of each person in custody complies with the European Convention on Human Rights Act, 2003 and Section 42 of the Irish Human Rights and Equality Commission Act, 2014 and that relevant garda policies are adhered to. If the person in custody has been arrested under certain provisions, then the member in charge must also consider whether the person’s detention is necessary for the proper investigation of the offence(s) for which they have been arrested and if so, authorise their detention. (The authorisation of detention was discussed in detail in Chapter 3.)

The Rank of the Member in Charge

The Custody Regulations are silent on the rank of the member in charge. However, the Garda Code states that in the Bridewell in Cork, Henry Street and Roxboro Road stations in Limerick and all stations in the Dublin Metropolitan Region (DMR), a sergeant attached to the regular unit will be appointed as the member in charge.

Inspection visits to DMR divisions and to the Bridewell station in Cork City division confirmed that a sergeant operated as the member in charge. In the other divisions visited, a member of garda rank from the regular unit assumed the role of member in charge when a person was brought into custody.

No clear justification was found for these two different systems as the responsibilities of the member in charge are the same, irrespective of rank. Reasons given to the Inspectorate included higher numbers of persons in custody at the places where sergeants are used as the member in charge and the greater availability of sergeants in those places. However, the Inspectorate's examination of custody data and resourcing information did not support these explanations.

Authorising a Person to Act as Member in Charge

Regulation 4 of the Custody Regulations requires the superintendent in charge of a district to issue instructions about who is to be the member in charge of each station in the district and to ensure that a written record is kept of the name and rank of the member in charge at any given time.

In practice, compliance with this regulation is achieved by the superintendent issuing a general instruction when they first take charge of a district. This is supplemented by daily entries in a diary or other book in the

station containing the name of the member in charge at any given time.

Selecting the Member in Charge

In stations where a garda member was the member in charge, the regular unit sergeant appointed a member of the unit to perform the role at the start of each shift. In general, members were assigned this duty on a rotating basis and the frequency with which they performed the role depended on the size of the unit and the number of persons in custody in that station. The Inspectorate was told that a more experienced member would be selected as the member in charge for arrests connected to serious, complex or high-profile investigations. It was explained that the rationale for this approach was to ensure that any subsequent prosecution was not jeopardised by incorrect custody processes.

Where a sergeant was the member in charge, the arrangements differed slightly from place to place. In some stations, the daily responsibilities of each regular unit sergeant included member in charge duties, and in others, certain sergeants were permanently assigned to this role or performed it on a long-term rotating basis.

Probationer Gardaí as Member in Charge

HQ Directive 58/08 states that unless unavoidable, probationer gardaí should not be designated as the member in charge. Given the large number of probationer gardaí attached to many regular units, the Inspectorate explored the extent to which they performed duty as member in charge.

The Inspectorate found that this policy was mostly adhered to in the divisions and stations that it visited, although there were occasions when probationers, many of whom

had very little operational experience, were selected for this duty. Reasons provided for giving probationers this role included the unavailability of more experienced members and their more recent training in custody matters. Some sergeants spoke in favour of allowing probationers to act as member in charge in order for them to gain experience. These sergeants explained that they would monitor the probationer or appoint a tutor or a more experienced garda to support them. Many gardaí who met with the Inspectorate said they felt unprepared for the role when they first performed it.

Non-Custody Responsibilities of the Member in Charge

Another responsibility that a member in charge might have is to act as the public officer in the garda station. This is in addition to the member in charge role and can include dealing with members of the public calling to the station, answering telephone calls and monitoring the police radio and CCTV systems.

All gardaí spoken to said that they understood the importance of the member in charge role and that once a person was brought into custody, this became their priority. However, many said that they were not always able to exclusively focus on their member in charge duties because they had to combine the role with their public office duties. Some arresting members reported that there were times when the member in charge was not immediately available to deal with an arrested person due to their other duties and explained that this delay may extend the person's time in custody. Similar feedback from investigating members indicated that the member in charge may not always be on hand straight after they finish conducting interviews or other custody procedures.

The Inspectorate did find examples of stations with specific plans in place to relieve the public officer of their other duties when they had to act as the member in charge. Recognising the potential risks that can arise in custody, one superintendent told the Inspectorate that two members would be on duty in the public office at all times, meaning that one could focus on persons in custody, while the other managed non-custody-related tasks. Similarly, some supervising sergeants advised that they would deploy another member to act as the public officer if an arrested person were brought to the station. This inspection found that in many places, the member in charge was left to manage all the responsibilities without any additional help.

Sergeants performing member in charge duties also had additional responsibilities. Most of those spoken to were the supervisor for some, if not all, of the regular unit members and in some stations they were also responsible for ensuring that incidents that occurred during their shift were managed effectively.

The Need for Objective Decision-Making

For certain types of offences, the law requires the member in charge to consider whether there are reasonable grounds for believing that the arrested person's detention is necessary for the proper investigation of the offence for which they are arrested, and if such grounds exist, to authorise detention. If detention is not authorised, the person must be released immediately. Examples of offences for which detention must be authorised include burglary, theft or serious assault. On the other hand, arrests for public order or motoring offences do not require detention to be authorised.

Where applicable, detention was authorised in all of the custody records examined during this inspection. The inspection found that refusals to authorise detentions did occur, but were extremely rare. In focus groups with members in charge, one sergeant reported an occasion when they had not authorised a detention. None of the members of garda rank had ever declined to authorise a detention, although some either knew of someone who had declined to authorise a detention or had witnessed this happening. From interviews with garda members, the Inspectorate identified that there were occasions when the account of the arresting member would be accepted without question as the basis for authorising detention rather than the decision being informed by an objective analysis of all of the available information.

Where the member in charge is of garda rank, often the arresting member and the member in charge are from the same station and frequently from the same regular unit. It can also be the case that the arresting member is more experienced than the member in charge, for example, they may be a detective or of a higher rank. A number of focus groups acknowledged that it was a particularly difficult situation for a junior garda operating as the member in charge in these circumstances. While there was overwhelming agreement that the member in charge has ultimate responsibility for the person in custody, it was suggested by garda members that a refusal to authorise detention would not be well received by colleagues. The Inspectorate was also given examples of members of garda rank having their decisions criticised by senior managers, a situation that has the potential to influence their future decision-making. One garda member suggested it would not be good for career progression if they refused to authorise detentions.

In comparison, the Inspectorate found that sergeants were more confident about their ability to occupy this decision-making role and observed occasions where sergeants successfully took charge of difficult situations in the custody area.

Assisting the Member in Charge – Role of the Gaoler

Regulation 5(4) of the Custody Regulations enables the member in charge to authorise another member to visit persons in custody and make necessary enquiries, if the member in charge is unable to adequately carry out the duties as set out in the regulations. The authorisation and the reasons for it must be in writing and terminates when those reasons no longer apply. This member may make entries in the custody record, although Regulation 6 states that the member in charge has overall responsibility for the accuracy and completeness of all entries.

In the Garda Síochána, the person who undertakes this role of assisting the member in charge is known as a gaoler. There is no further description of the role in internal policy documents and although it is briefly mentioned in the Garda Code, there is no policy or guidance about when a gaoler should be appointed. The crucial difference between the member in charge and the gaoler is the level of responsibility, with the member in charge being ultimately responsible for ensuring that all aspects of the Custody Regulations are adhered to.

In divisions visited by the Inspectorate where the member in charge was a sergeant, there was usually at least one member from the regular unit appointed to act as gaoler. The only records seen by the Inspectorate relating to the appointment or authorisation of a gaoler was the inclusion of their name in the station diary. Gaolers' duties included recording the initial details of persons in

custody; completing the risk assessment forms; contacting doctors, solicitors or other persons requested by those in custody; conducting welfare checks; and providing food and drink. During visits to stations where gaolers were deployed, the Inspectorate found variations in practices. For example, in some stations, gaolers performed almost every aspect of the role of member in charge for persons who were in custody but not in detention, while in others they were assigned specific tasks such as providing food and drink and conducting welfare checks.

In some stations, the role of gaoler was assigned to each regular unit member on a rotating basis, while in others a small number of members undertook the role on a permanent or semi-permanent basis. Few of those deployed as gaoler had received specific training for the role.

International Practice

In the 2002 12th *General Report on the CPT's activities*, the benefits of having designated staff who exclusively fulfil custody roles was highlighted.⁴⁹ This was reiterated in the 2019 28th *General Report on the CPT's activities*, when the CPT reported that '*in terms of resources, a division of labour between operational officers, custodial officers and investigators can lead to greater specialisation, professionalism and efficiency.*'⁵⁰ Although the CPT does not specify that custody officers should be of a supervisory rank, it stated that '*the creation of a specialised group of custody officers may therefore lead to an enhanced sense of responsibility of such officers for the persons in their charge*', adding that '*it may also possibly break the harmful esprit de corps that often prevents officers from speaking out against their colleagues in cases of*

ill-treatment'. The benefits of having larger and more centralised custody centres staffed with professional custody officers were also referred to in the CPT's most recent report on Ireland, issued in November 2020.⁵¹

Custody suites in other jurisdictions examined by the Inspectorate were predominantly resourced by designated staff who were permanently assigned to custody roles.

New Zealand Police mostly have sergeants in charge of their larger custody facilities. These sergeants are responsible for ensuring that all detainees received at the custody facility are lawfully detained, that custody is the appropriate course of action and that custodial monitoring requirements have been met in all cases. Police staff, known as authorised officers (AOs) are employed in custody facilities. The role and duties of AOs are outlined in statute and include powers to search detainees, take identifying information from them and care for intoxicated people in police custody. Where practicable, New Zealand Police employ full-time staff at its major custody units rather than rotating officers into custody roles for six months at a time as was previously the case. Sergeants are often the only sworn police in larger custody facilities, except where constables are used as relief for absent AOs.

In England and Wales, the chief constable of a police service is required by law to appoint custody officers, at the rank of sergeant or above, at the police stations designated by them as places to which arrested persons may be brought. In general, custody sergeants in Northern Ireland, England and Wales are assisted by detention officers. These are police staff designated in law to

49 Available at: <https://rm.coe.int/1680696a76>

50 Available at: <https://rm.coe.int/16809420e3>

51 Available at: <https://rm.coe.int/1680a078cf>

perform specified custody duties and given the necessary powers to do so. The duties include conducting searches and welfare checks; organising legal representation; taking fingerprints, palm prints, DNA samples and photographs; and dealing with the person's property. Some police services employ detention officers directly while others engage them via a contract. This staffing model means that police officers are available for front-line roles and Cheshire Constabulary indicated that this was also a more cost-effective model.

Custody in Scotland is resourced by police officers and staff from Police Scotland's custody division and, when necessary, backfilled using resources from its geographical divisions. Sergeants manage the main custody centres and also supervise constables who deal with detainees in smaller facilities, known as constable-led centres. In a 2019 report, Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) voiced concerns that an increase in constable-led centres was driven by a lack of resources at sergeant rank.⁵² Although HMICS acknowledged this resourcing constraint, the report highlighted that the decision to operate constable-led custody facilities must be informed by an appropriate risk assessment and accompanied by "reliable safeguards" including:

- > Robust supervision by the supervising sergeant of the risk assessment and care plan⁵³ made by the constable;
- > Constables who are experienced and competent in custody; and
- > Supervising sergeants who are familiar with the constables and other staff working in the custody facility, familiar with the environment in which they are

working, including any inherent risks in the facility and easily available.

In Oslo, resourcing of the city's custody suite consists of designated police officers, custody attendants and section leaders. The police officers' role is to authorise and make decisions in relation to a person's detention. Custody attendants perform a similar role to detention officers in the UK, while section leaders supervise the custody attendants. Custody attendants and section leaders are not police officers but have the same powers as police officers except that these powers may not be exercised off-duty. Custody attendants can progress to become section leaders.

It is important to note that detention officers and custody attendants work in large custody suites with high numbers of detainees. For example, Merseyside Police employs 93 detention officers across three custody suites, which receive approximately 25,000 detainees per year (HMICFRS, 2018). Oslo's one custody suite has 49 custody attendants who deal with approximately 8,000 detainees annually.

Assessment

In the view of the Inspectorate, the current resourcing model, in which large numbers of gardaí of different ranks with different training and different levels of experience perform the role of member in charge, is detrimental to the provision of custody services that are consistently safe, effective and efficient. This is notwithstanding the best endeavours of individual gardaí.

There is minimal consideration given to selecting the most suitable people to perform the role of member in charge. In general, selection is not based on up-to-date training

52 Available at: <https://www.hmics.scot/publications/inspection-strategic-arrangements-delivery-police-custody>

53 A care plan is a record of information including confirmation (or otherwise) of a person's fitness to be detained, frequency of and reasons for police observations and medication requirements.

in areas such as human rights, accredited skills such as first aid, or competence in areas such as risk management. The exception to this is the practice of selecting an experienced member in charge for a complex or high-profile case in order that custody processes stand up to scrutiny in court. This approach does not take account of the fact that those who may pose the highest risk of harm to themselves or others may not be in custody for the most serious offences.

Based on international practice, all those performing the custody role should be adequately trained, receive ongoing professional development and perform the role with sufficient frequency to enable them to retain their specialist knowledge and skills. Currently, the training and development requirements that arise from the large number of gardaí who perform custody duties are unachievable and unaffordable. A more efficient, effective and safe model would have fewer people performing custody duties on a more frequent basis in a smaller number of facilities, as recommended in Chapter 2. In the Inspectorate's view, this is best achieved by permanently assigning staff to the roles of member in charge and gaoler. This model would give effect to the CPT's preference of having designated staff who exclusively fulfil custody roles.

In Chapter 3, the Inspectorate recommended that the necessity for detention should be considered for all arrests. In addition, the decision whether or not to authorise detention must always be based on an objective analysis of all of the available information. Members in charge must be confident to probe arresting members about the necessity for detention, and if sufficient grounds do not exist, to refuse to authorise detention. In addition, they must be able to explain and, if required, defend their

rationale when their decisions are challenged by other garda members, including those of a higher rank, by the arrested person or by their legal representatives. The Inspectorate would expect that there would be some detentions not authorised, although not necessarily a large proportion. For example, less than 0.1% of detentions in Cheshire Constabulary are not authorised.

Because of camaraderie between regular unit members or the influence of experienced arresting members over more junior colleagues, members in charge of garda rank may be reluctant to question the necessity for detention or to refuse to authorise it even if they consider that it is unnecessary in the circumstances. This potential lack of rigour could be avoided by appointing sergeants to the role of member in charge. The authority that comes from their supervisory position makes them more suited to the role, would interrupt the '*harmful esprit de corps*' described by the CPT and result in better safeguarding of the right to liberty of persons in custody. Therefore the Inspectorate's view is that the member in charge role should be assigned to sergeants, a position it expressed in previous reports.⁵⁴ In Volume 3 of the report of the Morris Tribunal, it was also recommended that the member in charge should be '*of sergeant rank at least*' because it was not satisfied that the role '*is treated with sufficient importance, or that the member in charge is vested with sufficient authority to ensure compliance with the [custody] regulations*'. The Inspectorate recognises the resourcing challenges associated with deploying sergeants to this role in all divisions and the possibility of additional appointments being required. However, it considers that these challenges could in part be met through a greater understanding of custody demand, rationalisation of the custody estate and a broader review of the allocation, roles and

54 *Frontline Supervision* (2012), Recommendation 4; *Crime Investigation* (2014), Recommendation 9.9.

responsibilities of all sergeants as previously recommended by the Inspectorate.⁵⁵ The type of resourcing model in place in Scotland may offer an interim solution, provided adequate safeguards such as those described by HMICS are in place.

As gaolers provide important support to members in charge, the role needs to be better defined and those who perform it need to be appropriately trained and operationally competent. International practice shows that this role can be undertaken by trained police staff who are authorised in law to do so. This may be a viable option for the Garda Síochána when it develops its custody strategy and estate plan based on fewer custody facilities, as recommended in Chapter 2. Should the demand in those facilities be such that full-time gaolers are required, the appointment of police staff has the potential to facilitate the release of garda members for front-line duties. While this was previously recommended by the Inspectorate and remains extant, it would require legislative change.⁵⁶

As the Garda Síochána implements its new operating model based on a divisional rather than a district structure, the legislation regarding the authorisation of members in charge should be amended to remove reference to districts and to reflect the new model.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 25

The Inspectorate recommends that the Garda Síochána appoint sergeants as members in charge in all custody facilities and assign the roles of member in charge and gaoler on a permanent basis.

To support this model the following actions need to be taken:

- The role and responsibilities of gaoler should be defined;
- Only those trained and operationally competent should be authorised to undertake custody duties; and
- Consideration should be given to recruiting detention officers to assist members in charge in locations where demand justifies it.

Training for Custody Duty

Given the risks associated with custody, it is important that members in charge and gaolers are adequately trained and operationally competent to perform the role. This section looks at the different types of custody training currently provided to members, the extent to which this training meets requirements and examines the training provided in other jurisdictions.

Foundation Training

Since 2014, trainee gardaí receive custody-related training during phase one of the Bachelor of Arts in Applied Policing course

⁵⁵ *Frontline Supervision (2012)*, Recommendation 2.

⁵⁶ *Crime Investigation (2014)*, Recommendation 9.9.

at the Garda College. This is part of the module on station roles and responsibilities and consists of approximately 4.5 days of tuition over the 32-week foundation training programme. The training, which includes demonstrations and role plays, aims to provide trainees with an understanding of the role and responsibilities of the member in charge and the requirements of the Custody Regulations and associated guidance. It includes topics such as completing a custody record, conducting a risk assessment, authorising detention and releasing an arrested person.

Many of the gardaí interviewed by the Inspectorate, including longer-serving members, said that this was the only custody-related training they had received and felt that it did not adequately prepare them for the role of member in charge. When asked what had helped them, the response was nearly always the practical experience of performing the role.

Custody Management Course

The Crime and Operational Skills Faculty at the Garda College runs a Custody Management course. This consists of three days in the classroom and one day in a custody area and covers topics such as custody legislation, policy and case law, cell tactics, use of force, human rights and risk management. It was described as a refresher course that builds on the foundation training programme. Courses are arranged following a request from a divisional chief superintendent and courses are delivered by trainers from the Garda College, with places allocated by local management. The Garda College reported that it had fulfilled all requests from divisions for this course.

Although feedback from those who had completed the course was positive, very few of the members in charge who met with

the Inspectorate had been on the course and many were not aware of its existence. Information provided by the Garda Síochána showed that during the three-year period from 2017 to 2019, 352 garda members and sergeants from 19 divisions had attended this course, with no attendees recorded for nine divisions.

Continuous Professional Development Courses

Two Continuous Professional Development (CPD) courses include custody-related content. The first of these is the Sergeants Development Programme for newly promoted sergeants, which has a four-hour input on Prisoner Management. This classroom-based lesson is delivered by sergeants with custody experience. Topics covered include relevant legislation and policy, risk management, cell inspections, authorising detentions and supervision responsibilities.

The second is the Core Training Programme, which is a one-day CPD course for garda members from uniform and specialist roles, as well as those in administrative roles. In divisions, the course is delivered by local trainers. Custody was one of a number of subjects covered in the 2019 programme, which also included inputs on new case law, victims of crime, online crime and online exploitation of children. The custody content was described to the Inspectorate as an abridged version of the custody elements in the Sergeants Development Programme. College staff estimated that fewer than 20% of the 10,633 members of garda rank had received the Core Programme in 2019. Because the programme was not completed during 2019, the same topics were included in the 2020 programme.

First Aid Training

Many people coming into custody suffer from physical or mental illness, are under the influence of intoxicants, or have addictions. Therefore, it is critical that those responsible for their care and treatment are trained and competent to administer first aid.

First aid training is included in the foundation training programme, but as the qualification only remains valid for two years, regular recertification is required. Recertification courses can be provided by the Garda College if requested by divisional chief superintendents. Analysis of first aid recertification courses completed from 2016 to 2019 showed that over 20% of divisions had retrained fewer than 15 members over the four-year period. One division had no one recertified during this time. Interviews with garda members who perform the role of member in charge or gaoler revealed that many were doing so without up-to-date first aid training.

Training in Use of Force

Most people taken into custody comply with the requests and directions of gardaí. However, some may adopt a passively non-compliant approach, while others may actively resist or use violence against garda members.

It is therefore important that members in charge and gaolers are trained in de-escalation techniques and are proficient in the use of control and restraint tactics that are applicable to the custody environment. These include tactics that can be used in confined spaces and to safely place a non-compliant person in a cell and remove them when necessary.

Although most gardaí spoken to had received training in the use of force, including in the

use of handcuffs and baton, few of those performing custody duties had received additional use of force training specific to this role. The Custody Management course includes practical training to deal with violent or potentially violent persons in custody and in-cell tactics. Those who had attended this course agreed that this part of the training was very useful. However, the small number of people who had completed this course meant that these skills were not always available when needed.

Vulnerability, Disability and Mental Health Training

It is important that members of the Garda Síochána are able to recognise and respond appropriately to the needs of people with poor mental health, intellectual disabilities or other vulnerabilities that may make their full engagement in the custody process difficult.

The foundation programme for trainee gardaí includes training on '*mental illness awareness*' as part of the Policing within Communities module. This focuses on the topics of elderly people, different types of mental illness, garda powers and procedures, and transportation of persons with mental illness, as well as providing information on the community and social services involved in this area. In addition, trainee gardaí attend a two-day suicide prevention programme, known as Applied Suicide Intervention Skills Training (ASIST), co-delivered with the Health Service Executive.

Despite this, many members told the Inspectorate that they often relied on their own experience in these situations and would welcome training or guidance to increase their awareness of intellectual disabilities and mental health issues.

In a submission to this inspection, Mental

Health Reform⁵⁷ recommended that gardaí should be adequately trained and supported to address situations where mental health difficulties are present and to enable them to appropriately divert people with severe mental health difficulties from the criminal justice system. It reported that its consultation with service users identified that gardaí should be trained in the areas of counselling skills, communication skills, listening skills, crisis management strategies and the implications of different types of “mental illness”. It went on to recommend that the mental health-related elements of foundation and CPD training be evaluated to assess the extent to which they equip members to support and appropriately meet the needs of people with severe mental health difficulties.

Another submission, from the National Advocacy Service for People with Disabilities,⁵⁸ identified that disability and equality awareness training, as well as training in the use of Plain English, would be beneficial for gardaí in the context of custody.

Subject to evaluation, the programme being piloted with Irish Criminal Justice Disability Network, described in Chapter 3, could be delivered to those who perform custody roles.

Learning Lessons and Identifying Good Practice

It is important that lessons learned are identified and acted upon in order to improve procedures and address shortcomings and that good practice be recognised and shared among the garda workforce.

In the context of custody, the Inspectorate found a very limited and *ad hoc* approach to learning in this way. Although some of the custody-related courses include information on new case law, the low rate and infrequency of attendance make this an ineffective way to communicate new legal and operational information or practice developments across the organisation in a timely manner.

There was also poor recognition of the value of learning from mistakes as a way of developing policy and improving service delivery. Adverse incidents, such as a person engaging in self-harm or attempting to escape from custody, were treated as individual events and documented in the person’s custody record unless they reached the threshold for reporting to GSOC under Section 102 of the Garda Síochána Act, 2005.⁵⁹ They were not always reviewed at the local level or collated and analysed at the organisational level and as a consequence used to inform policy or practice. As a result, opportunities to improve the safety, care and treatment of persons in custody were missed.

Although GSOC and the State Claims Agency share valuable custody-related information with the Garda Síochána, this inspection found that it was not routinely analysed to identify lessons learned or used to inform policy and practice.

International Practice

The Inspectorate reviewed the training arrangements for custody staff in Norway and England and Wales. While each jurisdiction has a slightly different training methodology, all share a common approach of having an initial training course, a

57 Mental Health Reform is a national coalition of over 70 member organisations which work to drive progressive reform of mental health services and supports in Ireland.

58 The National Advocacy Service provides a free and confidential advocacy service to adults with a disability.

59 Section 102(1) of the Garda Síochána Act, 2005 provides that ‘the Garda Commissioner shall refer to the Ombudsman Commission any matter that appears to the Garda Commissioner to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person’.

mentoring programme and regular refresher training.

Although there is not yet a national custody training programme in England and Wales, all police services base their custody training on the UK's College of Policing's Authorised Professional Practice (APP) on arrest and detention.⁶⁰ The APP is regularly updated to take account of custody-related reports and lessons learned from enquiries and investigations. In addition to training in custody legislation and practice, custody staff are trained in relation to safeguarding children and vulnerable adults, as well as how to identify and meet the needs of those who may be unable to understand or participate fully in the custody process.

In Cheshire, all custody staff are expected to complete an accredited training course and a minimum of eight shifts shadowing more experienced officers before taking up their duties. The training is complemented by a competency-based workbook that has to be completed and signed off and there is ongoing training for staff to continue their professional development.

Custody officers in Oslo receive a 40-hour induction course which includes training on ethics, legislation, first aid and pacification techniques as well as specialist training in the use of force in custody. This is followed by a 6 to 12-month, mentor-led learning programme. It is planned that this programme will be rolled out across the country.

These jurisdictions also recognise the importance of regular refresher training. In Oslo, the duty roster for custody staff includes one day of training per month to update on new practices and procedures and undertake refresher training to maintain practical skills. Cheshire Constabulary and

Merseyside Police also provide annual refresher training which includes equality and diversity issues and officer safety skills.

Mechanisms for identifying and disseminating good practice and lessons learned were in place in these police services. In Cheshire, analysts produce custody performance reports, which form the centrepiece of its monthly scrutiny meetings, chaired by or on behalf of the assistant chief constable responsible for custody. At the time of the Inspectorate's visit, Cheshire's reports were focussed on the areas for improvement identified during an unannounced custody inspection. They are also used to identify trends and inform organisational learning. For example, excellent custody record entries identified through this process are circulated to staff to illustrate good practice.

In the UK, other policing organisations also contribute to the identification and dissemination of good practice and lessons learned. For example, on a quarterly basis, the Independent Office for Police Conduct in England and Wales publishes a *Learning the Lessons* magazine, which includes custody case studies, accompanied by questions for policy makers and operational staff.⁶¹ Separately, the National Police Chiefs' Council's lead officer for custody invites representatives from UK police services and relevant external stakeholders to a biannual custody forum to share good practice and other developments.

Assessment

Commenting on custody practice in some jurisdictions, the CPT expressed its preference for detention facilities staffed by 'a distinct corps of officers specifically trained for the custodial function'. Deploying custody staff who have received specialist training

60 Available at: <https://www.app.college.police.uk/app-content/detention-and-custody-2/>

61 Available at: <https://www.policeconduct.gov.uk/research-and-learning/learning-and-recommendations/learning-lessons>

provides greater mitigation against the high risks associated with custody and better protection of human rights, including the right to life. International practice shows that significant training is required to ensure that custody staff are operationally competent to undertake these roles.

Although there are several custody courses of different durations and varying content available to members of the Garda Síochána, none of them were mandatory for members performing custody duties. The Inspectorate was concerned to find that many members in charge had undertaken only limited training and few had received refresher training. In particular, many were not trained in custody-specific use of force techniques, including de-escalation skills, and did not have up-to-date first aid training. This training deficit creates an avoidable risk to the safe management of persons in custody.

In order to enhance the professionalism and effectiveness of custody, every member performing duty as member in charge or gaoler should receive adequate training before taking up the role and undertake regular refresher training. Key aspects of custody training include relevant law and policy, human rights, recognising vulnerability and supporting vulnerable people in custody, risk management, use of force including de-escalation techniques, and first aid. However, the Garda Síochána should conduct a formal training needs analysis for custody. Experts in areas such as mental health should be involved in the design and delivery of the training. The current Custody Management course provides a good basis from which to develop a course that fulfils the identified training needs.

An initial custody management course should be accompanied by a CPD programme. This should include reaccreditation of essential

operational skills such as first aid and use of force, as well as timely updates on changes in relevant law, policy or procedure.

Training and CPD must be informed by an ongoing process to capture good practice and lessons learned. Better use should be made of valuable sources of relevant information including claims and complaints data, internal and external reviews and enquiries, as well as reports produced by the CPT and National Preventive Mechanisms in other jurisdictions. CPD would be enhanced by enabling custody staff and their managers to share learning and good practice through events and fora. However, this training requirement cannot be met if the Garda Síochána continues its generalist approach to resourcing custody and can only be achieved if fewer people are appointed to carry out the roles.

The development of training and CPD should be driven by the strategic owner and involve other key stakeholders and relevant experts.

Recommendations

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 26

The Inspectorate recommends that the Garda Síochána's strategic owner for custody ensure that lessons learned and good practice are captured, reviewed and disseminated.

Recommendation 27

The Inspectorate recommends that the Garda Síochána develop a mandatory training and development programme for all those who undertake member in charge and gaoler roles.

The training and development programme should:

- Incorporate all aspects of custody including law and policy, human rights, risk management, vulnerability, diversity and mental health awareness, first aid, use of force in custody and de-escalation techniques;
- Be informed by lessons learned and good practice;
- Involve key stakeholders in its design and delivery; and
- Be accompanied by regular refresher training and information-sharing events.

6

Chapter 6

Local Supervision and Management of the Custody Process

'...more intrusive supervision...would improve record keeping, increase levels of compliance with legislative and policy requirements and ensure that all persons in custody are treated correctly.'



Chapter 6 – Local Supervision and Management of the Custody Process

Introduction

While the member in charge has the primary responsibility for ensuring that the Custody Regulations, other relevant legislation and garda policy are complied with in relation to each person in custody, gardaí of other ranks play important roles in ensuring that the custody process works effectively, in accordance with law and policy. In part, this concerns the overall supervision and monitoring of custody in their station, district/community engagement area or division. In addition, legal responsibilities are assigned to each supervisory rank for certain aspects of the custody process, such as authorising the taking of photographs, fingerprints, palm prints and DNA samples, as well as deciding if a person's time in custody should be extended. This chapter examines the responsibilities of sergeants, inspectors, superintendents and chief superintendents from supervisory, managerial and legal perspectives.

Role of Local Sergeants

In stations where members of garda rank perform the role of member in charge, the regular unit sergeant is responsible for assigning a member to this role on each shift. In addition to sergeants' general supervisory duties, the Garda Code assigns them specific responsibilities regarding persons in custody. It states that sergeants will, as soon as practicable after taking up duty:

- > *Ascertain the number of persons detained;*
- > *Ensure that their detention is in accordance with the Criminal Justice*

Act, 1984 (Treatment of Persons in Custody in Garda Stations) Regulations, 1987, and that the duties imposed by those Regulations are strictly observed, particularly in relation to visiting all prisoners on a regular basis, throughout and immediately before completing his/her tour of duty;

- > *Ensure that all prisoners are safely confined; and*
- > *Ensure that the member in charge of the station is properly delegated, in writing or otherwise, by the district officer.*

This inspection found that not all sergeants were aware of these obligations. Those who met with the Inspectorate strongly emphasised that the member in charge was the decision-maker in relation to persons in custody, but acknowledged that they had some degree of responsibility for custody. Their level of involvement included helping with searching persons in custody, restraining those who were violent and being available to offer support and guidance to the member in charge if asked. However, several members in charge reported that sometimes there was no unit sergeant available for advice, resulting in them contacting a sergeant in another station or telephoning their unit sergeant at home.

Some sergeants described adopting a "hands off" style and one explained that they took a "helicopter view" of both the member in charge and the person in custody. Several sergeants reported having responsibility for quality assuring custody records and providing informal feedback on the standard to the members in charge who completed them. In one area, this was a formal

structured process where, on a weekly basis, the sergeant in charge of the station reviewed all custody records and provided written feedback to each member in charge, through their supervisory sergeant. This inspection found that this was not done everywhere and few members in charge received feedback on the quality of their custody record entries. None of the sergeants spoken to were involved in overseeing the identification and management of risk or vulnerability.

Sergeants said that they never wrote in the custody record as this was the responsibility of the member in charge, although it would not be unusual for a member in charge to record the advice provided by a sergeant. In the location mentioned above where formal reviews of custody records were conducted, the feedback report, containing details of mistakes or poor-quality entries, was attached to the custody record. Some members reported being unclear about whether they were expected to amend the record based on the feedback received.

Sergeants were also responsible for signing off on the completed Cell Inspection Checklists that were discussed in Chapter 4. However, they did not appear to have any further responsibility for dealing with any issues identified during the cell inspection.

In addition to general supervision, members not below the rank of sergeant are required by law to authorise certain actions in respect of arrested persons in particular circumstances. These include:

- > Taking the photograph of an arrested person for the purpose of assisting with their identification (Section 12 of the Criminal Justice Act, 2006);
- > Taking fingerprints and palm prints from a person who has been arrested for the purpose of being charged with a relevant offence (Section 100 of the Criminal Justice

(Forensic Evidence and DNA Database System) Act, 2014); and

- > Taking a sample for the purpose of generating a DNA profile for inclusion in the reference index of the DNA Database System (Section 11 of the Criminal Justice (Forensic Evidence and DNA Database System) Act, 2014).

Regulation 18 of the Custody Regulations states that such authorisations must be recorded, but does not explicitly require them to be in the custody record.

There is a specific section in the custody record that must be completed to show whether or not a photograph was taken under Section 12 of the Criminal Justice Act, 2006. Examination of the sample of 318 custody records showed that the relevant section was not completed in 90% of cases. Of the 32 custody records that had this section completed, 23 showed that the person was photographed using this power, but four of those had no authorisation recorded. It was noted that there is no requirement for the authorising sergeant to make or sign the entry; rather, a member completes the section by inserting the name of the authorising sergeant.

Although the custody record has a specific section to record if fingerprints and palm prints were taken using other powers, there is no place to record if they are authorised and taken by virtue of Section 100 of the Criminal Justice (Forensic Evidence and DNA Database System) Act, 2014. All authorisations for taking DNA samples are recorded on a separate form, which is retained by the investigating member, but there is no section on the custody record to record if a DNA sample was authorised and taken under this legislation. It was not possible to ascertain from custody records the level of recorded authorisations for fingerprints and palm prints and DNA taken using these powers.

Assessment

The varying approaches taken by sergeants to the supervision of custody means that the requirements of the Garda Code were not consistently fulfilled. Notwithstanding Recommendation 25 of this report that members in charge should be of sergeant rank, the Inspectorate considers that there needs to be more intrusive supervision by sergeants of garda members operating as member in charge. This would improve record keeping, increase levels of compliance with legislative and policy requirements and ensure that all persons in custody are treated correctly. As an interim measure and pending implementation of Recommendation 25, the general supervisory responsibilities of sergeants, as defined in the Garda Code, should be reinforced with an emphasis on upholding the rights of people in custody. Levels of compliance should be regularly monitored.

The design of the custody record and the recording of certain authorisations on other forms that are not attached to the custody record make it difficult to audit the use of the powers to take fingerprints and palm prints or DNA samples, or to verify that correct authorisations were given. To improve record keeping and accountability, there should be a specific section in the custody record for each of these authorisations. In addition, when a sergeant authorises the taking of photographs, fingerprints and palm prints, or DNA samples, they should make and sign an entry in the custody record to this effect. Where this is not feasible, a copy of their written authorisation should be attached to the custody record as soon as practicable. It is the practice that when an authorisation is given in England and Wales, the supervisor who makes it is responsible for recording it in the custody record.

Members of other ranks also have a role in

authorising the taking of fingerprints and palm prints or DNA samples. This inspection found that although the custody record may indicate who gave the authorisation, there is no requirement for the person granting it to sign an entry in the custody record to this effect. For the same reasons of accountability and improved record keeping, the Inspectorate considers that those who give authorisations should make and sign an entry in the custody record to this effect. Where this is not feasible, a copy of the written authorisation should be attached to the custody record as soon as practicable. While this does not require a legislative change, it does require a policy decision which should be brought to the attention of those who may have responsibility for granting authorisations. For clarity, the legislation should be amended to reflect the principle that where any part of the custody process requires an authorisation, the custody record should contain a written record of that authorisation, signed by the person granting it.

Recommendations

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 28

The Inspectorate recommends that pending the implementation of Recommendation 25, the Garda Síochána improve the supervision of garda members who perform the role of member in charge by ensuring sergeants comply with their responsibilities under the Garda Code.

Recommendation 29

The Inspectorate recommends that the Garda Síochána require that when an authorisation is given by a member of a specified rank, the custody record contains either an entry signed by the person granting it or a copy of that person's written authorisation.

Recommendation 30

The Inspectorate recommends that the Department of Justice consider amending legislation to ensure that where an authorisation is given by a member of the Garda Síochána of a specified rank, the custody record contains either an entry signed by the person granting it or a copy of that person's written authorisation.

Role of Local Inspectors

The Garda Code contains no stated role or responsibilities for inspectors in relation to the management of custody. Inspectors who met with the Inspectorate agreed that custody was an important area to supervise and saw day-to-day supervision as being the responsibility of sergeants in the stations where the member in charge is of garda rank. The extent of these inspectors' involvement with custody varied across places visited and the absence of defined custody responsibilities meant that their approaches differed. Some inspectors said they ensured

that they were aware of what was happening in the custody area on a routine basis, while others periodically examined custody records.

Some inspectors who met with the Inspectorate had recently been given portfolio responsibility for custody in their division and one outlined in detail their vision for the role. This involved inspecting facilities, monitoring that cell checks were done, ensuring that processes were working correctly, conducting audits and ensuring that sergeants carried out a weekly quality assurance review of custody records. The effectiveness of this approach could not be assessed because of the short length of time it had been in operation.

Legislation requires that an inspector authorises the taking of photographs, fingerprints and palm prints, and DNA samples from persons in detention following their arrest under certain powers.⁶² These are different from the circumstances that require a sergeant's authorisation. The authorisation of an inspector is required in relation to taking:

- > Photographs, fingerprints and palm prints (Section 6 of the Criminal Justice Act, 1984, as amended); and
- > An intimate sample or non-intimate sample for forensic testing and, if appropriate, for the purpose of generating a DNA profile for inclusion in the reference index of the DNA Database System (Sections 12 and 13 of the Criminal Justice (Forensic Evidence and DNA Database System) Act, 2014).

These authorisations must be recorded and there is a section in the custody record to record the fact that an inspector authorised the taking of photographs, fingerprints and

⁶² These are: Section 4 of the Criminal Justice Act, 1984; Section 2 of the Criminal Justice (Drug Trafficking) Act, 1996; Section 42 of the Criminal Justice Act, 1999; Section 50 of the Criminal Justice Act, 2007; and Sections 16 & 17 of the Criminal Procedures Act, 2010.

palm prints under Section 6 of the Criminal Justice Act, 1984. However, there is no requirement for inspectors to append their written authorisation to the custody record. An examination of relevant custody records found examples of fingerprints and palm prints being taken, but with no corresponding authorisation by an inspector or consent of the arrested person. DNA authorisation forms are not attached to the custody record but are retained by the investigating member. As a result, it was not possible to assess the extent to which inspectors' authorisations had been given when required.

International Practice

The Inspectorate examined the responsibilities of inspectors in comparable common law jurisdictions and found that they have a more prominent role in the operation of custody.

In terms of management responsibilities, large custody suites such as those in Cheshire and Merseyside have full-time "PACE inspectors", who oversee the running of the suite and deal with the legal responsibilities assigned to that rank. In smaller facilities, such as the PSNI custody suites outside Belfast, the on-duty uniform inspector is responsible for custody in addition to their other managerial roles. They have the same legal responsibilities as their counterparts in England and Wales.

Inspectors in the UK have a number of legal responsibilities in relation to custody, including conducting periodic custody reviews, considering applications to extend the period of detention, deciding whether to authorise a delay in the notification of a person's arrest to a third party and whether to authorise an intimate search⁶³ of the arrested person. These inspectors cannot be

involved in the investigation of the offence for which the person has been arrested.

Assessment

Compared to other similar jurisdictions, garda inspectors have a very limited role in custody, in terms of both management and legal responsibilities. To improve custody services, the Inspectorate considers that the role of inspectors needs to be developed.

As the role of divisional superintendents changes under the Garda Operating Model, there is an opportunity for some of their responsibilities to be devolved to inspectors. The Inspectorate considers that divisional inspectors operating on a 24/7 basis as envisaged by the new operating model should have a managerial role in the delivery of efficient and effective custody services in the division during their shift. Should larger purpose-built custody suites be introduced, consideration should be given to assigning inspectors on a full-time basis to manage and oversee custody services in those places.

The Inspectorate believes that inspectors should also be assigned additional legal responsibilities and considers that they should have a role in considering applications to extend the time an arrested person is kept in custody. Because this also affects the role of superintendents, the rationale for this is set out later in this chapter.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

63 An intimate search is defined in the PACE Act 1984 as a search of a body orifice other than the mouth.

Recommendation 31

The Inspectorate recommends that the Garda Síochána assign to divisional inspectors, operating the shift pattern envisaged by the Garda Operating Model, a stated role in the delivery of efficient and effective custody services during their shift.

Role of Superintendents and Chief Superintendents.

In districts/community engagement areas and divisions, superintendents and chief superintendents have overall responsibility for the delivery of custody in their areas. Their operational responsibilities are reviewed together in this section, which then concludes by considering their decision-making roles in relation to applications for extending the time a person may be kept in custody.

Local Superintendents

The Garda Code outlines some specific custody responsibilities for superintendents, including prioritising and giving clear direction on issues such as the arrest, detention and care of persons in custody. Superintendents must also develop and deploy quality assurance standards and quality auditing protocols for all key work processes and services, including the care and safety of those in custody. As such they are required to conduct quarterly audits of their district headquarters stations and visit all stations in their district. At the time of this inspection, a replacement auditing process was being piloted. This new Inspection and Review process was described in Chapter 2. Under the new process, superintendents

decide on the subjects to be audited and are required to report the outcome of the audit to their chief superintendent, who then reports to the Garda Professional Standards Unit (GPSU). Custody may or may not be included, depending on the decision of the superintendent.

An example of good practice identified during this inspection was provided by a superintendent who advised that when he assumed responsibility for a new district, he undertook a full audit of the custody facilities and custody records to check compliance with the Custody Regulations. As a result of one such audit, the superintendent decided to close a number of cells due to health and safety concerns. He also reported having scheduled follow-up reviews.

Although other superintendents acknowledged their responsibilities regarding custody, the level of attention given to it was found to vary. In some stations visited by the Inspectorate, superintendents had recently commissioned reviews of custody records and PULSE prisoner logs and undertaken visits to cell areas. Meanwhile, others delegated the day-to-day supervision of custody to sergeants and only became involved if there was a specific problem or incident.

The Custody Regulations state that the superintendent in charge of a district is responsible for authorising, in writing, the member in charge and that a written record is to be maintained containing the name and rank of the member in charge at any given time. During this inspection, the Inspectorate saw examples of generic authorisations made by superintendents. It was also shown separate books and diaries which contained the name and rank of the member in charge at particular dates and times.

Superintendents are also empowered to authorise the taking of fingerprints and palm

prints with reasonable force if the person fails or refuses to allow the prints to be taken. No such cases were identified during this inspection.

Other general responsibilities of superintendents that are particularly relevant to custody include the monitoring of the use of force and complaints against garda members. These responsibilities are considered in more detail in Chapter 7.

Chief Superintendents

Under the Garda Code, chief superintendents are responsible for ensuring that the Garda Síochána complies fully with legal provisions and human rights standards in their division. There is a specific reference to the obligations under Article 3 of the European Convention on Human Rights Act, 2003 which would have resonance with the rights of persons in custody. Chief superintendents who met with the Inspectorate advocated that persons in custody were treated with dignity and respect and pointed out that every directive issued by the Garda Síochána highlights the requirement to ensure that human rights are protected. A number indicated that they promoted human rights at every opportunity, such as at divisional Performance and Accountability Framework meetings or when meeting probationer gardaí. However, others said that they did not see it as their role to reinforce the message of human rights and pointed to other methods, such as HQ directives, which they considered are better suited to delivering this message. Most chief superintendents were satisfied that their division was fully compliant with custody policies and procedures, stating that there were few formal custody-related complaints, and that custody was not the subject of challenge in the courts, a point verified by representatives of the Office of the Director of Public Prosecutions.

At the time of this inspection, chief superintendents were required to conduct biannual audits of their district headquarters stations and report their findings to the GPSU. A number of those spoken to reported that custody would be included in these audits and that they would visit the custody facilities and examine a sample of custody records. However, the GPSU reported that the return rate for these audits was poor.

Under the Garda Síochána's Use of Force Policy, chief superintendents have a responsibility to assess the facts of use of force incidents to ascertain if there have been any breaches of policy or procedure. This is dealt with in more detail in Chapter 7.

Chief superintendents are also responsible for identifying the training needs in their divisions and sending requests for training places to the Garda College. This would include training for custody-related matters. Offers of places on courses are sent to the divisional office and then given to local superintendents to nominate attendees.

Assessment

Although superintendents and chief superintendents have management responsibility for custody, the level of attention paid to it varies and in general is dependent on the interest of the individual officer. Greater emphasis needs to be placed on custody by both ranks to ensure that their area is fully compliant with the Custody Regulations, garda policies and human rights practices. The Inspectorate considers that the current audit system does not provide sufficient levels of assurance to superintendents and chief superintendents in this regard. The implementation of Recommendation 6 regarding a formal governance structure aims to address this issue.

Extending Time in Detention

A legal responsibility of superintendents and chief superintendents is to consider applications to extend the length of time a person who has been arrested under certain legislation is kept in custody. However, before they do so they must have reasonable grounds for believing that further detention is necessary for the proper investigation of the offence for which the person has been arrested. The duration of the extension can range from 6 to 24 hours, depending on the

power used to effect the arrest, with 24-hour extensions available for arrests made under the Offences against the State Act, 1939. As previously stated, the Inspectorate believes that this Act should be retained as a separate piece of legislation. Figure 6.1 shows the periods of time a person may be detained and the level of authorisations needed, depending on the power of arrest. In some cases, applications can be made to a court for further extensions, these were not considered as part of this review.

Figure 6.1 Detention Periods and Authorisation Levels, by Legislation

Legislation	Initial Authorisation	Authorisation of Extension of Detention		Maximum Total Time Gardaí can Authorise
	Member in charge	Superintendent	Chief Superintendent	
Section 4 of the Criminal Justice Act, 1984	6 hours	+ 6 hours	+ 12 hours	24 hours
Section 2 of the Criminal Justice (Drug Trafficking) Act, 1996	6 hours	+ 18 hours	+ 24 hours	48 hours
Section 42 of the Criminal Justice Act, 1999	6 hours	+ 6 hours	+ 12 hours	24 hours
Section 50 of the Criminal Justice Act, 2007	6 hours	+ 18 hours	+ 24 hours	48 hours
Sections 16 & 17 of the Criminal Procedure Act, 2010	6 hours	+ 6 hours	+ 12 hours	24 hours
Section 30 of the Offences Against the State Act, 1939	24 hours ⁶⁴	–	+ 24 hours	48 hours

Source: Irish legislation; table compiled by the Garda Inspectorate

64 There is no requirement for the member in charge to authorise the detention of a person arrested under Section 30 of the Offences against the State Act, 1939.

Applications for extensions are normally made to the district/community engagement superintendent or the divisional chief superintendent depending on the type of extension being sought. There is no requirement for applications to be dealt with in person and they are often carried out over the telephone. In addition, there is no legal requirement for the decision-maker to be independent of the investigation in connection with which the person has been arrested. The Inspectorate was told that some superintendents may refer the person making the application to another superintendent to avoid a conflict of interest if they are already involved in the investigation. Examples were also provided of extensions being sought from detective superintendents who were overseeing the investigation involving the person in custody. Garda inspectors have no role in reviewing or extending detention.

The process of authorising an extension of detention is not set out in the Garda Code or any other code of practice or instruction and there is no training available on this subject. Superintendents and chief superintendents told the Inspectorate that they relied on their own policing experience when making these decisions. They explained that the investigating member or senior investigating officer would present the reasons for their application. Some said that they would include the member in charge in the process and, if they were in the station at the time they were considering the application, they would examine the custody record. They did not seek the views of the person in custody, the appropriate adult if the person was vulnerable or under 18 years of age, or their legal representative, nor was there any legal requirement to do so.

Although superintendents and chief superintendents must have reasonable grounds for believing that continued detention is necessary for the proper

investigation of the offence for which the person was arrested, there is no legal or policy obligation to consider how the time in detention has been utilised prior to the application for an extension being made. Some of those spoken to advised that they took this into account when considering granting an extension. The Inspectorate considers this to be good practice that should be adopted on an organisational basis and incorporated into legislation.

Superintendents and chief superintendents also explained that when they authorised an extension, it was for the maximum period allowable in law. They did not assess the length of time that was necessary to undertake the remaining investigative actions and extend the period of detention by that time. Some explained that this was what the legislation required, although Section 4 of the Criminal Justice Act, 1984 states that the extension is for '*a further period not exceeding six hours*', suggesting that a shorter period could be authorised. Others said that if they granted a shorter period and it transpired that the investigative actions had not been completed, they would be unable to grant a further extension.

If an extension is authorised, there is a requirement under Regulation 7 of the Custody Regulations for superintendents or chief superintendents to sign a written record of their decision and for this to be attached to and form part of the custody record. The person granting the authorisation is not required to personally notify the arrested person of the extension or the rationale for it. This responsibility sits with the member in charge, who must also make a corresponding entry in the custody record.

Superintendents and chief superintendents explained that they would make a record of their decision in their diary or journal, but very few ensured that a written record of their

decision was attached to the custody record. In one division visited, a *pro forma* had been created to record extension decisions, which the superintendent and chief superintendent completed and forwarded to be attached to the custody record.

A number of the superintendents and chief superintendents told the Inspectorate that when carrying out checks of custody records, they had found that there was no written confirmation in the custody record of their decision to extend or of the member in charge informing the arrested person that they would be kept in custody for an additional period. Others said that they did not check that their decision was recorded.

Of the 318 custody records examined during this inspection, 23 related to persons who had had their time in custody extended. Although all contained an entry made by the member in charge indicating that the person had been informed that an extension had been granted, most had no written authorisation from the superintendent or chief superintendent.

Several superintendents and chief superintendents reported having had reason

to refuse applications for extensions and explained why they had done so. Reasons included their assessment that no further investigative actions were needed or that the time already spent in custody should have been sufficient. It was explained that refusals were a rare occurrence. Most indicated that they would welcome a consolidation and streamlining of the numerous separate powers to extend detention and some commented favourably on what they described as the more straightforward arrangements in the PACE Act 1984.

Extending Detention in Other Jurisdictions

As part of this inspection, the Inspectorate considered the arrangements by which police officers may extend detention in the comparable common law jurisdictions of Scotland, England and Wales. Figure 6.2 shows the lengths of time a person arrested under non-terrorist legislation in these jurisdictions may be detained and the levels of authorisation needed. Judicial extensions are not included.

Figure 6.2 Periods of Detention and Levels of Authorisation, according to Jurisdiction

Jurisdiction	Legislation	Initial Authorisation	Extensions of Detention (only for indictable offences ⁶⁵)		Maximum Total Time Police can Authorise
		Custody Sergeant	Inspector ⁶⁶	Superintendent and above ⁶⁷	
Scotland	Criminal Justice (Scotland) Act, 2016	12 hours	12 hours	–	24 hours
England & Wales	PACE Act 1984	24 hours	–	12 hours	36 hours

Source: United Kingdom legislation; table compiled by the Garda Inspectorate

65 An indictable offence is one which if tried on indictment would attract a sentence of five years or more. Arrests for terrorist offences are dealt with under separate legislation.

66 Inspectors also conduct periodic reviews to assess if detention continues to be necessary, the first after 6 hours.

67 In the PACE Act 1984, there is no distinction made between the role of superintendents and chief superintendents; the legislation refers to a police officer of the rank of superintendent or above.

Under the PACE Act 1984, an arrested person whose detention has been authorised by the custody sergeant may be kept in custody without charge for up to 24 hours. In certain circumstances, a police officer of the rank of superintendent or above can authorise an extension of detention for an additional period not exceeding 12 hours, giving a maximum period of detention of 36 hours. Applications for extending detention beyond 36 hours must be heard by a court. Before granting an extension, the superintendent must be satisfied that:

- > The investigation is being conducted *'diligently and expeditiously'*; and
- > There are reasonable grounds for believing that a further period of detention is necessary *'to secure or preserve evidence or obtain such evidence by questioning'*.

When superintendents decide to authorise an extension of detention, they also consider the duration of the extension. Although the maximum period they can approve is 12 hours, they assess the amount of time needed and authorise detention for a corresponding period. If it subsequently transpires that more time is needed, a further application can be considered.

It is important to point out that the superintendent's review after 24 hours is not the first occasion on which someone independent of the investigation considers whether detention is still necessary. As an additional safeguard, inspectors carry out periodic reviews to assess whether detention continues to be necessary. The first review must be carried out not later than six hours after detention was first authorised by the custody sergeant and then at intervals of not more than nine hours.

In Scotland, when a person's detention has been authorised by the custody sergeant, the person may be kept in custody without

charge for up to 12 hours. This period may be extended to 24 hours by an inspector if they consider that continued detention is necessary and proportionate for the purposes of bringing the person before a court or otherwise dealing with the person in accordance with the law. Similar to inspectors in England and Wales, Scottish inspectors also conduct custody reviews at 6 and 18 hours using the same test as that for extending detention.

The law in these jurisdictions states that those responsible for carrying out reviews or considering extensions should not be involved in the investigation. Legislation also stipulates that the person in custody and/or their representative should be invited to make representations about their time in custody and that those representations must be considered when deciding whether or not to grant an extension of detention. It is a legal requirement that those considering authorising extensions must satisfy themselves that there have been no undue delays in conducting the investigation during the time already spent in custody.

Assessment

As part of a review of police powers, the Department of Justice is consolidating the various powers of arrest and detention, including powers to extend detention which have evolved over time. The Inspectorate supports such a change, although it considers that the Offences against the State Act, 1939 should be retained as a separate piece of legislation because of the nature of the threats that it is designed to tackle.

In terms of extensions of detention, consolidation provides an opportunity to standardise the rank of the decision-maker and length of extensions for all relevant offences. The review also provides an opportunity to assign responsibility for considering

any applications for extensions within the first 24 hours in custody to members of the rank of inspector or above. Including “or above” means that superintendents would not be excluded from the process and could undertake this responsibility if an inspector were unavailable. As inspectors will be on duty in divisions on a 24/7/365 basis under the new Garda Operating Model, they would be readily available to undertake these responsibilities. They would be able to speak in person with the investigating member and the member in charge and examine the custody record to assess the conduct of the custody process up to that point. They would also be able to hear from the arrested person, their legal representative and, if a child, the adult who is supporting them. If the inspector is satisfied that grounds exist to authorise detention, they can then inform the arrested person of their decision and rationale for it. If further extensions beyond 24 hours are permissible in law, these should be the responsibility of members of superintendent rank or above.

The Inspectorate considers that the maximum period of time for which any one extension can be granted by gardaí should be six hours, provided the total time in custody does not exceed that permitted in law. This would ensure that the necessity for continued detention is subject to regular formal scrutiny. It also considers that granting extensions of detention for the maximum permitted period may on occasions be unnecessary and disproportionate to the investigative actions required. In the Inspectorate’s view, those who are deciding whether or not to authorise an extension of detention should also consider the necessity and proportionality of authorising the full period permissible in law, in accordance with human rights principles. The query about the ability to authorise more than one extension within the maximum permitted period should be clarified and the

forthcoming legislation written so as to allow more than one extension in the period.

The consideration by some garda superintendents and chief superintendents of how the time already spent in custody has been used is good practice and clearly demonstrates the application of human rights principles. This approach has been legislated for in other jurisdictions, where there is a two-part test that must be satisfied before an application to extend detention is granted. The first part is to assess if the investigation so far has been conducted promptly and without undue or unnecessary delays and the second is the necessity for further detention.

Other features of the international legislation and practice examined during this inspection that are aimed at protecting the rights of persons in custody include:

- > The opportunity for representations to be made by or on behalf of the arrested person in respect of the application to extend their time in detention. This enables the person to have a voice in the extension process and allows them or their representative to present any concerns about the circumstances or conditions of their detention; and
- > The person considering whether detention should be extended should be independent, and be seen to be independent, of the investigation.

The Inspectorate considers that these features provide additional protection to the rights of persons in custody and should be considered for inclusion in the new legislation on extensions of detention.

The law regarding authorising and extending the detention of a person arrested under Section 30 of the Offences against the State Act, 1939 is set out in Figure 6.1. This shows that it is possible to have two periods of detention, each of which is for a maximum of 24 hours,

without an explicit legal requirement for the necessity for continued detention to be formally considered during those periods. The Inspectorate is concerned that this provides fewer safeguards for persons arrested under this Act than for those arrested under other legislation. Therefore, the Inspectorate considers that this concern and its proposals regarding extensions of detention should be brought to the attention of the Independent Review Group recently established to examine all aspects of the Offences against the State Acts, 1939 to 1998.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 32

The Inspectorate recommends that the Department of Justice consider amending the legislation that applies to garda authorised extensions of detention, in order to better safeguard the rights of persons in custody.

The following matters should be included:

- The periods of time for which detention can be extended by members of the Garda Síochána should be standardised;
- Extensions of detention within the first 24 hours in custody should be a matter for members of the rank of inspector or above;
- Where extensions of detention beyond 24 hours are permitted in law, these should be a matter for

members of superintendent rank or above;

- Each period of garda authorised extension should be for a maximum of six hours;
- The ability to authorise more than one period of extension within a six-hour period;
- The member considering an application for an extension must be independent of the investigation;
- The arrested person and/or their legal representative should be given the opportunity to make representations to the decision-maker about the decision to extend the period of detention. Where the arrested person is a child or is vulnerable, an appropriate adult should have this opportunity;
- A formal record should be made of the invitation to make representations, as well as the details of any representations provided;
- The test to be satisfied before authorising an extension should consist of two parts. These are to assess whether the investigation so far has been conducted without undue delay and whether there are reasonable grounds to believe that further detention is necessary for the proper investigation of the offence; and
- The concerns and proposals regarding extensions of detention should be brought to the attention of the Independent Review Group recently established to examine all aspects of the Offences against the State Acts 1939 to 1998.

7

Chapter 7

Other Custody-related Powers and Safeguards

'Legislation and garda policies should highlight the need for equality and human rights to be central to the decision to search, while practices must ensure that the dignity of those being searched is maintained.'



Chapter 7 – Other Custody-related Powers and Safeguards

Introduction

In addition to powers to arrest and detain people, garda members are empowered to search them, retain their property and use force in certain circumstances. These are intrusive powers and human rights considerations must be central to any decision to use them. This chapter examines the application of these powers in the context of custody.

It is important that people who are subject to the actions and decisions of garda members have the ability to complain about how they have been treated. The level of awareness of the complaints process and how it operates, and the number of custody-related complaints, are also reviewed.

Releasing a person or transferring them into the custody of another organisation is an important part of the custody process. A short section on release and transfer identifies and brings together the core elements of the process, many of which have already been discussed in detail in this report.

Finally, the chapter examines the custody record as the primary tool for recording details of a person's time in custody, how it operates and lists improvements that would enhance its use.

Searching a Person in Custody

It is important to search persons in custody to protect their safety, reduce the risk of harm to others and allow items of evidentiary value to be seized. This section looks at powers, policies, procedures and record keeping in relation to searching persons in custody at a garda station.

Powers to Search a Person

The Garda Code states that *'every prisoner brought to a Garda station must be searched'* and indicates that the search should normally wait until the person is brought to the station. The power to search is provided in common law and was affirmed in the case of *DPP v. McFadden* (2003). Reference is made to the case in HQ Directive 58/08, which states that *'the search of a person in custody is authorised at common law, so as to take anything found on that person in the nature of a dangerous weapon, or which may be used to facilitate an escape or an item of evidentiary value'*. The power does not require the member to have any specific grounds to suspect or believe that the person has any of these items in their possession.

Several other powers may also be used. These include Section 30(5) of the Offences against the State Act, 1939, which enables a garda member to search, or cause to be searched, a person detained under that section, and Section 6 of the Criminal Justice Act, 1984, which enables a garda member to search, or cause to be searched, a person detained under Section 4 of that Act.

The Offences against the State Act, 1939 does not stipulate the purpose of the search and the member does not need to have any grounds for carrying it out. Similarly, the Criminal Justice Act, 1984 does not stipulate the purpose of the search and, with one exception, the member does not need to have any grounds for carrying it out. The exception arises if the member has reasonable cause to suspect that the person has concealed a controlled drug or an explosive substance. They can then require the person to remove their underclothing if a member not below

the rank of superintendent authorises the search.

In addition, Section 23 of the Misuse of Drugs Act, 1977 enables a member of the Garda Síochána to search a person who they have reasonable cause to suspect is in possession of a controlled drug contrary to the Act. The member may detain the person in order to carry out the search and may bring them to a garda station for this purpose.

Policy and Procedures on Searching

Regulation 17 of the Custody Regulations contains procedures that must be followed when searching persons in custody. These include that the member conducting the search must ensure that the person understands the reason(s) for the search and that it is conducted with due respect for the person. It sets out the information that should be recorded and specifies who should conduct the search, specifically that where practicable a doctor should carry out a search that involves the removal of underclothing.

Regulation 17 is supplemented by guidance notes in HQ Directive 58/08, which highlight the legal necessity to inform a person of the reason for the search before carrying it out. The directive also states that *'where a member in charge has concerns relating to a prisoner's claim of sexual identity or gender the member in charge should request the attendance of a doctor for the purpose of having that person searched'*. Additional information on searching persons in custody is contained in the Garda Code and while these different policy documents do not conflict with each other, they need to be read together to understand what is required of a member conducting a search and seizing property. This inspection found that there was no policy or guidance in relation to the searching of children or vulnerable adults in custody.

Recording when a Person in Custody is Searched

There is no specific place on the custody record that must be completed to indicate whether the person in custody was searched. However, it does have a section in which to write the name of the member carrying out the search and any other person present while it is being conducted. This section must also be completed to show whether the person was told of the reason for the search and if so, who informed them and the time they were told. It does not require the reason for the search, the power used, or the type of search carried out to be recorded. An examination of the sample of 318 custody records showed that 292 people had been searched and in all but seven cases there was a record of the person being given a reason.

Types of Search Conducted

The types of person searches carried out by police officers range from a "pat down" to a search of body orifices and can include the removal of clothing including underclothing. The Garda Síochána uses a number of terms to describe the types of searches that members may conduct, including a "quick search", "detailed search", "strip search" and "intimate search". Although these descriptions are used in operational and training contexts, none of the terms are defined in law and the Inspectorate heard varying explanations of what each of these types of searches entailed.

Noting that a strip search is a very intrusive and potentially degrading measure, the CPT has developed a standard for strip searching (CPT, 2017). It states that a strip search should be *'carried out only when there are reasonable grounds to suspect that a detained person may have hidden on him/her items that may be used to harm him/herself or others or that may be evidence of a crime and such a search is necessary*

in order to detect these, an ordinary search being unlikely to result in their discovery'.⁶⁸ It should require the authority of a senior officer and be subject of a written policy, setting out in clear terms the circumstances in which it is permissible to resort to it.

Overall, the Inspectorate found that there was a lack of awareness of the powers under which searches could be carried out, the extent of those searches and whether authorisations from gardaí of higher rank were required. It was also unclear from the custody records examined the extent to which searches were conducted and the justification for them. None of the gardaí or superintendents spoken to provided examples of either seeking or giving authorisations to remove underclothing as part of a search under Section 6 of the Criminal Justice Act, 1984.

Of the 20 persons in custody who spoke with the Inspectorate, 18 said that they were searched and five reported that they were required to remove all of their clothes, apart from underclothing. One young person who met with the Inspectorate to discuss their experience of garda custody also reported being left in a cell wearing only their underclothes following what they described as a strip search.

How Searches are Conducted

Members who met with the Inspectorate were very clear about the requirement under Regulation 17 of the Custody Regulations for searches to be conducted by a person of the same sex and that another person should be present while the search was conducted. When asked about searching a transgender person, many were uncertain, but some indicated that they would ask the person

what gender they considered themselves to be and treat them accordingly.

Garda members are taught techniques for carrying out person searches. Where the search includes removal of all clothing, apart from underclothing, the person is asked to remove all items of clothing at the same time. This practice was confirmed by persons in custody who reported being clothed only in their underwear during a search. This is in contrast to the position of the CPT which states that *'detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and redress before removing further clothing'*⁶⁹ (CPT, 2017).

Where it is suspected that drugs have been concealed by swallowing, the CPT states that efforts to recover these drugs should not be conducted without medical authority and supervision and noted favourably in its report on Ireland that persons suspected of having ingested drugs are immediately sent to hospital for observation.

International Practice on Searching

The Inspectorate reviewed international legislation and practice in relation to searching persons in custody.

The Police and Criminal Evidence Act, 1984 (the PACE Act 1984) contains several different powers to search persons in custody in England and Wales. Section 54 of the PACE Act 1984 is a power to search an arrested person on arrival at the police station. The purpose is to enable the custody sergeant to ascertain everything the person has with them and is carried out if the custody sergeant considers it necessary. It is important to note that this is in addition to

68 Available at: <https://rm.coe.int/pdf/168072ce4f>

69 Available at: <https://rm.coe.int/pdf/168072ce4f>

a power to search upon arrest if the police officer has reasonable grounds to believe that the person may present a danger to anyone or have concealed items that might be evidence or that might be used to assist escape. These reasons are similar to those in the common law power affirmed in the case of *DPP v. McFadden*, as described earlier. Section 54 does not permit an intimate search, defined as a physical examination of any body orifices other than the mouth, but can include a strip search. As well as deciding if it is necessary to search a person under Section 54, the custody sergeant decides on the extent of the search.

A strip search is defined in Code C of the PACE Codes of Practice as a search involving the removal of more than outer clothing and guidance is provided in relation to conducting this type of search. In particular, the Code of Practice states that a strip search may take place if it is considered necessary to remove an article which the person would not be allowed to keep and the officer reasonably considers that they may have concealed the item. It warns against the routine use of this type of search if there is no reason to consider that items are concealed.

Section 55 of the PACE Act 1984 is a power to conduct an intimate search. This type of search may only be carried out if an officer of the rank of inspector or above has reasonable grounds for believing that the person may have concealed on them anything that could be used to injure themselves or others and that they might do so while in custody, or that the person has concealed Class A drugs with intent to supply or export. The person must consent to the search and it must be carried out by a medical professional unless certain conditions are met. Where the purpose of the search is to locate drugs,

the search must be carried out at a medical facility and not at a police station.

Code C of the PACE Codes of Practice sets out the procedures that are expected to be followed when the person to be searched is a child or a vulnerable adult. These include that strip and intimate searches are carried out in the presence of an appropriate adult except in certain specified circumstances. The description of how to carry out a strip search reflects the CPT standard. It specifies the record to be made in the custody record if a strip search is carried out, including the reason it was considered necessary, those present and the result. In the case of an intimate search, it also requires a record to be made in the custody record of the authorisation to search, the grounds for giving the authorisation, the grounds for believing the items could not be removed without an intimate search, which part of the body was searched and by whom.

Strip search and intimate search are similarly defined in Scotland. A strip search must be authorised by an inspector or above, while an intimate search may only be carried out under the authority of a warrant issued by a sheriff.⁷⁰ It also requires the consent of the detainee and must be carried out by an authorised healthcare professional. Police Scotland's standard operating procedure (SOP) provides detailed information about conducting searches of persons in custody.⁷¹ It includes descriptions of the types of searches that may be conducted, the levels of authorisation required for each and the records to be made. The SOP also sets out how to conduct searches, with specific instructions for searching children and transgender people.

In New Zealand, under Sections 85 and 88 of the Search and Surveillance Act, 2012, police officers may conduct a rub down search immediately following the arrest or detention

⁷⁰ In Scotland, a sheriff is a legally qualified judge.

⁷¹ Available at: <https://www.scotland.police.uk/spa-media/0mfjn3pa/care-and-welfare-of-persons-in-police-custody-sop.pdf>

of a person. The purpose of the search is to locate items that may be used to harm any person or facilitate the person's escape. If the police officer has reasonable grounds to believe the person has evidential material relating to the offence for which the arrest was made or the person detained, they may also search for such material. Section 11 of the Search and Surveillance Act, 2012, empowers officers to search any person who is lawfully in police custody and going to be locked up.⁷² The primary purpose of the search is not to look for or seize evidential material but to protect the detained person's property and remove items that might be used to harm themselves or others. The search is completed by custodial staff before the person is placed into a cell, unless the circumstances are such that an urgent search is required. This search is separate from the power to search immediately upon arrest.

A strip search is defined in New Zealand law as a search where the person conducting it may require the person being searched '*to undress, or to remove, raise, lower, or open any item(s) of clothing so that the genitals, buttocks, or (in the case of a female) breasts are uncovered, or covered only by underclothing*'. A strip search may be conducted when there are reasonable grounds to believe that evidential material, weapons, or items which may be used to harm any person or facilitate the person's escape may be concealed and cannot be located by a less intrusive search. Authority must be obtained from a supervisor of sergeant level or above and the person conducting the search should consider obtaining assistance from a medical practitioner, nurse and/or a parent, guardian or other person responsible for the day-to-day care of the person to be searched. The New Zealand Police policy on strip searching is required by law to be published on its website.

A person arrested for some drugs offences may in certain circumstances be required to permit a medical practitioner to conduct an internal search, described as an internal examination of any part of the person's body by means of an X-ray machine or other similar device, or a manual or visual examination through any body orifice apart from a visual examination of the mouth, ears and nose. An internal search can only be conducted with the consent of the person being searched and must be conducted by a registered medical practitioner.

UK jurisdictions provide information in their statutory codes of practice about establishing a person's gender for the purpose of search, while in New Zealand, this information is contained in the police manual.

Assessment

The Inspectorate has a number of concerns about the powers, policies and practices in relation to searching of persons in garda custody.

In general, this inspection found that human rights considerations were not at the forefront of members' minds when deciding if a search should be carried out and if so, in what manner. This meant that the factors of proportionality and necessity, as well as legitimacy, were not always considered as part of the decision-making process. For example, a human rights approach means that there would be a case-by-case assessment of the need to carry out the common law search, rather than the current policy of searching everyone in custody. The Inspectorate would expect the member considering carrying out a search to assess the specific circumstances of each case in order to decide if it is lawful, proportionate and necessary to do so and to ensure that the

⁷² Locked up means a person taken into lawful custody and being placed behind a closed or locked door that prevents them from leaving, such as a police cell, charge room or vehicle.

decision is non-discriminatory. In reaching their decision, members should take into account a range of factors including identified risks or vulnerabilities, potential length of time in custody and whether the person will be placed in a cell.

Legislation and garda policies should highlight the need for equality and human rights to be central to the decision to search, while practices must ensure that the dignity of those being searched is maintained.

This inspection also found that there was a lack of clarity about the powers to search people in custody. Therefore, it would be beneficial for those in custody, their representatives and garda members if the powers were consolidated into a single piece of legislation, such as the proposed Police Powers Bill being developed by the Department of Justice. The consolidation process also provides an opportunity to review the powers to ensure they are human rights compliant and fit for purpose. A review should consider, for example, when and for what items people can be searched, the grounds that must be satisfied before a search is carried out, the definition of the different types of search that could be conducted and what levels of authorisation are needed, if any.

The Inspectorate is not aware of any provision in Irish legislation that specifically refers to a search of body orifices, other than the mouth, similar to the intimate or internal searches defined in other jurisdictions. Therefore, this type of search and the power to conduct it should be defined in law.

Acknowledging the significant impact on the person's right to privacy, the Inspectorate considers that this type of search should only be conducted if the person consents and if it is authorised by a member of at least the rank of superintendent who is satisfied that there is no other way to retrieve the items suspected of being concealed. The Inspectorate notes

that in Scotland such authorisations are given by judges, while in England and Wales they are given by police inspectors. It also considers that intimate searches for drugs should only be conducted at a medical facility by an appropriate healthcare professional. Therefore, legislation should also prescribe when, where and by whom this type of search may be conducted, as well as the need for the person's consent and the authorisation level required.

The Inspectorate is of the view that a search that involves the removal of underclothing should also be defined in law, along with the power to conduct it. Again, because of its intrusive nature, this type of search should only be conducted if authorised by a member of at least the rank of inspector who is satisfied that the person has concealed an item that they would not be allowed to keep and that this type of search is necessary to retrieve it.

In order to strengthen the safeguards for those who may be subject of a search, clear procedures on all aspects of searching should be developed and incorporated in the proposed statutory code of practice. As the level of intrusion of the search increases, so must the safeguards and therefore these procedures should deal with the conduct of strip searches and intimate searches, as well as the searching of children and vulnerable adults. Information to enable members to establish the gender of persons for the purpose of searching should also be included in the statutory code of practice.

The Inspectorate considers that the information in the Custody Regulations and HQ directives is insufficiently detailed to assist members when conducting searches. Notwithstanding the proposed statutory codes of practice, the Garda Síochána should bring together all its policies, procedures and practices on searching people in custody

into the single document referred to in Recommendation 1. It should emphasise the importance of adopting a human rights approach and demonstrate in a practical sense how rights need to be considered and competing rights balanced. In particular, it should develop a policy on the searching of children and vulnerable adults that involves an appropriate adult in the process and requires their presence during a strip or intimate search, unless the person requests otherwise. It should also update its policy in relation to establishing a person's gender for the purposes of search.

To improve accountability in relation to searching and demonstrate compliance with legislation, policy and human rights requirements, more detailed record keeping is needed. This should include the need to record why something that is required to be done is not done, for example, why a person was not told the reason for being searched. The information to be recorded should be placed on a legal footing. Pending the introduction of legislation, the Garda Síochána should issue a direction requiring those who decide to conduct a search to make a record of their decision and the grounds for it, the power used, the type of search and the outcome. Details of others present during the search and the person authorising the search, if required, should also be recorded. As a minimum requirement, this information should be contained in the custody record.

Like all aspects of custody, searching is an area which should be the subject of regular internal quality assurance reviews.

Recommendations

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 33

The Inspectorate recommends that the Garda Síochána immediately cease the practice of having a person remove all items of outer clothing simultaneously during a search and introduce a new policy that is aligned with the position of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Recommendation 34

The Inspectorate recommends that the Garda Síochána review and update its policies, procedures and practices and develop a single source of information for searching persons in custody.

The information should:

- Emphasise the need for the human rights considerations of legality, necessity, proportionality and non-discrimination to be central to the decision to search;
- Include instructions for the searching of children, vulnerable adults and those identifying as transgender;
- Specify the details that must be recorded when a search is conducted including the name of the person conducting it, type of search, power under which it is conducted, grounds for the search, authorisation if required, and outcome of the search; and
- Be incorporated in the single document referred to in Recommendation 1.

Recommendation 35

The Inspectorate recommends that the Department of Justice consider enacting new legislation relating to the searching of persons in custody.

The following matters should be addressed:

- Separate powers to search upon arrest and on arrival at the station should be defined;
- A search that involves removal of underclothing should be defined in law and subject to a specific power which requires the authorisation of a member of the rank of inspector or above;
- A search that involves searching of body orifices (apart from the mouth) should be defined in law, subject to a specific power which requires the person's consent, authorised by a member of superintendent rank or above, carried out by a medical professional and, if the search is for drugs, it should be conducted at a medical facility;
- Additional legal safeguards to protect the rights of a child or vulnerable adult who is subject to a search that involves the removal of underclothing or examination of a body orifice should be defined;
- Information about how to establish the gender of a person for the purpose of searching should be provided; and
- There should be a legal requirement to record in the custody record the type of search conducted, the power under which it is conducted, the grounds for it, the authorisation if required and the outcome of the search.

Dealing with Property in the Possession of Persons in Custody

The common law power to search persons in custody includes the power to take any items found that are evidence of an offence, that might be used to cause injury or effect escape, or that could assist in the identification of the person arrested. Furthermore, guidance in HQ Directive 58/08 highlights the removal of belts and clothing that contains cords or strings due to their potential to be used by the person in custody to harm themselves. In the same way that a person must be informed of the reasons for a search, they must be informed of the reason property is retained. This section deals with the storage, retention or return, and recording of property in the possession of persons in custody.

Storage of Property

It is the responsibility of the member in charge to look after items taken from persons in custody. During the course of this inspection, 23 custody facilities were visited and all but four had dedicated lockers for storing a person's property. These were usually situated in the custody registration area, which was accessible by most of the garda workforce. The Inspectorate found that the majority of these lockers were routinely left open and in only six of the facilities visited did members in charge indicate that they locked the property lockers and retained the keys for the duration of a person's stay in custody. The Inspectorate observed lockers containing property that were either left open or were locked with the key still in place. It also noted that items of clothing including jackets and tops were left on the floor outside a cell door rather than being secured in a locker and many of the lockers were too small to store these types of items. An example of good storage was observed in the Oslo custody suite, which had secure lockers of an appropriate size

incorporated into the cell infrastructure and accessible only to custody staff.

Retention or Return of Property

When items of property are taken from the person in custody for investigative purposes, these are retained by the investigating member and dealt with through the Property and Evidence Management System (PEMS).⁷³ All other items taken from the person should either be returned to them upon their release or transferred with them to another agency.

Several of the children and young people who had been in custody and who met with the Inspectorate reported that they experienced difficulties in getting their property returned, even after they were told that their case was closed. The type of property generally included jackets, money and mobile telephones. Some reported making unsuccessful attempts to get their property back. One explained the difficulty he faced when he contacted the station

saying, “when you try to get stuff back they will say things like the garda who dealt with the case is not in the garda station”. Many of this group said that eventually they gave up their efforts to get their property back.

Recording Details of Property

Regulation 17 of the Custody Regulations states that particulars of any property taken from or handed over by a person in custody must be recorded in the custody record and that the person must be asked to sign the custody record to indicate that it is correct. Any refusal to sign must also be recorded along with the time of refusal. The 2nd General Report of the CPT’s activities highlighted the importance of obtaining the signature of the person in custody for matters such as items in the person’s possession and, if necessary, an explanation for the absence of a signature.

Figure 7.1 shows the section of the custody record for listing any property taken from the person.

Figure 7.1 Section E of the Custody Record

E. PROPERTY SECTION			
Item No.	Property of person in custody	Tick as appropriate	
		Section A Returned	Section B Retained

(Strike through unused columns)

I confirm that I have taken possession of my property listed at section A above. I have been informed that my property listed at Section B above is being retained by the Garda Síochána for investigative purposes.

Signature of person in custody _____
 Date _____ Time _____

I confirm that property listed at Section B above is being retained for investigative purposes.

Signature of Member _____ Date _____ Time _____

Source: Garda Síochána, Custody Record C84 form

73 PEMS is an electronic tracking system to manage all property and exhibits in the possession of the Garda Síochána.

This illustrates that there is no place for the person to sign to confirm that the list of property that was taken at the start of the custody process is correct, or to record a refusal to sign, as required by the Custody Regulations. Neither is there anything to remind the garda member to obtain this signature. There are two columns beside the list of property to show whether property is returned to the person in custody or retained as evidence. There is also a space for the person to sign to acknowledge receipt of the property being returned and for a member to confirm that other items are being retained for investigative purposes. In circumstances where a person has been permitted to retain items of property while in custody, there was no policy or practice to record that fact.

An examination of custody records found that the property section was not always fully completed and that the description of items lacked detail.

In New Zealand, property belonging to the person in custody is photographed in their presence and only listed where photographic recording is not available, when property is retained as an exhibit, or when making a partial return. Photographs are uploaded to the property management system, while the property is placed in tamper-proof bags and stored in allocated storage facilities. Details of items seized as exhibits are also entered in the property management system, whereupon a receipt for the items is produced and given to the detainee.

Assessment

The procedure and practice for recording and storing property taken from persons in custody was generally poor. The imprecise way in which property is recorded and

the fact that the person is not required to sign the custody record to confirm that the inventory of items taken at the start of the custody process is correct are weaknesses in the process. The absence of a record to show that no property is taken from a person, or that they are permitted to retain certain items while in custody, is another area that needs to be addressed. The Inspectorate considers that the New Zealand process for recording property belonging to people in custody is good practice and could overcome the identified deficiencies.

The lack of secure storage lockers in some custody areas is unacceptable, as is the failure to make proper use of the lockers that are available. Leaving items of personal property on the floor outside a person's cell shows a disappointing lack of respect for the person and their belongings.

These inadequacies create opportunities for property to be mishandled and leave the Garda Síochána and individual members open to allegations of improper practice. Ensuring that secure storage is available, making proper use of it and implementing better recording practices would contribute to more robust property management arrangements.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 36

The Inspectorate recommends that the Garda Síochána improve the processes for recording, managing and returning property in the possession of persons in custody.

To achieve this, the following actions are required:

- At the start of the custody process, all items in the possession of the person in custody should be listed on the custody record;
- For each item listed there should be an indication as to whether it is retained by the person while they are in custody or by the member in charge and the person should be asked to sign the custody record to confirm that the information is correct;
- Upon release or transfer, the custody record should be completed to show which items are returned to the person and which are retained by the Garda Síochána, and this should be signed by the person in custody;
- Any refusal to sign should be recorded;
- Adequate secure lockers should be available in every custody facility to ensure that all items are safely and respectfully stored;
- Storage lockers must remain locked at all times with keys only available to the member in charge and gaoler, if appointed;
- The design of the custody record should be amended to allow for

the detailed recording of property at the start of the custody process and at release or transfer. It should include space for the person in custody to confirm that the list is correct or for a refusal to sign to be recorded; and

- The Garda Síochána should consider adopting the New Zealand policy of photographing property belonging to persons in custody and uploading the images onto its property management system.

Use of Force

Regulation 20 of the Custody Regulations states that no member shall use force against a person in custody except such reasonable force as is necessary. It sets out the circumstances in which force may be used against a person in custody and the reporting requirements that accompany any use of force. These are when it is necessary:

- > *In self-defence;*
- > *To secure compliance with lawful directions;*
- > *To prevent escape; or*
- > *To restrain [the person] from injuring themselves or others, damaging property or destroying or interfering with evidence.*

The Garda Síochána's Overarching Use of Force Policy, contained in HQ Directive 47/2012, affirms the fundamental principle underpinning the policy namely that '*any action taken must comply with the fundamental principles of legality, necessity (absolute necessity in terms of lethal force), proportionality and accountability and applied in a non-discriminatory manner in accordance with the principles of the European Convention on Human Rights*'.

Although this section of the report focuses on the use of force in the custody environment, it is important to note that the same policies apply to all incidents where force is used by members of the Garda Síochána. In custody, members may have to deal with people exhibiting disturbed behaviour, those who are passively or actively resistant, as well as those who are aggressive or violent. In that context, this section looks at how use of force incidents in custody are recorded, reported and monitored.

Recording and Reporting Use of Force

At the time of this inspection, the policy and procedure for recording and reporting use of force was contained in HQ Directive 47/2012. It stated that when a garda member used force, they were required to make a record of it in their notebook or journal and if they used a baton, incapacitant spray, hard hand controls, firearms, or certain other specialist equipment, they had to report the matter to their immediate supervisor and make an entry on the PULSE computer system. The use of handcuffs or soft-hand tactics were not required to be recorded on PULSE. Garda policy on recording use of force changed after the field work for this inspection had been completed. HQ Directive 51/2020, issued in October 2020, now requires all types of use of force to be recorded on PULSE and if the person subject to force requires

medical attention while in garda custody this information must also be included on the PULSE incident record.

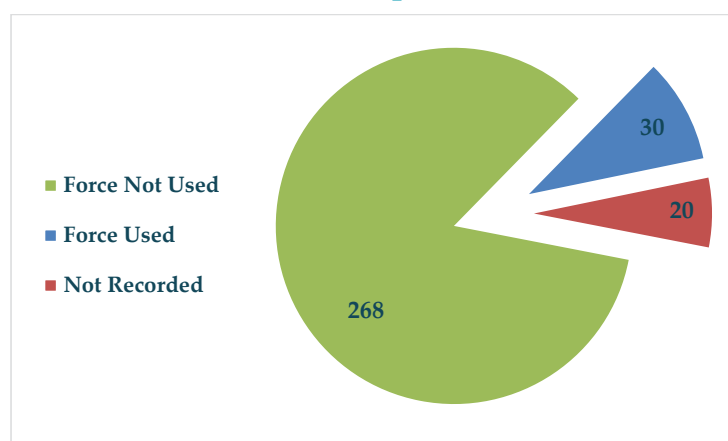
If a member uses force which causes injury to a person in custody, Regulation 20 of the Custody Regulations requires a report to be made to the local superintendent, who is obliged to have the matter investigated. Regulation 20 also places a general requirement on all members to report another member who ill-treats a person in custody or uses force contrary to the regulation. None of the members spoken to reported having ever needed to make such a report.

Force used Prior to Arrival at Custody

Where force has been used on a person who is subsequently arrested, this must be reported to the member in charge of a garda station on arrival. A record must also be made in the custody record to this effect. In practice, use of force is recorded on the risk assessment form, which is attached to the custody record. The first question on the form asks whether force has been used and if the answer is yes, then further details are recorded.

The Inspectorate examined the sample of 318 custody records to ascertain the number of occasions on which there was a record of force being used prior to arrival at the station. This information is displayed in Figure 7.2.

Figure 7.2 Recorded Incidents of Use of Force prior to Arrival at Station



Source: Garda Síochána custody records; analysis by the Garda Inspectorate

This shows that in the majority of cases force was not used. However, in 20 cases, there was no record to indicate whether or not force had been used. Of the 30 cases where use of force was recorded, the majority involved the use of handcuffs. The Inspectorate noted that there was limited information on the forms it examined about the circumstances that resulted in force being used. Reasons provided for this included that the information was recorded in the member's notebook and that some members in charge considered that the purpose of the question was to assess if the person needed medical attention.

Although the use of handcuffs is a use of force, at the time of the inspection it was not required to be recorded on PULSE. However, it was clear from conversations that some garda members considered that the use of handcuffs where no injury was sustained did not need to be recorded at all. Nevertheless, most members said that they would inform the member in charge if force was used at the time of arrest. Many members in charge said that this was often the first thing an arresting member disclosed on arrival at the garda station and confirmed that they would make a corresponding record. During inspection visits, the Inspectorate identified that this was not a consistent approach.

Of the 20 people in custody who spoke with the Inspectorate, six reported that force was used at the time of their arrest. Some complained that handcuffs had been applied too tightly, while others felt that in general excessive force was applied. Checks of the relevant custody records were made and found that there was no record of the alleged use of force. In one case, the Inspectorate observed injuries which the person in custody alleged had been caused by excessive force during their arrest and transportation to the garda station. The Inspectorate found that there was no record of force being used prior

to the person's arrival at the station and no record of the arrested person's injuries even though a doctor had been called. This was brought to the attention of the member in charge and a supervising sergeant. One of the children who met with the Inspectorate reported that they had been hit on the head with a flashlight during transportation to the garda station and was told that it was because they had tried to escape. Several others reported that incapacitant spray had been used on them, but they had been not provided with water to wash their eyes.

Recording Force Used During Custody

When force is used during a person's time in custody, this should always be recorded in the custody record by the member in charge or gaoler. While most members spoken to confirmed that any force used would be recorded in the custody record, a small number suggested that the details of the incident would only be recorded in their notebooks. For example, one gaoler stated that if they had to deal with a violent person, they would write "*prisoner needs to be restrained*" in the free text section of the custody record. The Inspectorate found that the requirement to make a PULSE entry about the use of baton, hard hand tactics or incapacitant spray in custody was not well understood.

Of the 318 custody records examined by the Inspectorate, seven contained information in the free text section about the use of handcuffs while the person was in custody. In two of the seven cases, there was a record of other force having been used, on one occasion to search the person and on the other to place them in a cell. In both cases, the entries did not specify the type of force used.

The Use of Restraint Techniques in Custody

The 2017 *Report of the Independent Review of Deaths and Serious Incidents in Police Custody* in the UK states that ‘*police practice must recognise that all restraint has the potential to cause death*’ and that ‘*recognition must be given to the wider dangers posed by restraining someone in a heightened physical and mental state*’.⁷⁴ The report recommended mandatory and accredited training for police officers in restraint techniques and supervision of vital signs during restraint, with appropriate refresher training for officers. It also highlighted that officers should be skilled in the use of de-escalation techniques.

The Inspectorate reviewed the custody-related training materials provided by the Garda Síochána and noted that the Custody Management course provided training in techniques to control and restrain persons in custody and included the use of cell tactics. Understanding of the condition of positional or postural asphyxia, a form of asphyxia that causes death when a person’s position prevents them from breathing adequately, is listed as a learning outcome of the Custody Management course. It can occur if a person is restrained in a prone position and has been identified as a factor in a number of deaths in police custody in the UK.

Another learning objective is for course attendees to understand the condition of excited delirium, which has been defined as ‘*a state of extreme mental and physiological excitement, characterised by extreme agitation, hyperthermia, hostility, exceptional strength and endurance without apparent fatigue*’ and which requires immediate medical intervention⁷⁵ (The Royal College of Emergency Medicine, 2019).

Positional asphyxia and excited delirium are also described in the Garda Síochána’s Restraints and Handcuffs Policy. The inspection found that there was some awareness of these conditions among members in charge and gaolers, but the understanding of their seriousness and how they can be prevented was more limited. Although the Custody Management course includes an input on these subjects, many of those performing member in charge or gaoler roles had not received that training.

Members reported that the equipment available to them to restrain people in custody was handcuffs and baton, as they would not use incapacitant spray in a confined space. Unlike other jurisdictions, leg restraints were not available. At the time of this inspection, anti-spit guards had not been issued to garda members, although they have since been provided as a consequence of the COVID-19 pandemic.

The Garda Síochána has no specific reference document regarding using force in custody and relevant information is dispersed throughout a number of different policies and training documents. In comparison, the UK’s College of Policing provides detailed information on restraint in its Authorised Professional Practice on detention and custody, with links to other relevant reports, legislation and practice documents.⁷⁶

Monitoring Use of Force at the Local Level

The Use of Force policy states that local superintendents should satisfy themselves that PULSE incidents reflect the circumstances of a use of force incident and that divisional chief superintendents should

74 Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

75 Available at: https://fflm.ac.uk/wp-content/uploads/2019/05/AcuteBehaveDisturbance_Apr19-FFLM-RCEM.pdf

76 Available at: <https://www.app.college.police.uk/app-content/detention-and-custody-2/>

evaluate each incident of the use of force to determine if there has been any breach of policy and procedures.

The Inspectorate found that there was no formal process to monitor the use of force in custody and many members indicated that their use of force had never been the subject of an assessment or investigation. In addition, chief superintendents did not actively monitor use of force, with most of those spoken to seeing their role as dealing with disciplinary cases which involved the use of force.

There was no requirement for superintendents to examine use of force incidents unless injury is caused as a result. If a PULSE incident included details of force being used, some superintendents stated that it may be reviewed during Performance and Accountability Framework meetings. Few of the superintendents who met with the Inspectorate routinely examined use of force incidents. However, one explained how they regularly checked for such incidents in their district, including those that occurred in the custody facility. The superintendent outlined how they checked custody records and made use of CCTV to verify that the details of the report of an incident matched the circumstances.

Monitoring Use of Force at the Organisational Level

At the organisational level, use of force incidents are monitored by Internal Affairs in the Garda Síochána, which at the time of this inspection was conducting a major review of the reporting and monitoring of use of force. In particular, it was developing a system to report use of force incidents to the Policing Authority on foot of a previous recommendation made by the Inspectorate.⁷⁷

Internal Affairs explained that it reviewed weekly and monthly reports on the use of batons, incapacitant spray, conductive energy devices (TASER) and firearms produced from the PULSE system and that a large part of their focus had been on the use of incapacitant spray. If their attention was drawn to a particular incident, for example, because of the age of the person against whom force has been used, they would examine the PULSE narrative, and only if they thought there was an anomaly would they contact the relevant division or national unit for further information.

Monitoring the use of force in custody is one aspect of unannounced inspections conducted by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and an area which required improvement in a number of police services.

During its visit to Cheshire Constabulary, the Garda Inspectorate heard about how it was improving its monitoring of the use of force in custody following this matter being identified as an area for improvement. This police service uses information from monthly Custody Performance Reports to review the number and type of use of force incidents and the age, gender and ethnicity of those against whom force was used. It also considers long-term use of force trends, including the use of force against children. In addition, the superintendent responsible for managing custody for the organisation chairs regular meetings of a panel that examines a sample of the incidents where force is used in custody. This examination compares records with video and audio recordings. Use of force incidents involving children are always examined by the panel.

⁷⁷ *Public Order Policing (2019)*, Recommendation 4A.

Assessment

The Garda Síochána and its members have an obligation to ensure that any force used is lawful, necessary, proportionate and non-discriminatory and those who use force must make accurate records that are capable of withstanding scrutiny. The findings from this inspection give rise to a number of concerns about the reporting, recording and monitoring of use of force incidents in custody, as well as the training provided to custody staff to deal with people who are non-compliant, aggressive or violent.

The Inspectorate was concerned to find that not all incidents of use of force that occurred prior to arrival at the garda station were reported and recorded in accordance with garda policy. This was also a concern highlighted in the recent CPT report on Ireland. Furthermore, the lack of detail recorded in the custody risk assessment about the nature and duration of force used, as well as the circumstances which may have made it necessary, means that assessments of risk and vulnerability may be poorly informed. Poor practices and the recording policy in place at the time of the inspection also limited any subsequent monitoring of use of force incidents, especially those that involved handcuffs or soft-hand tactics. The policy change that requires all incidents of use of force to be recorded on PULSE is welcome, although the level of compliance with this new policy was not examined by the Inspectorate.

The absence of a structured process at divisional level to examine incidents of use of force in custody is a weakness that needs to be addressed. In particular, the Inspectorate considers that every incident where force has been used against a child should be reviewed. In addition, a dip-sample of all other incidents should be reviewed on a routine basis. Audio and video recordings of the

incidents should be used in this process and any suspected breaches of policy should be brought to the attention of a senior manager for further investigation.

Although the lack of an electronic custody management system prevents information on all recorded use of force incidents being easily retrieved at both divisional and organisational levels, the new policy on recording all use of force incidents on PULSE should enable the Garda Síochána to assure itself, the public and its oversight bodies that it is compliant with the legal and human rights obligations associated with using force in custody. The Inspectorate acknowledges and supports the ongoing review of the recording, reporting and governance processes for use of force incidents. However, the resulting systems, structures and processes must be capable of ensuring that all use of force incidents in custody and prior to arrival there can be captured, analysed and monitored at divisional, regional and organisational level.

The low level of awareness of the potentially fatal consequences of restraint in custody was very concerning to the Inspectorate, as was the limited knowledge of the serious conditions of positional asphyxia and excited delirium. Including information about these matters in a policy document, without relevant training, does not adequately equip members to recognise and deal with them. Members performing custody roles without sufficient knowledge of these conditions and without recent training in custody-related tactics, including de-escalation techniques, creates a risk for the Garda Síochána and for every person in the custody environment. As these are skills that need to be refreshed on a regular basis, this is best achieved by having permanent custody staff. The need for training in use of force in custody and de-escalation techniques is included in Recommendation 27.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 37

The Inspectorate recommends that the Garda Síochána improve the monitoring of use of force in custody to ensure that it is fully compliant with legal, human rights and policy obligations.

To achieve this, the following actions are required:

- Ensure that all use of force incidents in custody, including prior to arrival at a garda station, are reported and recorded;
- Ensure that force used in custody is lawful, necessary, proportionate and non-discriminatory;
- Thoroughly review all incidents of use of force in custody involving children; and
- Collect and publish comprehensive data on the use of force associated with custody.

Complaints Against Members of the Garda Síochána

All complaints against members of the Garda Síochána must be referred to the Garda Síochána Ombudsman Commission (GSOC). A complaint may be made directly to GSOC or to a garda member at any garda station, in

which case it should be transmitted to GSOC. Regulation 20 of the Custody Regulations states that if a person in custody makes a complaint about the conduct of a member before or after arrest or if someone makes a complaint on their behalf, details should be recorded on a separate sheet of paper, a copy of which should be attached to and form part of the custody record. A 2013 HQ Directive reminds gardaí that all complaints must be notified to GSOC in accordance with Section 85 of the Garda Síochána Act, 2005.

In a thematic examination of complaints mechanisms, the CPT noted that such mechanisms are a '*fundamental safeguard against torture and inhuman or degrading treatment of persons deprived of their liberty*'.⁷⁸ It sets out a number of important aspects of a complaints systems, including that:

- > Persons deprived of their liberty should promptly receive information, both orally and in writing, about all avenues of complaint;
- > User-friendly information tools such as posters, leaflets or videos, should be developed and made available;
- > Data on complaints, relevant proceedings and outcomes can be used to identify trends and develop future policies aimed at improving the functioning of the complaints mechanisms and the accountability of the authorities; and
- > The absence of complaints is often indicative of an unsafe environment in the establishments concerned or of a lack of trust in the complaints system.

This section of the report examines how the Garda Síochána deals with complaints made by persons in custody and reviews information about the number of custody-related complaints.

78 Available at <https://rm.coe.int/16807bc1cf>

Recording Complaints

This inspection found that there was no specific instruction regarding the recording of complaints from a person in custody. Most gaolers and members in charge of garda rank told the Inspectorate that if a person in custody had a complaint, they would either refer the person to a sergeant or advise them to contact GSOC. Some explained that the person would be provided with a complaint form and offered assistance to complete it. If the form is completed at the garda station it should be sent to GSOC and a copy given to the complainant. Some members in charge stated that they would only deal with a complaint at release stage and not during the period in custody and there was limited awareness of the need to attach a copy of the complaint to the custody record.

Several members in charge told the Inspectorate that when they were releasing or transferring a person, they would ask if they had any complaints about their time in custody. They would then record the person's response in the custody record. Some members said that they would ask the person to sign the record to indicate that they had no complaint. Entries to this effect were noted in a number of the custody records examined; however, this was not a consistent practice across all the divisions visited during this inspection. Some members in charge said that they would not ask about complaints but would record the fact that no complaint was made if the person did not explicitly say they wanted to complain.

This inspection found that there was no clear information available to persons in custody advising them that they could make a complaint and how to do so. This information is not included in the Notice of Rights form given to people in custody and there were no posters or leaflets in any of the custody facilities visited. When asked

if they knew how to make a complaint, 3 of the 20 people in custody who engaged with the Inspectorate said that they did. The Inspectorate also identified a reluctance on the part of some persons in custody and solicitors to make complaints. Reasons given included a lack of confidence in the system and a fear that it would make the situation worse for them. Children who engaged with the Inspectorate stated that they were not asked if they wanted to make a complaint. Some expressed a lack of knowledge of the complaints process and GSOC, and those who were aware of the process said they did not have faith in it.

The Number of Custody-related Complaints

Chief superintendents and superintendents told the Inspectorate that they did not compile or receive management reports about complaints, including custody-related complaints, in their division. Most explained that they would only become aware of complaints if they were involved in referring a specific incident to GSOC or were tasked to carry out an investigation into a complaint made to GSOC. A number highlighted that they received very few complaints about custody and regarded this as a positive performance indicator.

The small number of custody-related complaints was confirmed by data provided to the Inspectorate by GSOC. This included details of the number of complaints made by members of the public in the category of "During police custody". GSOC also provided details of the number of referrals in this category made by garda superintendents under Section 102 of the Garda Síochána Act, 2005. Figure 7.3 shows the number of complaints and referrals recorded by GSOC each year from 2016 to 2019.

Figure 7.3 Complaints and Referrals in the Category “During police custody” 2016–2019

Year	Complaints	Referrals
2016	255	7
2017	246	4
2018	172	9
2019	167	10

Source: Data provided by the Garda Síochána Ombudsman Commission; analysis by the Garda Inspectorate

Assessment

Complaints provide valuable feedback about how people in custody are treated and should be regarded as important management information that can be used to improve policies, procedures and practices. However, the Inspectorate considers that these learning opportunities are being missed by the Garda Síochána. Information about the number and type of custody-related complaints at organisational and divisional level is available from GSOC and should be requested by the Garda Síochána and analysed to enable trends and patterns to be identified and action taken as needed.

The Inspectorate is not satisfied that enough is done to ensure that people understand that they can make a complaint about their time in custody and know how to do so. This information should be included in the Notice of Rights. Providing leaflets and displaying posters in the custody area would help to promote and raise awareness of the complaints process. Care should be taken to ensure that these documents are easily understood and accessible to everyone.

A review of inspection reports into police custody in England and Wales by HIMCFRS highlighted the importance of making information about the complaints process available to persons in custody, having a clear process for dealing with complaints

and using complaint data to inform custody policies, procedures and practices. This was confirmed in the 2020 *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing*, commissioned by the Scottish Government, which said that all persons in custody should be informed that they have a right to complain.⁷⁹

The Inspectorate considers that action needs to be taken to address the inconsistent approach to handling complaints in custody. It is of the view that a person being released or transferred should not be specifically asked if they wish to make a complaint about their time in garda custody. Rather they should be informed that they have the right to make a complaint and have written information about how to do so. An entry to this effect should be made in the custody record. This should be in addition to information about how to make a complaint being included in the Notice of Rights and displayed clearly in the custody area. The process for ensuring persons in custody know how to make a complaint and for dealing with any complaints made during their time in custody should be clearly defined and included in the single document referred to in Recommendation 1 of this report.

79 Available at: <https://www.gov.scot/publications/independent-review-complaints-handling-investigations-misconduct-issues-relation-policing/>

Recommendations

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendations.

Recommendation 38

The Inspectorate recommends that the Garda Síochána ensure that all persons in custody are informed that they have the right to make a complaint at any time and have written information about how to do so.

To achieve this the Garda Síochána should:

- Include information about making a complaint in the Notice of Rights form;
- Raise awareness of the complaints process by providing leaflets and displaying posters in the custody area; and
- Ensure that the process for dealing with complaints made by persons in custody is clearly defined and included in the single document referred to in Recommendation 1 of this report.

Recommendation 39

The Inspectorate recommends that the Garda Síochána monitor complaints made by persons in custody and use the information to improve custody policy, procedures and practices.

Release

A number of elements of the process for releasing persons from garda custody or transferring them into the custody of others have already been discussed in this report. These include risk management, the return of property and complaints. As the arrangements for release are just as important as those for keeping a person in custody, this short section looks at the overall process for release or transfer.

Recording Release

Although release or transfer are important parts of the custody process, there are no prompts in the custody record to remind members in charge of what they need to do at this stage. For example, it has no specific section to capture all the relevant information, including the date and time of release or transfer. Although this information should also be recorded in the PULSE prisoner log, this inspection found that it was missing from some logs and that in other cases the time on the PULSE prisoner log did not match that on the custody record.

Explaining What Comes Next

A number of outcomes can result from a person being in custody. These include:

- > Release with no further action being taken;
- > Release to be summonsed for court at a later date;
- > Charge and release to attend court at a future date;
- > Charge and hold in custody until the next available court; or
- > Transfer to a medical facility or to a prison.

Irrespective of the outcome, it is important that each person has the next stage of their particular circumstances clearly explained

to them. The Inspectorate saw examples of where this was done well, but also found that this was not always the case.

Management of Risk

This inspection identified that risk assessments were not reviewed and updated immediately prior to release or transfer, nor were they shared with those into whose custody a person was being transferred. As identified in Chapter 4, risks and vulnerabilities are not always added to PULSE to enable other members who may come into contact with the person to be aware of those factors and take any necessary action.

Some members in charge and gaolers interviewed by the Inspectorate felt that their responsibility ended once a person was released from custody. In contrast, others ensured that the person could get home safely and some provided information about support services that may be able to provide assistance to the person according to their circumstances. For example, one sergeant had established a relationship with a local suicide support organisation and signposted some individuals to it, while others described providing leaflets about substance abuse or calling social workers. In these instances, the actions were taken as a result of the personal interest of the member, rather than an organisational policy or process that was established with other agencies or organisations.

In other jurisdictions, police officers in conjunction with on-site healthcare professionals can signpost persons in custody to other support organisations and can refer them to Criminal Justice Liaison and

Diversion services if appropriate.⁸⁰ In New Zealand, a person must be released from custody to a person, agency or organisation. This is done as part of the risk assessment process and their custody policy has a set of actions that must be followed at the time of release.

Assessment

Releasing or transferring persons in custody would benefit from a more structured process, which should incorporate a number of important factors. The risk assessment and management plan should be reviewed and if necessary updated, and where there is a risk of self-harm, the member in charge should ensure that appropriate support is in place for the person. For example, the person may be released into the care of a family member. If the person is being transferred into the custody of other gardaí or another agency, then those receiving the person should be briefed on the identified risks and how they are being managed. PULSE should also be updated with any identified risks or vulnerability factors. It is important that the person is told, and understands, what will happen to them next and that they are informed that they have the right to make a complaint and have information about how to do so. Items of property taken from the person that are not retained for investigative purposes should be returned against receipt.

In addition, there should be agreed protocols with appropriate agencies and organisations that can provide support to people being released, particularly if they are considered vulnerable. Where referrals are made or people are signposted to other organisations, this information should be recorded in the custody record. A new section should be

80 Criminal Justice Liaison and Diversion services are in place in England and Wales. They support people who have mental health, learning disability, substance misuse or other vulnerabilities through the criminal justice system, refer them for appropriate health or social care, and enable them to be diverted away from the criminal justice system into a more appropriate setting.

added to the custody record containing this list of actions and completed upon the person's release or transfer.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 40

The Inspectorate recommends that the Garda Síochána develop and implement a structured process for the release or transfer of persons in custody.

The process should include:

- Reviewing and updating the risk assessment prior to release and where there is a risk of self-harm, ensuring that appropriate support is in place;
- Where a person is transferred into the custody of others, sharing with them a reviewed risk assessment and management plan;
- Updating PULSE with any identified risks or vulnerability factors;
- Ensuring the person understands what will happen to them next;
- Returning items of property taken from the person that are not retained for investigative purposes; and
- Informing the person that they have the right to make a complaint and ensuring they have written information about how to do so.

Evaluating the Custody Record

The primary source of information about how a person in custody has been treated is the custody record. Through this document it should be possible to tell whether a person has been able to avail of their statutory rights, whether the provisions contained in the Custody Regulations have been complied with and whether the person has been treated with dignity and respect. Therefore, it is vital that everything that happens in relation to the person is captured accurately and in detail in the custody record. The Inspectorate found that the standard of completion of custody records was often poor. During its visit to Ireland, the CPT also found that custody registers were not always maintained in a comprehensive and accurate manner.

Throughout this report, the Inspectorate has referenced a number of areas where the layout and design of the custody record needs to change to improve record keeping and facilitate the quality assurance processes that are necessary to provide confidence that people have had access to their rights and entitlements. This section looks in general at recording practices and identifies areas for improvement.

Operating the Custody Record

Regulation 6 of the Custody Regulations states that a custody record must be kept in respect of each person in custody. The member in charge is responsible for the accuracy and completeness of all entries made while they are performing that role.

Currently, the custody record is part of an A3 size book containing 12 individual records. Each custody record consists of four separate pages each with a carbon copy. A copy of the custody record is attached at Appendix 3.

A custody record comprises a number of sections that relate to various parts of the Custody Regulations or other relevant

legislation, as well as space for free text. When the free text space has been filled, a separate A3 book of continuation pages is available. Members in charge and gaolers highlighted the difficulty of using the custody book and continuation pages, particularly when they had a number of people in custody at the same time.

Although reference numbers and names are written on the front cover of the custody books and continuation books, retrieving completed records was cumbersome and inefficient. The fact that all entries are handwritten made examination of records difficult.

Access to Custody Records

Regulation 24 of the Custody Regulations says that a person in custody, an appropriate adult if the person is under 18 years of age, or their legal representative can request a copy of the custody record once the person ceases to be in custody. Garda members told the Inspectorate that they would never allow a solicitor to see the custody record during the time in custody.

In comparison, Code C of the PACE Codes of Practice states that legal representatives are entitled to inspect the custody record as soon as practicable after arrival at the police station and at any time after that on request. This is in addition to the ability to request a copy of the custody record as soon as the person leaves custody.

During engagement with representatives of the Law Society, defence solicitors confirmed that they were unable to view the custody record while their client was in custody and explained that at times it was difficult to obtain information about their clients when they are in custody. When asked if they would ever request that specific information was entered in the custody record, they indicated their reluctance to do so because of concerns that it may annoy the member in charge.

Electronic Custody Record

All police services reviewed as part of this inspection had an electronic system to capture and record information on persons in custody. While a previous recommendation made by the Inspectorate to introduce an electronic custody system has been accepted by the Garda Síochána and is included in its IT strategy, it has yet to be implemented.⁸¹ Members of all ranks spoken to during this inspection supported the introduction of an electronic custody record as a more efficient and effective way of keeping accurate records of people's time in custody and a better means of assessing levels of compliance and performance.

Assessment

Despite the case having been made for an electronic custody system and accepted by the Garda Síochána, it was disappointing to find that it was not yet in place. Its absence means that it is much more difficult to effectively scrutinise compliance with legislation and policy, assess the extent to which statutory and human rights are protected, and determine whether people are being treated with dignity and respect. The Inspectorate advocates the expeditious introduction of an electronic custody management system. It should be linked to other garda IT systems such as PULSE and its computer aided dispatch system. This would improve access to relevant information and enable certain fields to be automatically populated, thereby avoiding the need for information to be input on multiple occasions.

If, as it appears, the paper custody record will remain in place for some time, then there is a pressing need for improvements to be made to it. The Inspectorate considers that it should be redesigned to facilitate the recording of more detailed information in a number of areas, as well as making it more user friendly. This report has already highlighted weaknesses in the recording of many aspects of custody

81 *Crime Investigation (2014)*, Recommendation 9.8.

and made a number of corresponding recommendations. These aspects together with several other changes that are required

to improve the recording of information about the care and treatment of persons in custody are listed in Figure 7.4.

Figure 7.4 Proposed Changes to the Custody Record

Notification to Solicitor

There should be a separate section to record this information. Where notification is not requested, this fact should be recorded and the person asked to sign the entry. Space to record the signature and any refusal to sign is needed.

Third-Party Notification

A separate section should be created for third-party notifications. Where notification is not requested, this fact should be recorded, and the person asked to sign the entry. Space to record the signature and any refusal to sign is needed.

Foreign Nationals

The offer of the right to contact their consul and the response should be recorded and the person asked to sign the entry. Space to record the signature and any refusal to sign is needed.

Interpreters

The section should include a place to include the reason that the member in charge decided not to call an interpreter.

Risk Management

The risk assessment form should be accompanied by a risk management plan, both of which should be included in the custody record rather than maintained as a separate form.

Recording Photographs, Fingerprints and Palm Prints, and DNA Samples

There should be specific sections to record all details relating to the taking of photographs, fingerprints and palm prints, and DNA samples, including the power used and the name, rank and signature of the authorising member.

Extension of Detention

There should be a specific section to record details relating to the extension of detention, to include the name, rank and signature of the authorising member.

Search of a Person in Custody

The section relating to searches must include whether the person was searched, and if so the names of those conducting it, the type of search, the power under which it was conducted, the grounds for it, the authorisation if required and the outcome of the search.

Property

The custody record should be amended to allow for the detailed recording of all items of property in the possession of the person at the start of the custody process and whether the item is retained by the person or by the member in charge. There should be space for the person in custody to confirm that the list is correct or for a refusal to sign to be recorded.

Release or Transfer

There should be a specific section that contains a checklist of all matters that must be dealt with upon release or transfer.

The Inspectorate considers that a better custody record will contribute significantly to improved record keeping and recommends a full review and redesign of the current custody record, with the changes being reflected in any future electronic version. If new custody legislation is enacted, additional changes may be required.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 41

The Inspectorate recommends that the Garda Síochána review and redesign the paper custody record to include the proposed changes outlined in this report and listed at Figure 7.4.

Garda Síochána Custody Record - Risk Assessment

C.84(A)

Details of arrested/detained person

Name _____ D.O.B _____ Date _____ Time _____

B1 Condition of Person in Custody on arrival at station

Questions to be asked of arresting/detaining/escorting member

Was force used before arriving in custody at the Garda Station? Yes No

If yes, give details: _____

Did arrested/detained person require First Aid? Yes No

If yes, give details (by whom and when given?): _____

Garda observations (visible signs of injury/illness/medical condition/alcohol/influence of drugs)

This notice is to be read over to the arrested/detained person before asking the following questions

'Answers given to questions in the course of this risk assessment will not be used to incriminate you for any offence and relate solely to your welfare and the conditions and lawfulness of your detention in this Garda station'

B1 (a) Medical/Drugs

Are you injured or suffering from any illness or medical condition? Yes No

If yes, give details: _____

Have you recently seen a doctor or been to a hospital for any illness or injury? Yes No

If yes, give details: _____

Are you currently taking any medication, prescription drugs, tablets or drugs of any kind? Yes No

If yes, give details: _____

Have you ingested/taken drugs and/or medication? Yes No

If yes, when? give details: _____

B1 (b) Alcohol

Have you consumed alcohol recently? Yes No

If yes, when and how much? give details: _____

Garda Síochána Custody Record - Risk Assessment

C.84(A)

Do you have any drug/alcohol dependencies? Yes No
 If yes, give details: _____

B1 (c) Mental Health/Self Harm

Have you ever tried to harm yourself? Yes No
 If yes, give details: _____

Are you suffering from mental health problems, depression or are you considered mentally vulnerable? Yes No

If yes, give details: _____

Garda observations: Are there signs that the arrested/detained person has self-harmed or is suffering from a mental illness? Yes No

Give details (If yes, a doctor is required): _____

B1 (d) Learning Difficulties

Do you require help with reading/writing or do you have any learning difficulties? Yes No
 If yes, give details: _____

Garda observations: Does the arrested/detained person exhibit any sign of learning difficulties? Yes No

If yes, give details: _____

B1 (e) Dietary Requirements

Have you any special dietary requirements/allergies? Yes No
 If yes, give details: _____

B1 (f) Other

Is there anything else regarding your welfare you wish to make me aware of while you are in custody? Yes No

If yes, give details: _____

This risk assessment requires the assessing member to consider the necessity to call a doctor where the answer is yes to any of the questions answered by the arrested/detained person or the observations of the assessing member deem it necessary. If the decision is made to call a doctor the details must be recorded. Likewise, where the decision is made not to call a doctor the reasons must be recorded.

Completing Member: Signature _____ Rank _____ Date _____

Note: This risk assessment replaces Section B1 in the custody record and should be affixed to and form part of the custody record.



An Garda Síochána - Cell Inspection Checklist for Station No. of Cells

	Cell 1		Cell 2		Cell 3		Cell 4		Cell 5		Cell 6		Cell 7		Cell 8	
	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N	Y	N
Cell Key:																
Do you have immediate access to the cell spare key?																
Housekeeping:																
Is cell clean?																
Are all items left by previous prisoner removed from cell?																
Cell Door																
Is cell lock and slide bolts in working order?																
Is inspection hatch working and free from visual damage?																
Is viewing portal free from visual damage?																
Is plaster work surrounding cell door free from visual damage?																
Call Button:																
Is call button working and free from visual damage?																
Is the plaster/sealant surrounding the call button free from visual damage?																
Cell lighting:																
Are cell lights in working order?																
Is the light unit free from visual damage?																
Is the plaster/sealant surrounding the light fittings free from visual damage?																
Toilet:																
Is toilet unit in working order?																
Is toilet unit free from visual damage?																
Ceiling/Floor/Walls/Windows:																
Are the ceiling, floor, walls and windows free from visual damage?																
Bedding:																
Is the mattress and blanket clean and free from visual damage?																
General Custody Area:																
Are Ample probe, first aid kit and disposable gloves available in custody area?																
Is there a sharps container available for use and not filled to capacity?																
Is there a ligature knife available?																

Completed By: _____
 Date: ____ / ____ / 20____ Time: ____ : ____ hrs

If answer is "no" to any of above, please, state what action is recommended? _____
 Date received by Sergeant _____

Date forwarded to District Office: _____ Action taken by District Office: _____

Garda Síochána Custody Record

C. 84.

4

Incident PULSE I.D. No. _____

District _____

Garda Station _____

Name _____

Authorisation to further extend detention for a further period not exceeding 48 hours pursuant to section 2(2)(h)(ii) Criminal Justice (Drug Trafficking) Act, 1996 given on Date _____ Time _____ By _____
 Judge of the District / Circuit Court _____
 Signature of Member I/C _____

P. DETENTION - SECTION 30 OFFENCES AGAINST THE STATE ACT, 1939, AS AMENDED

To be completed in respect of a person detained under section 30 Offences Against the State Act, 1939, as amended (24hrs)

Name of arresting member _____ Date _____
 Time of arrest _____

Direction to extend detention pursuant to section 30(3) Offences Against the State Act, 1939, as amended, given by: (24hrs by C/Supt - does not apply to rearrest)

Name _____ Rank _____ Time _____ Date _____

Notification of direction to extend detention given to detained person

Time _____ Date _____ Notified by _____
 Signature of Member I/C _____

Authorisation to extend for a further period not exceeding 24 hours by a Judge of the District Courts: (Does not apply to rearrest)

Given on Date _____ Time _____ By _____
 Judge of the District Court _____
 Signature of Member I/C _____

Q. DETENTION - SECTION 50 CRIMINAL JUSTICE ACT 2007

To be completed in respect of a person detained under section 50 Criminal Justice Act 2007 (not exceeding 6hrs by member I/C)

"I have reasonable grounds for believing that the detention of _____ is necessary for the proper investigation of the offence(s) in the respect of which he/she has been arrested."

Signature of Member I/C _____ Time _____ Date _____
 Notification of decision to detain given to detained person
 Time _____ Date _____ Signature of Member I/C _____

Direction to extend detention pursuant to section 50(3)(b) Criminal Justice Act 2007 given by: (not exceeding 18hrs by Supt)

Name _____ Rank _____ Time _____ Date _____
 Notification of direction to extend detention given to detained person
 Time _____ Date _____ Notified by _____
 Signature of Member I/C _____

Direction to further extend pursuant to section 50(3)(c) Criminal Justice Act 2007 given by: (not exceeding 24hrs by C/Supt or in the case of a rearrest an authorisation to further extend detention for a further period not exceeding 24hrs by a Judge of the District / Circuit Court)

Name _____ Rank/Judge _____
 Time _____ Date _____

Notification of direction to further extend detention given to detained person

Time _____ Date _____ Notified by _____
 Signature of Member I/C _____

Authorisation to further extend detention for a further period not exceeding 72 hours pursuant to section 50(3)(g)(i) Criminal Justice Act 2007

Given on Date _____ Time _____ By _____
 Judge of the District / Circuit Court _____
 Signature of Member I/C _____

Authorisation to further extend detention for a further period not exceeding 48 hours pursuant to section 50(3)(h)(i) Criminal Justice Act 2007

Given on Date _____ Time _____ By _____
 Judge of the District / Circuit Court _____
 Signature of Member I/C _____

R. DETENTION - SECTION 42 CRIMINAL JUSTICE ACT, 1999

To be completed in respect of a person detained under section 42 of the Criminal Justice Act, 1999 as amended (not exceeding 6hrs by member I/C)

"I have reasonable grounds for believing that the detention of _____ is necessary for the proper investigation of the offence(s) in respect of which he/she is arrested"

Signature of Member I/C _____ Time _____ Date _____
 Notification of decision to detain given to detained person
 Time _____ Date _____ Signature of Member I/C _____

Direction to extend detention pursuant to section 42(3)(b) Criminal Justice Act, 1999 given by: (not exceeding 6hrs by Supt)

Name _____ Rank _____ Time _____ Date _____
 Notification of direction to extend detention given to detained person
 Time _____ Date _____ Notified by _____
 Signature of Member I/C _____

Direction to further extend detention pursuant to section 42(3)(bb) Criminal Justice Act, 1999 given by: (not exceeding 12hrs by C/Supt)

Name _____ Rank _____ Time _____ Date _____
 Notification of direction to further extend detention given to detained person
 Time _____ Date _____ Notified by _____
 Signature of Member I/C _____

S. ELECTRONIC RECORDING OF INTERVIEW - NOTICE TO PERSONS WHOSE INTERVIEW IS BEING ELECTRONICALLY RECORDED

Notice given to interviewee
 Date notice given _____ Time notice given _____
 Signature of Member I/C _____
 Any further requirement to notify is to be recorded in action / occurrence

T. FINGERPRINTS, PALMPRINTS, PHOTOGRAPHS - WHERE ARRESTED - DETAINED UNDER
 Section 4 Criminal Justice Act, 1984
 Section 2 Criminal Justice (Drug Trafficking) Act, 1996
 Section 30 Offences Against the State Act, 1939, as amended
 Section 50 Criminal Justice Act 2007
 Section 42 Criminal Justice Act, 1999

Authorisation to Fingerprint, Palmprint, Photograph
 Date authorisation given _____ Time authorisation given _____
 Authorisation given by _____
 Signature of Member I/C _____

U. Interviews (persons under eighteen years)

Authorisation to question an arrested person in the absence of a parent or guardian given by Member I/C

Reasons for giving such authorisation under Regulation 13(1) (a-d)

Actions taken in compliance with Regulation 13(2) (a-c)

Signature of Member I/C _____

UI. Authorisation to exclude a parent, guardian or other person from the questioning of the arrested person given by Member I/C

Reasons for giving such authorisation under Regulation 13(1)(d)(i-ii)

Signature of Member I/C _____

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